

GAHC010003812017



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

Case No. : MACApp./119/2022

RELIANCE GENERAL INSURANCE CO. LTD
HAVING ITS REGISTERED OFFICE AT 570, NAIGAUM CROSS ROAD, NEXT
TO ROYAL INDUSTRIAL ESTATE, WADALA W MUMBAI 400031 AND
BRANCH OFFICE AT 5TH FLOOR, ANIL PLAZA, G.S. ROAD, GUWAHATI
781005, REPRESENTED BY THE REGIONAL MANAGER.

VERSUS

SMTI PREM DEVI BOTHRA and 3 ORS
- W/O LATE JAI PRAKASH BOTHRA, C/O BALAJI AUTO DIESEL, BOTHRA
BHAWAN, A.T. ROAD, TOKOBARI, KALI MANDIR, GUWAHATI-5

Advocate for the Petitioner : MR. S DUTTA

Advocate for the Respondent : MR. R K JAIN

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

JUDGMENT

Date : 26-04-2024

JUDGMENT & ORDER (CAV)

Heard Mr. A. J. Saikia, learned counsel for the appellant and Mr. R. K. Jain,

learned counsel for the respondents.

2. The insurance company is on appeal under Section 173 of MV Act, 1988 against the judgment and order dated 07.12.2016 passed by the learned Member, MACT Dhubri in MAC Case No. 338/2009.

3. The case of the claimant in brief is that on 12.01.2009 when the claimant's husband (deceased) was travelling in a bus bearing No. AS 17/8048 as a passenger, the said vehicle met with an accident at about 7.45 am at Khoraghat on NH 31 under Bogribari police station. In the said accident, the claimant's husband sustained grievous injuries on his person and died on the spot. It was further contended that at the time of accident the deceased was a businessman earning about Rs.40,000/- per month and was about 48 years of age.

4. Subsequently, the claimant learnt that another vehicle bearing No. WB 23B 4743 (truck) was also involved in the accident. The claimant then filed a petition before the Tribunal for impleading the owner and the driver of the said vehicle. On receipt of the notices, the opposite party No.2, 3 and 4 did not appear and contest the case and the case was proceeded ex-parte against them. However, opposite party No.1 i.e. the insurer of the truck contested the case by filing written statement and denied his liability.

5. In support of the claim, the claimant adduced oral and documentary evidence. On the other hand, the opposite party did not examine any witness. After hearing the learned counsel for the parties, the learned Member, MACT awarded compensation in favour of the claimant amounting to Rs.21,29,880/- (Rupees Twenty One Lakhs Twenty Nine Thousand Eight Hundred and Eighty) only . Hence, this appeal.

6. Learned counsel for the appellant has argued that the learned Member, MACT has made an error in assessing the monthly income of the deceased at Rs.14,829/- in absence of any documentary evidence and thereby awarded huge amount of compensation. It is also submitted that the learned Member MACT ought not to have awarded interest on future prospect as the insurance company cannot pay the advance amount on an uncertain event. According to learned counsel for the appellant, the

award of compensation deserves to be modified for the interest of justice.

In support of his submission learned counsel for the appellant has relied on the following case laws:

- (i) *MAC Appeal 378/2017 (Oriental Insurance Company Ltd. Vs Smt. Champabati Ray and 5 others).*

7. Per contra, learned counsel for the respondent/claimant has submitted that the learned Tribunal after considering everything awarded justified compensation which needs no interference by this Court.

In support of his submission learned counsel for the respondent has relied on the following case laws:

- (i) *(2010) 10 SCC 458 (Prahlad and others vs State of Maharashtra).*
- (ii) *AIR 1999 SC 3571 (Ravinder Kr. Sarma vs State of Assam and others).*

8. In the case in hand, the factum of accident has not been challenged. The learned tribunal has determined the income of the deceased on the basis of income tax return of 2008-2009 as the victim died on 12.01.2009.

9. I have considered the submission of the learned counsel for the parties. I have also perused the judgment of the learned Tribunal and the documents available on the trial court record. I do not find any irregularity on the findings of the trial court regarding income of the deceased. However, there was some irregularity found in the calculation on awarding compensation which is to be corrected as per law laid down by the Hon'ble Supreme Court.

10. The question is whether the interest on future prospect be awardable in the case. In the case of *Champabadi Ray* (supra) it is elaborately discussed regarding interest on future prospect which is reproduced as follows:

“ *In the case of Khusbu Chirania @ Kanta Chirania vs Kamal Kumaar Srivastava (2018) 0 Supreme (Gau) 966 and in the case of Nasima Begum Vs Keramat Ali (2019) 0 Supreme (Gau) 507, this Court has stated no interest on future prospect should be given. Though no reasons have been enunciated in the aforesaid judgments, the reason for the same seems to be due to the fact*

that future prospects is relatable to an income to be received in the future and as such there could not be any loss to the claimants for the payment of future prospect, at the time the deceased met with the accident. The reason for awarding interest on the compensation amount minus the future prospect is due to the fact that though the loss of dependency starts from the date of the accident and the compensation amount is computed on the date of the award of the Tribunal, interest is awarded to compensate the loss of money value on account of lapse of time such as time taken for the legal proceedings and for the denial of right to utilize the money when due. However, future prospect is with regard to the probable income to be received in the future and as such there is no requirement to compensate the claimant by way of future interest, for the loss that to be occurred in the future, as the future is yet to happen. Further, future prospect is given for the entire future and as such the claimant is getting compensation in a lump sum under future prospect prior to occurrence of future events".

Thus, with regard to future prospect, this Court is also of the view that there cannot be any interest on future prospect as the same relates to an income to be given in the future.

11. The Hon'ble Apex Court in the case of **National Insurance Company Ltd. vs Pranay Sethi (supra)**, reported in **SLP(Civil) no 25590 of 2014** has held in case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation.

12. In the present case, the age of the deceased was around 48 years when the accident took place. Hence, 25% be added to the established income of the deceased i.e. Rs. 14,829/-+ Rs.3707/-=Rs.18,536/-

13. As per the case of **Sarla Verma & Ors. vs Delhi Transport Corp. & Anr** reported in **2009 (6) SCC 121**, the multiplier would be 13.

14. So far as the dependency is concerned, 1/3rd of the annual income of the

deceased towards his personal and living expenses be deducted.

15. As per ***Pranay Shethi (supra)*** the Hon'ble Supreme Court has fixed compensation in case of death reasonable figures on conventional heads namely- Loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs.15,000/- and Rs. 40,000/- respectively. As per the impugned judgment, the aforesaid amount should be enhanced at the rate of 10% in every three years. Hence, amount of funeral expenses comes to Rs.16,500/-, consortium Rs.44,000/- and loss of estate Rs.16,500/-.

16. In view of the above discussion, the computation of compensation is awarded as follows-

(a) Annual income of the deceased=Rs.18,536/-X12=Rs.2,22,432/-

(b) After deducting 1/3rd of the income of the deceased,

the amount comes to =Rs.1,48,288/-

(c) After multiplying with multiplier,

the amount comes to =Rs. 1,48,288 X 13=Rs.19,27,744/-

(d) Funeral expenses=Rs. 16,500/-

(e) Spousal consortium= Rs.44,000/-

(f) Loss of Estate= Rs. 16,500/-

Total = Rs.20,04,744/- (Rupees Twenty Lakhs Four Thousand Seven Hundred Forty Four) only.

17. In the result, the appeal is partly allowed. The compensation and award is modified as described above. The Reliance General Insurance Co. Ltd. is directed to deposit Rs. 20,04,744/- to the savings account of the claimant in any nationalized bank through NEFT. The claimant/respondent is directed to furnish her bank details of any nationalized bank to the Insurance Company for necessary payment. The compensation so awarded shall carry an interest @6% per annum from the date of filing of the case. Any amount, if paid earlier, be adjusted accordingly.

18. Statutory amount in deposit be refunded to the Insurance Company.

19. With the above observation, the appeal stands disposed of.

20. Send back the trial court record.

JUDGE

Comparing Assistant