

GAHC010009312017



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

Case No. : MACApp./5/2017

SMTI BANESHA KHATUN and 2 ORS
W/O LATE SOBURUDDIN ALI

2: MD. BANIS ALI
S/O LATE SOBURUDDIN ALI

3: MD. MUSA ALI

S/O LATE JABED ALI
ALL ARE R/O VILL. BIHAPARA
P.O. HATIPARA
P.S. CHAYGAON
DIST. KAMRUP
ASSAM
PIN 781141 THE APPELLANT NO. 2 IS MINOR
AGED ABOUT 6 YEARS
BEING REPRESENTED BY HIS MOTHER and NATURAL GUARDIAN
SMTI. BANESA KHATUN APPELLANT NO. 1
AS STATED ABOV

VERSUS

UNITED INDIA INSURANCE CO. LTD and 3 ORS
REPRESENTED BY BRANCH MANAGER, ARUN PRAKASH MISSION, 1ST
FLOOR, G.S. ROAD, BHANGAGARH, GUWAHATI-781005, KAMRUP, ASSAM

2:THE NATIONAL INSURANCE CO. LTD.
REPRESENTED BY BRANCH MANAGER
BELTOLA BRANCH
GUWAHATI-28
KAMRUP
ASSAM
INSURER OF TRUCK NO. AS-01BC/0706

3:MD. SAYEF ALI

S/O MD. TARMUJ ALI
VILL. BAMAJANI
P.S. KAMALPUR
DIST. KAMRUP
ASSAM
PIN -781354 REGD. OWNER OF M/CYCLE NO. AS-03D/3715

4:HARENDR A SAHARIA
S/O SRI MAHENDRA SAHARIA BORSAJAI
NARBOM
H. NO. 10
MOHANAGAR PATH BELTOLA
GUWAHATI-28
KAMRUP
ASSAM REGD. OWNER OF TRUCK NO. AS-01BC/070

Advocate for the Petitioner : MR.K PAUL

Advocate for the Respondent : MR.D BARUA

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Appellants: Mr. J.P. Chauhan,
Advocate.

For the Respondents: Mrs. R.D. Mozumdar,
Advocate.

Date of Hearing: 06.02.2024.

Date of Judgment: 22.02.2024.

JUDGMENT AND ORDER (CAV)

Heard Mr. J.P. Chauhan, learned counsel representing the appellants as well as Mrs. R.D. Mazumdar, learned counsel appearing for the respondent.

2. This is an appeal under Section 173 of the Motor Vehicles Act, 1988 against the judgment dated 11.05.2015 passed by the learned Member, Motor Accident Claims Tribunal No.2, Kamrup, Guwahati in MAC Case No.1951/2012.

3. On 28.06.2012 at about 12.15 at midnight, Soburiddin Ali was replacing the rear wheel of the vehicle number AS-02-BC-0706. At that time, one motorcycle bearing registration no. AS-03-D-3715 hit him. Soburiddin Ali was taken to the hospital at Guwahati. But he succumbed to his injuries. Police registered the Dispur P.S. Case No.1321/2012. At the time of the accident, Soburiddin Ali was 24 years old and he was earning ₹14,000/- per month. He left behind his wife Banesa Khatun, his son Banish Ali and his father as his legal heirs.

4. Banesa Khatun, Banish Ali and Musa Ali, father of Soburiddin Ali jointly filed a claim petition before the Tribunal seeking compensation.

5. The Insurance Company contested the case by filing a written statement.

6. On the basis of the pleadings of the parties, the learned Tribunal framed the following issues:

I. Whether the death was caused to the deceased Soburiddin Ali due to motor vehicle accident that occurred on 28.06.2012 involving the vehicle bearing registration no. AS-03-D-3715 (motorcycle)?

II. Whether the accident occurred due to rash and negligent driving of the driver of the vehicle in question?

- III. Whether the driving licence and insurance police were valid to cover up the accident?
- IV. Whether the claimant(s) is/are entitled to get any compensation?

7. During the hearing, the claimants examined Musa Ali, father of Soburiddin Ali. The Insurance Company did not examine any witnesses.

8. On the basis of the evidence on record, the Tribunal awarded a compensation of ₹13,15,000/- only along interest @ 6% per annum to be calculated from the date of the filing of the claim petition.

9. The present has been filed on specific grounds. The appellants have stated that at the time of the accident, Banesa Khatun was pregnant and carrying a child in her womb. It is further submitted that after the accident, a son was born. In that way, late Soburiddin Ali had left behind four legal heirs, which included his wife, his two sons and his father. According to the appellants, the Tribunal should have deducted 1/4th from the income of the deceased whereas, the Tribunal deducted 1/3rd.

10. Late Soburiddin Ali was treated at different hospitals and for that matter the claimants had produced bills worth ₹8,145/-. But the Tribunal did not include this expenditure in the compensation amount.

11. The appellants claimed that late Soburiddin Ali earned an amount of ₹14,000/- per month and the Trial Court notionally held his income at ₹6,000/- per month.

12. I have considered the submissions made by the learned counsels of both sides.

13. In paragraph 30 in *Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation and Anr.*, reported in (2009) 6 SCC 121, the Supreme Court has held that when the number of dependents is up-to 3, then 1/3 is to be deducted. It is a settled position of law that the father of the deceased cannot be considered to be dependent in this case.

14. Therefore, the learned Tribunal has correctly deducted 1/3 from the income of the deceased.

15. Exhibits 5, 5(I), 5(II), 5(III) and 5(IV) are the medical documents exhibited by the claimants. I find that the Tribunal was silent upon these documents. Therefore, the claimants are entitled to receive ₹8,145/- on account of medical expenses.

16. The claimants/appellants exhibited a certificate issued by a person called Harendra Saharia to prove that the deceased was earning ₹8,000/- every month. But no witnesses were examined to prove this document. Therefore, the aforesaid certificate remained not proved. Under the aforesaid circumstances, this Court hereby holds that the learned Tribunal has correctly held the monthly income of the deceased was ₹6,000/- per month.

17. Now, this Court is of the opinion that the appeal is to be partly allowed.

18. This Court hereby directs that the Insurance Company shall pay an amount of ₹8,145/-, apart from paying the sum of ₹13,15,000/- to Smti. Banesa Khatun and her two sons only.

19. With the aforesaid direction, the appeal stands partly allowed and

disposed of accordingly.

Send back the LCR.

JUDGE

Comparing Assistant