

GAHC010012592014



**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : MACApp./191/2014

SMTI DEVI BASUMATARY @ DEVI GOGOI
W/O LATE PARESH GOGOI, R/O PRAFULLA NAGAR, P.O. and P.S.
MANGALDOI, DIST. DARRANG, ASSAM.

VERSUS

AJIT CHETIA and 2 ORS,
S/O RAMESH CHETIA, R/O BORDOLOI NAGAR AIKON BHAVAN PATH,
TINSUKIA 786125, DIST. TINSUKIA, ASSAM OWNER OF THE 210
EXCAVATOR

2:IFFCO TOKIO GENERAL INSURANCE CO. LTD.

C/O CHETIA TRADE AGENCY
DURGABARI POLICE OFFICE ROAD
TINSUKIA

3:BRANCH MANAGER

ITTCO TOKIO GENERAL INSURANCE CO. LTD. UPAXANA COMMERCIAL
COMPLEX
NEAR SBI
ULUBARI BRANCH
ULUBARI
GUWAHATI 781007
DIST. KAMRUP M
ASSAM

Advocate for the Petitioner : MR.T J MAHANTA

Advocate for the Respondent : MR. R GOSWAMI

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the appellant : Ms. P. Bhattacharya

Advocate for the respondents : Shri R. Goswami

Date of hearing : **18.06.2024**

Date of Judgment : **18.06.2024**

JUDGMENT & ORDER

The present appeal has been preferred under Section 173 of the Motor Vehicle Act, 1988 against a judgment and order dated 10.02.2014 passed by the learned MACT, Darrang in MAC Case No. 36/2012. The appeal has been preferred by the claimant praying for an enhancement.

2. The claim was made in respect of an accident which had occurred on 18.09.2011 in which the husband of the appellant Paresh Gogoi had expired. The deceased was a driver of Excavator and in the claim petition as well as in the deposition, it was contended that the deceased used to receive a monthly remuneration of Rs.8,000/-. The claimant had deposed as PW-1 and a co-worker as PW-2 and both of them had consistently stated regarding the monthly income of the deceased to be Rs.8,000/-. There was, however, no document on the monthly income.

3. The learned Tribunal, vide the judgment and order dated 10.02.2014 had awarded an amount of Rs.4,85,000/- with interest @ 6%.

4. I have heard Ms. P. Bhattacharya, learned counsel for the appellant

whereas the respondent nos. 2 and 3 – IFFCO TOKIO General Insurance Company are represented by Shri R. Goswami, learned counsel.

5. Ms. Bhattacharya, learned counsel for the appellant has submitted that though there was no documentary evidence on the aspect of income, there was adequate statement in the claim petition supported by the deposition made by her as PW-1 and another witness as PW-2 regarding the monthly income of the deceased as Rs.8,000/- . She however submits that the owner in his written statement had stated that the monthly income of the deceased was Rs.4,500/- . The owner however admits regarding the employment of the deceased with him as a driver of the Excavator. The learned counsel submits that the learned Tribunal had taken Rs.3,000/- as income per month being the notional income. It is submitted that in any case, at least the amount mentioned by the owner in the written statement should have been taken to be the monthly income.

6. The learned counsel has also structured the present appeal for enhancement on the ground that the aspect of future prospects has not been taken into consideration by the learned Tribunal. By referring to the case of **National Insurance Co. Ltd. Vs. Pranay Sethi** reported in **(2017) 16 SCC 680**, the learned counsel for the appellant has submitted that the Constitution Bench of the Hon'ble Supreme Court laid down the future prospect to be 40%. It is also submitted that even if the aforesaid consideration is made from the perspective of the date of the accident, the case of **Santosh Devi Vs. National Insurance Company Ltd.** reported in **(2012) 6 SCC 421** should have been taken into account which prescribed the future prospect at 30%. The learned counsel accordingly submits that a case for enhancement is made out and the Award is required to be enhanced.

7. Shri Goswami, learned counsel for the Insurance Company has submitted

that the approach of the Tribunal, so far as the monthly income of the deceased is concerned, in absence of any documentary evidence, the income which was deemed at Rs.3,000/- per month as notional income cannot be found fault with. He however in his usual fairness submits that the Award has not taken into consideration the aspect of future prospects. He also submits that the aspect of future prospect has to be considered as per the law prevailing at the time of accident which was on 18.09.2011.

8. The rival submissions have been duly considered and the records of the learned Tribunal have been carefully perused.

9. The present appeal for enhancement revolves around two aspects namely, the monthly income of the deceased and the future prospects. The monthly income of the deceased was deposed by the witness for the claimant as Rs.8,000/- per month. The owner in his written statement had however stated the monthly income of the deceased to be Rs.4,500/-. The learned Tribunal had however taken the monthly income on a notional basis of Rs.3,000/-. In the unorganized sector wherein the employment of persons are not documented, the aspect of monthly income may not be able to be proved by any documentary evidence. The outlook of the Tribunal is to take a reasonable stand by ascertaining as to whether the aspect of employment was otherwise substantially proved. In the present case, there was no dispute or denial by the owner who was opposite party in the claim regarding the employment of the deceased. However, the income which was claimed to be Rs.8,000/- was stated to be Rs.4,500/-. The learned Tribunal, however, as mentioned above, had taken the monthly income to be Rs.3,000/-.

10. On the aspect of future prospect, a reading of the impugned judgment would show that such aspect was not taken into consideration by the learned

Tribunal. The Hon'ble Supreme Court in the case of ***Pranay Sethi*** (supra) has laid down the future prospects to be 40%. Unlike a legislation, a judgment would be effective retrospectively unless a specific observation is made for its prospective effect. In any case, even if this aspect is considered from the date of the judgment by the Tribunal, the case of ***Santosh Devi*** (supra) was already available as per which the future prospect was quantified at 30%.

11. Considering all the aforesaid facts and circumstances, this Court is of the opinion that the impugned Award is inadequate and therefore a case for enhancement is made out.

12. Taking the assistance of the learned counsel for the parties, this Court has arrived at a lump sum figure as additional compensation which is quantified at Rs.1,50,000/- (Rupees One Lakh and Fifty Thousand) only. The aforesaid amount is required to be paid by the Insurance Company within a period of 45 days from today in the Registry of this Court, failing which, the amount would carry interest @ 9% from the expiry of the prescribed period of 45 days. The amount be released to the claimant on being properly identified by the learned counsel.

13. The appeal accordingly stands allowed in terms of the observations made above.

JUDGE

Comparing Assistant