



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

MAC APPEAL No. 271 of 2020

- 1.** Smt. Sapna Puri @ Sapna Devi,
age about 40 years,
W/o- Late Jugesh Puri,
R/o- Vill.- Sutar Para, Godhuli Bazar, Azara, P.O. &
P.S. Azara,
Dist.- Kamrup(M), Assam, Pin- 781017.

- 2.** Miss Megna Puri,
age 17 years (minor)
D/o- Late Jugesh Puri
R/o- Vill.- Sutar Para
Godhuli Bazar, Azara
P.O. & P.S. Azara
Dist.- Kamrup(M)
Assam, Pin- 781017.

- 3.** Miss Sonam Puri,
aged about 13 years, (minor)
D/o- Late Jugesh Puri,
R/o- Vill.- Sutar Para,
Godhuli Bazar,
Azara, P.O. & P.S. Azara
Dist.- Kamrup(M),
Assam, Pin- 781017.

4. Smti. Puspa Rani Puri,
aged about 71 years,
W/o- Late Bhagat Ram,
R/o- Vill.- Sutar Para,
Godhuli Bazar, Azara,
P.O. & P.S. Azara,
Dist.- Kamrup(M),
Assam, Pin- 781017

.....Appellants

-Versus-

1. Md. Sahadot Ali,
S/o- Md. Jabed Ali,
R/o- Vill.- Tapattary, P.O. Piradhara,
P.S. Abhayapury, Dist.- Bongaigaon, Assam.

2. Cholamandalam Ms General Insurance Company
Limited,

Head Office-

2nd Floor, "Dare House", No. 2,
Nsc Bose Road, Chennai- 600001, India

Branch Office-

Aastha Plaza, Bora Service,
Ulubari Opposite to B. Deorah College,
Pin- 781007, Guwahati, Assam.

Policy No. 3379/01301436/000/01
Valid Upto- 01-12-2017
(Owner-Cum-Driver of the Offending Truck bearing
Registration No. AS-19-C-8364)

.....Respondents

:: BEFORE ::
HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Appellants : Mr. A. Lal, Advocate

For the Respondents : Mr. K. K. Bhatta, Adv.
(for respondent No. 2)

Date of Judgment : 23.09.2024

JUDGMENT (CAV)

- 1.** Heard Mr. A. Lal, learned counsel for the appellants. Also heard Mr. K. K. Bhatta, learned counsel for the respondent No. 2.
- 2.** This Appeal under Section 173 of the Motor Vehicles Act, 1988 has been filed by the appellants/claimants, namely, Smt. Sapna Puri @ Sapna Devi, Miss Megna Puri, Miss Sonam Puri and Smti. Puspa Rani Puri praying for enhancement of compensation awarded to the appellants/claimants by the impugned judgment and award dated 23.12.2019 passed by the Motor Accident Claims Tribunal No. 3, Kamrup(M) at Guwahati in MAC Case No. 206/2017.
- 3.** The facts relevant for consideration of the instant appeal, in brief, are as follows:-
 - (i) That on 09.12.2016, at about 11 PM, one Jugesh Puri met with a motor vehicle accident at Bidyanagar, 7th Mile, Guwahati due to rash and negligent driving of the

vehicle bearing Registration No. AS-19-C-8364. The accident also involved one Maruti Swift car bearing Registration No. AS-01-BS-5425 which was driven by the said Jugesh Puri as a result of the accident, the driver of the Maruti Swift car, namely, Jugesh Puri sustained grievous injuries and he was immediately taken to Guwahati Medical College & Hospital wherein he succumbed to his injuries within 3 hours of the accident.

(ii) On death of the deceased Jugesh Puri, his dependents, namely, the present appellants who are the wife, daughters and mother of the deceased respectively preferred an application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation for the death of Jugesh Puri in the aforesaid motor vehicle accident. The appellants/claimants side adduced evidence of three witnesses, namely, the Appellant No. 1 Smt. Sapna Devi as PW-1, Meghraj Rai as PW-2 and one Abdus Samad as PW-3.

(iii) Though, the respondent/Insurance Company contested the claim of the appellants by filing written statements, however, it did not adduce any evidence in defence against the claim of the appellants.

(iv) Ultimately, on completion of the inquiry in MAC Case No. 206/2017, The Motor Accident Claims Tribunal No. 3, Kamrup(M) by Judgment dated 23.12.2019 awarded a

compensation amount of Rs.19,71,312/- along with an interest at the rate of 7.5% per annum from the date of cross-examination of PW-3 within 15.07.2019 till its realization. It was further directed that out of the total awarded amount of compensation, a sum of Rs.2,50,000/- shall be paid to the mother of the deceased (Appellant No. 4) and a sum of Rs.3,00,000/- each would be deposited in a nationalized bank as fixed deposit in the name of Appellant No. 1, 2 and 3 for a period of 10 years and the remaining amount along with interest would be paid to Appellant No. 1.

4. The instant appeal has been filed by the appellants/claimants being aggrieved with the quantum of compensation awarded to the appellants as well as they are also aggrieved with the Claims, Tribunal directing the payment of interest on the awarded compensation from the date of cross-examination of PW-3 only instead of date of filing of the claim petition. They are also aggrieved of the fact that no parental loss of consortium was awarded in respect of two minor child of the deceased. The Appellants/claimants are also aggrieved by the fact that only 7.5% rate of interest per annum was awarded on the compensation amount instead of an enhanced rate of 12% which was claimed by the Appellants/claimants.

5. Mr. A Lal, learned counsel for the appellants/claimants has submitted that the Motor Accident Claims Tribunal No. 3,

Kamrup(M) had erred in computing the annual income of the deceased at Rs.1,81,077/- per annum and in computing loss of dependency at the rate of Rs.1,35,800/- only.

6. Learned counsel for the appellants/claimants has submitted that though the Learned Tribunal had agreed, in the impugned judgment, to the proposition that the evidence on record justifies that the deceased could earn a sum of Rs.2,89,725/- (Two Lakh Eighty Nine Thousand Seven Hundred and Twenty Five) as mentioned in the basis of the exhibit No. 21 i.e., the IT return of the deceased for the assessment year 2014-15. However, it is submitted by the learned counsel for the appellant that the learned Tribunal was wrong in coming to the finding that the said income is the family income and deceased's own share in the said income would only be to the extent of fifty percent, as there was no evidence to that effect on record.

7. Learned counsel for the appellants has submitted that the said finding was only an assumption made by learned Tribunal without any basis on record. Learned counsel for the appellants/claimants has also submitted that the evidence adduced by the claimants before the Tribunal could not be demolished by the Insurance Company. It is also submitted that the Insurance Company also did not adduce any evidence in defense and, therefore, the Tribunal ought to have relied on the evidence available on record and ought not to have assumed that the income of the deceased which he earned from the

business of Puja Engineering Works is a family income and the deceased was entitled only to 50% of the same.

8. Learned counsel for the appellants/claimants has also submitted that the evidence adduced by the claimants clearly shows that the expenditure of the deceased was more or less to the extent of Rs.50,000/- per month and this expenditure was regularly incurred by the deceased from his earning, therefore, his earning could not have been less than that amount. It is submitted by the learned counsel for the appellants/claimants that the evidence of PW-3 clearly shows that the deceased took a loan of Rs.4,60,000/- for purchasing a Maruti Swift Desire car and against that loan, he was regularly paying the equal monthly installment of Rs.10,721/-. It is also submitted that the evidence also shows that the elder daughter of the deceased was a student of Kendraya Vidyalaya at Jammu and the younger daughter was also studying and on the educational expenses of both the daughters, at least Rs.10,000 to Rs.15,000 was incurred on monthly basis. He also submits that the petitioner had to maintain his ailing aged mother and had to incur expenses on her medical expenses monthly and it is submitted that the evidence to that effect was not contradicted or was not countered by the Insurance Company before the Tribunal. It is also submitted by the learned counsel for the appellant that petitioners also regularly incurred Rs.3500/- per month towards the house rent.

9. Learned counsel for the appellant/claimant has also submitted that the evidence on record also shows that the deceased was having four separate running bank accounts at the time of his death and considering the expenses incurred by the deceased regularly every month, which comes to more or less Rs.50,000/-, the monthly income of the deceased could not have been less than Rs.50,000/- per month. Hence, it is submitted that the Tribunal was wrong in computing the monthly income of the deceased as well as loss of dependency of the claimants.

10. Learned counsel for the appellants/claimants has also submitted that the Tribunal has erred in fixing the rate of interest payable by the Insurance Company to the claimants at the rate of 7.5% per annum without any basis. He has submitted that under the similar circumstances, other statutes prescribes a higher rate of interest on the compensation awarded. He also submits that under the Workmen's Compensation Act, the rate of interest awarded is at the rate of 12% per annum and in cases under the Consumer Protection Act, the rate of interest awarded is at the rate of 12% to 18% for delayed payment. Similarly, under Land Acquisition Act, the rate of interest is 9%, whereas, under Arbitration and Conciliation Act, 1996, the rate of interest is at 18% per annum. He submits that in case of Motor Vehicles Act, 1988, which gives the discretion to the Tribunal to fix the rate of interest on the awarded compensation, the rate of interest cannot be arbitrarily fixed at 7.5% and it should be at

least 12% per annum on the compensation awarded till payment.

11. Learned counsel for the appellants/claimants have cited several rulings in support of his submission that the rate of interest payable on the awarded compensation has to be at a higher rate. The learned counsel for the appellants/claimants has also submitted that the Tribunal has erred in awarding the interest payable on the awarded compensation from the date of cross-examination of PW-3 i.e., 15.07.2019 without assigning any reason for the same. He submits that the rate of interest on the awarded compensation has to be payable from the date of filing of the claim petition as settled by a number of judgments by the Supreme Court of India.

12. The learned counsel for the appellants/claimants has also submitted that the Tribunal has also erred in awarding loss of consortium only for only @ Rs.40,000/- . He submits that the claimant No. 1 ought to have given a compensation of Rs.48,000/- for loss of spousal consortium, whereas, appellant Nos. 2 and 3 ought to have given loss of parental consortium at the same rate and as well as appellant No. 4 ought to have given loss of filial consortium at the same rate.

13. In support of his submissions, learned counsel for the appellants/claimants has cited following rulings:-

- "1. *Gurpreet Kaur and Ors Vs. United India Insurance Company Ltd. and Ors.* reported in 2022 SCC OnLine SC 1778;
2. *Amrit Bhanu Shali and Ors. Vs. National Insurance Company Ltd. and Ors.* reported in (2012) 11 SCC 738;
3. *Malarvizhi and Ors. Vs. United India Insurance Company Ltd. and Anr.* reported in 2019 SCC OnLine SC 1579;
4. *Srimati Chameli Wati and Anr. Vs. Municipal Corporation of Delhi and Ors.* reported in AIR 1986 SC 1191;
5. *Amresh Kumari Vs. Niranjan Lal Jagdish Prashad Jain* reported in 2012 STPL 118 SC
6. *Smt. Puspa Maheswari and Ors. Vs. United India Insurance Company Ltd. and Ors.* reported in 2017 SCC Online GAU 740;
7. *Josphine James Vs. United Insurance Company Ltd. and Anr.* reported in 2013 (10) SCALE 340;
8. *Magma General Insurance Company Ltd. Vs. Nanu Ram Alias Chuhru Ram and Ors.* reported in (2018) 18 SCC 130;
9. *The New India Assurance Company Ltd. and Ors. vs. Somwati and Ors.* [Judgment dated 07.09.2020

*in Civil Appeal No. 3093/2020 arising out of SLP (C)
No. 23478 of 2019].*

14. On the other hand, Mr. K. K. Bhatta, learned counsel for the respondent No. 2 has submitted that the claimants in this case have failed to prove the income of the deceased at the time of his death as the income tax return which is exhibited as Exhibit-21 by PW-1 is of the financial year 2012-13 whereas the deceased Jugesh Puri died on 09.12.2016 and no income tax return has been exhibited before the learned Tribunal for the year in which he died and, therefore, it is submitted by learned counsel for the respondent No. 2 that the claimants have failed to prove the income of the deceased at the time of his death.

15. Learned counsel for the respondent No. 2 has also submitted that the rate of interest of 7.5% on the awarded compensation is also correct as the said rate was the prevailing bank rate on fixed deposit given by the Reserve Bank of India, therefore, there is no error in awarding the rate of interest at the rate of 7.5% per annum on the awarded compensation. He also submits that the Section 171 of the Motor Vehicles Act gives discretion to the Court to award the rate of interest and it is for the Tribunal to fix the rate of interest from a particular date and where there is negligence on the part of the claimant, the Tribunal may fix the rate of interest from a particular date and in this case the Tribunal has accordingly fixed it from the date of cross-examination of PW-3. However, the learned counsel for

the respondent No. 2 has fairly submitted that the learned Tribunal has not assigned any reasons for awarding the date of interest from the date of cross-examination of PW-3 and if the Tribunal given the reasons, the thing would have been much more clearer.

16. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record, including the case record of MAC Case No. 206/2017 which was requisitioned from the Motor Accident Claims Tribunal No. 3, Kamrup(M), Guwahati.

17. On perusal of the impugned judgment, it appears that the Motor Accident Claims Tribunal No. 3, Kamrup(M), while computing the annual income of the deceased Jugesh Puri, has relied upon Exhibit- 21 only, which is the income tax return for the assessment year 2014-15. Though, the Tribunal had come to the finding that the income from the Puja Engineering works cannot be treated as sole income of the deceased Jugesh Puri and it would be regarded as the family income only, however, fact remains that the Tribunal relied upon income tax return which has been exhibited as Exhibit-21 by the claimant for arriving at its finding. The Insurance Company has not filed any appeal or any cross-objection with regard to the said fact. In absence of any cross-objection or appeal challenging the fact that the Tribunal had relied upon the Exhibit-21 to arrive to

assess the annual income of the deceased the respondent No. 2 cannot take that plea now in this appeal.

18. Now, let us see as to whether the Tribunal was correct in holding that the income derived from Puja Engineering work is the family income in which the deceased has only 50% share. The only evidence which is on record is that the Puja Engineering Works is still running and it is run by the brother of the deceased now. No other evidence to the effect that the puja engineering work is a family property or the earning derived from the same is a family income is there on record on the basis of which the Tribunal could have reached the finding that the income generated from Puja Engineering Work is a family income. It is apparent on perusal of the Exhibit- 21 which is the income tax return that same was filed by the deceased whereby he had shown his gross annual income for the said period as Rs.2,89,725/- after deduction under Chapter 6A of the Income Tax Act his total income has been shown as Rs.1,99,905/-.

19. This Court is of considered opinion that merely because of the fact that the claimant No. 1 while depositing PW-1 has stated in her cross-examination that the Puja Engineering Works is still run by her brother-in-law, the Tribunal was wrong in coming to the conclusion that the income generated from Puja Engineering Works was the family income where the deceased was entitled only to 50% of the same as no evidence to that effect was there on record.

20. This Court is of the considered opinion that the Tribunal was wrong in deducting 50% of the income of the deceased and assessing the annual income of the deceased at Rs.1,44,862/-. On the basis of Exhibit-21, the net annual income of the deceased shown in his income tax return is Rs.1,99,905/-, same may be regarded as the annual income of the deceased. As the age of the deceased Jugesh Puri at the time of his death was 43 years, hence, in pursuant to the observations made by the Apex Court in the case of "**National Insurance Company Limited Vs. Pranay Sethi**" reported in **(2017) 16 SSC 680**, an addition of 25% is made with regard to the future prospect which comes to Rs.49,976/-. When we add the component of future prospects with the annual income of the deceased the total comes to Rs.2,49,881. As the deceased left behind 4 dependents including his wife, two daughters and aged mother, therefore, as per the guidelines of Apex Court in the case of "**National Insurance Company Limited Vs. Pranay Sethi**" (supra), one fourth of the income so computed is deducted towards the personal expenditure of the deceased which comes to Rs.62,470/-. When we deduct the amount of Rs.62,470/- from Rs.2,49,881/- the net annual income of the deceased comes to be Rs. 1,87,411/-.

21. In the case of "**National Insurance Company Ltd. Vs. Pranay Sethi**"(s), the Supreme Court of India had dealt with various heads under which compensation is to be awarded in a death case and one of these heads is loss of consortium and it was

held by the Supreme Court that reasonable figure against loss of consortium would be Rs.40,000/-. It was also observed that amount which was quantified by the Supreme Court should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in the span of three years. More than six years have passed since the judgment of *Pranay Sethi* (supra) was delivered hence the enhancement of 20 % is to be made on the amount quantified by the Apex Court. Thus, Rs.48,000 has to be given against the head loss of consortium.

22. In the case of "*New India Assurance Company Ltd. v. Somwati and Ors.*" (supra), the Supreme Court of India has observed that in legal parlance consortium is a compendious term which encompasses spousal consortium, parental consortium and filial consortium. The spousal consortium is generally defined as rights pertaining to the relationship of husband and wife which allows compensation to the surviving spouse for loss of company, society, cooperation, affection and aid of other in every conjugal relationship.

23. Parental consortium is granted to a child upon the premature death of a parent for loss of parental aid, protection, affection, society, discipline, guidance and training.

24. Filial consortium is the right of the parents to compensation in case of an accidental death of a child. An accident leading to death of child causes great shock and agony

to the parents and family of the deceased. The greatest agony for the parent is to lose their child during their lifetime. The children are valued for their love, affection, companionship and their role in family unit.

25. It was also observed by the Apex Court that Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in case of genuine claim. In cases where a parent has lost their minor child or unmarried daughter or son, the parents are entitled to awarded loss of consortium under the head filial consortium. Parental consortium is awarded to the children who lost their parents in motor vehicle accident under the Act.

26. Under the above circumstances, in the instant case, the appellant number No. 1 is entitled to get an amount of compensation of Rs.48,000/- against loss of spousal consortium, whereas appellant Nos. 2 and 3 are entitled to get an amount of Rs.48,000/- each for loss of parental consortium. However, as the deceased was neither minor child nor unmarried, the appellant No. 4 is not entitled to get loss of filial consortium as per the observations made by the Apex Court as discussed herein above.

27. Therefore, an amount of Rs.48,000/- each is added to the loss of dependency computed herein above. Thereafter, as per observation of the Apex Court in the case of ***Pranay Sethi*** (supra), the compensation against conventional head as

also given by the Tribunal is added there too, i.e., loss of estate Rs.18,000/- and loss of funeral expenses Rs.18,000/-.

28. In view of the directions made in the foregoing paragraphs, the compensation payable to the appellants is thus computed as follows:-

<i>Sl. No.</i>	<i>Description</i>	<i>Amount</i>
1.	<i>Loss of dependency</i>	$14 \times 1,87,411 =$ <i>Rs.26,23,745/-</i>
2.	<i>Loss of spousal consortium</i>	<i>Rs.48,000/-</i>
3.	<i>Loss of parental consortium</i>	$Rs.48,000 \times 2 =$ <i>96,000/-</i>
4.	<i>Loss of estate</i>	<i>Rs.18,000/-</i>
5.	<i>Funeral expenses</i>	<i>Rs.18,000/-</i>
6.	<i>Total</i>	<i>Rs.28,03,745/-</i>

29. As regards rate of interest on the awarded compensation is concerned, the same has to be also just and reasonable. One criteria may be to give the same rate of interest as was given by the Reserve Bank of India for the concerned period for the fixed deposits for one year. It appears that the nationalized banks were granting rate of interest in between 7 to 7.5 percent on fixed deposit for one year during the said period. Therefore, the

interest at the rate of 7.5% on the awarded compensation from the date of filing of the claim petition appears to be just.

30. As regards date from which interest is payable, it is no longer *re-integra* that interest is payable from the date of filing of the claim petition if no negligence or wrong for any delay in disposal of the claim petition is attributable to the claimant.

31. In the result, the compensation to be paid by the Insurance Company to the appellants is enhanced to Rs.28,03,754/- . The Insurance Company i.e., respondent No. 2 is directed to pay the said amount to the appellants at a rate of interest of 7.5% per annum from the date of filing of the claim petition by the claimants till realization.

32. This appeal is accordingly stands allowed in terms of observation made hereinabove.

33. Send back the case records of MAC Case number 206/2017 to the Motor Accident Claims Tribunal No. 3, Kamrup(M) Guwahati, along with a copy of this judgment.

JUDGE

Comparing Assistant