



GAHC010004692010

Page No.# 1/17



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

Case No. : MACApp./68/2010

SMT DURGAWATI DEVI and 3 ORS,
W/O LATE RAM PRASAD.

2: BIKASH KUMAR

S/O LATE RAM PRASAD.

3: SMT. RADHA KUMARI

D/O LATE RAM PRASAD.

4: SMT. MONISHA KUMARI

D/O LATE RAM PRASAD ALL ARE R/O DHIRENPARA
UNDER POLICE STATION AMBARI FATASIL
DIST. KAMRUP

ASSAM NOS. 2 TO 4 ARE MINOR ONES AND THEY ARE REPRESENTED BY
THEIR MOTHER SMT. DURGAWATI DEV

VERSUS

UNITED INDIA INSURANCE CO. LTD. and 4 ORS,
DISPUR BRANCH, DISPUR, GUWAHATI.

2:SHIV NARAYAN DAS

S/O LATE RAMESHWAR DAS
A RESIDENT OF UMTRU DOWER HOUSE
BYRNIHAT
MEGHALAYA AND AT PRESENT RESIDING AT ANANDA NAGAR
SIX MILE
GUWAHATI
ASSAM.



3:CHITRA BAHADUR NEWAR

S/O N.B. NEWAR
A RESIDENT OF BORBILLA HAHARA
P.S. KHETRI
DIST. KAMRUP

ASSAM NOTICE TO BE SERVED DIRECTLY TO SRI CHITRA BAHADUR
NEWAR AND ALSO THROUGH HIS EMPLOYER SRI SHIV NARAYAN DAS
RESPONDENT NO.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocate for the petitioners : Shri A. Lal, Advocate

Advocate for respondents : Shri S. Dutta, Advocate.

Date of hearing : 10.08.2023

Date of judgment : 10.08.2023

1. The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 with regard to a judgment and award dated 28.04.2009 passed in MAC Case No. 175/2007 (earlier registered as MAC Case No. 2418/2004) by the learned Addl. District Judge, FTC No. 2, Kamrup. The grievance of the appellants is with regard to the adequacy of the Award whereby an amount of Rs. 4,89,500/- (Rupees Four Lakh Eighty Nine Thousand



Five Hundred) has been awarded with interest to be paid at the rate of 6% from the date of filing of the claim petition.

2. I have heard Shri A. Lal, learned counsel for the appellants whereas the Insurance Company is represented by Shri Siddhant Dutta, learned counsel.

3. Before going to the grounds of challenge and the issue involved, it would be convenient if the facts of the case are narrated in brief.

4. The claim has arisen from the death of the predecessor of the claimants. While the appellant-claimant no. 1 is the wife of the deceased, the rest of the five appellants / claimants are the children. The mother of the deceased was also arrayed as pro-forma respondent in the claim petition. The death had occurred on 22.09.2004 in a Motor Vehicle Accident and such accident is not the subject matter of dispute. The claimants had stated that the deceased Ram Prasad had business and had two shops of electronic items, one at Byrnihat and one at Lalmati, Guwahati and used to earn at least Rs. 15000/- (Rupees Fifteen Thousand only)per month. The age of the victim - deceased was claimed to be 34 years at the time of the accident and the number of dependents being 8, a claim of Rs. 35 lakhs was made in the claim petition. Four numbers of witnesses were produced before the learned Tribunal including the claimant no. 1, the wife of the deceased, two brothers of the deceased and an employee. As regards the age, apart from the statement made by the claimant no. 1 as CW1, the School Transfer Certificate was produced as per which the date of birth of the deceased was stated to be 15.12.1970 as per which, as on the date of the accident, his age would have been about 34 years. With regard to the income, two numbers

of documents were exhibited, one by the village Headman and the other by an organization.

5. The learned Tribunal, however vide the impugned judgment and award had taken the monthly income to be Rs.4000/- and the age of the deceased was taken to be in the range of 40-45 years and accordingly the aforesaid figure of Rs.4,89,500/- (Rupees Four Lakh Eighty Nine Thousand Five Hundred) was arrived at. The rate of interest which was directed to be paid was stipulated to be 6 % per annum from the date of filing of the claim petition.

6. Shri Lal, the learned counsel for the appellants has based his claim for enhancement on the following broad aspects.

i. The age of the victim which was held to be in the range of 40-45 was erroneous and perverse in view of the documentary proof as per which the age of the deceased was 34 years at the time of death.

ii. The income of the deceased which has been taken to be Rs. 4000/- per month on notional basis is contrary to the evidence on record as per which the said income was proved to be at least Rs. 15000/- per annum.

iii. The rate of interest which has been awarded i.e., 6 % per annum is on the lower side and not reasonable.

7. Additionally, Shri Lal, the learned counsel has also raised the issue that the learned Tribunal has overlooked the aspect of dependency as there were as

many as 7 numbers of dependants of the deceased who were leading a reasonably decent life.

8. By elaborating his arguments, the learned counsel has drawn the attention of this Court to the evidence of the appellant no. 1 who had deposed as CW1. In the said evidence, it was stated that the deceased was the sole earning member of the family and after his passing away, there is no source of income. It has further been stated that the deceased was an able bodied person who had two shops of electronic goods, one at Lalmati Guwahati and the other at 13th Mile, Byrnihat and had dealt in electronic goods and had also engaged employees in his shop on monthly basis. His monthly income was stated to be Rs. 15000/- (Rupees Fifteen Thousand).

9. As regards the age of the deceased, attention of this Court has been drawn to the Transfer Certificate issued by the school in question as per which the date of birth was 15.12.1970 and the said certificate was issued in the year 1992. It is submitted that in view of such categorical proof regarding the age, relying on the age which was recorded in the post-mortem report as 45 years could not have been made which has caused serious miscarriage of justice. He submits that the age which can be deduced from the aforesaid Transfer Certificate would be around 34 years at the time of accident. The learned counsel has also referred to the cross examination and the further cross-examination of CW1 from where it appears that no specific question denying the claim was put upon her and therefore, there are no scope for any rebuttal.

10. Reliance has also been put on the evidence of the elder brother of the

deceased who had deposed as CW2. In his said deposition, he has categorically stated that the deceased was 34 years of age at the time of the accident and such categorical assertion was maintained at the time of cross-examination. CW3 is an employee of the deceased who had deposed that he was paid a monthly wage of Rs.5000/- (Rupees Five Thousand) by the deceased and another employee was paid Rs. 7000/- (Rupees Seven Thousand) per month. CW4 is the younger brother of the deceased who also claimed to have worked as an employee under him and he had supported the versions of the other witnesses with regard to the two shops of the deceased. The Trade License which was issued by the Guwahati Municipal Corporation was also exhibited before the learned Tribunal as Exhibit no. 7. The license appears to be of the year 1987 which was valid upto 1999. Certain Insurance policies of Peerless were also exhibited. Shri Lal, the learned counsel, by referring to the impugned judgment has submitted that the learned Tribunal had come to a finding that the Income Certificate was not properly proved and there were no books of account. The learned Tribunal had also come to a finding that there were no concrete evidence with regard to the income and therefore a notional income of Rs.4000/- (Rupees Four Thousand) per month was adopted. The learned counsel submits that the findings of the learned Tribunal are not only unreasonable but also not in consonance with the materials which were proved by the claimants in the proceedings.

11. The learned counsel for the appellants has relied upon certain judgments to support his contention. On the point of income, the following judgments have been cited:

i. Ramesh vs. Rajammal reported in **1988 AIHC 4476 (Madras High Court)**

ii. Royal Sundaram Alliance Insurance CO Ltd. vs. Sanjida Begum reported in **2016 SCC Online Del 290**

iii. Rajwati @ Rajjo & Ors. vs. United India Insurance Co. Ltd. & Ors. reported in **2022 SSC Online SC 1699.**

iv. New India Assurance Co. Ltd. vs. Suminder Kaur and Ors. reported in **2010 SSC Online Del 1752**

12. In the case of **Ramesh** (supra), the Hon'ble Madras High Court has laid down that in each and every case before a MACT, income proof is not able to be produced. More so, when the deceased was not a salaried employer. In the case of **Royal Sundaram** (supra), it has been laid down by the Hon'ble Delhi High Court that there cannot be any thumb rule with regard to the proof of income. The Hon'ble Supreme Court in the case of **Rajwati** (supra), has laid down that strict rules of evidence should not be applied in a case of Motor Accident Claim which is different from a criminal trial. In the case of **Suminder Kaur** (supra), the Hon'ble Delhi High Court has laid down that income can be proved by indirect evidence also.

13. On the adoption of the rate of interest by a Tribunal, Shri Lal, the learned counsel submits that under Section 171 of the Act, no specific rate of interest has been prescribed. He has drawn the analogy with similar acts like that

Employees Compensation Act, 1923 (earlier Workmen's Compensation Act, 1923), the Arbitration and Conciliation Act, 1996, Land Acquisition Act, 1894 and the Consumer Protection Act, etc wherein specific rates of interest have been prescribed and such rate is more than the rate which has been granted in the present judgment. He submits that in all such enactments, the minimum rate of interest prescribed is 12 % and all the aforesaid Acts being beneficial legislation, a uniform practice should be followed by the Tribunals while granting interest.

14. Supporting the aforesaid contention, the learned counsel has relied upon the following judgments.

i. *New India Assurance Co. Ltd. vs. Lata Agarwal* reported in **2022 SCC Online Gau 448.**

ii. *Josphine vs. United India Insurance Co. Ltd.* reported in **(2013) 16 SCC 711.**

iii. *Smt. Puspa Maheswari vs. United India Insurance Co. Ltd.* reported in **(2017) 6 GLR 665.**

iv. *Smt. Chameli Wati & Anr. Vs. Municipal Corporation of Delhi* reported in **AIR 1986 SC 1191.**

v. *Shantilata Shethy & Anr. Vs. Divisional Manager* reported in **2021 SCC Online SC 3201**

vi. *Ajaya Kr. Das and Anr. Vs. Divisional Manager* reported in **2022 SCC**

**Online SC 93**

15. In the case of **Lata Agarwal** (supra), the issue was with regard to the date from which the interest would be paid and it was held that it would be from the date of filing of the claim petition and not from the date of the judgment. In the case of **Josphine** (supra), the Hon'ble Supreme Court had interfered with regard to the rate of interest and had directed such rate to be enhanced to 9 % per annum in terms of the case of **Upahar Tragedy [(2011) 4 SCC 481]**. In the case of **Puspa** (supra), this Court had enhanced the rate of interest to 9 %. In the case of **Chameli** (supra), the interest rate was enhanced to 12 %. In the cases of **Shantilata** and **Ajaya** (supra), the Hon'ble Supreme Court had granted interest at the rate of 12 %. However, both the aforesaid cases were pertaining to the erstwhile Workmen's Compensation Act, 1923.

16. Shri Lal, the learned counsel has also submitted that the learned Tribunal has acted on surmises and conjectures as there were no materials to arrive at the conclusion as done in the impugned judgment. He submits that if an adverse party to a litigation is actually interested to put a defence, a specific question is required to be put in the cross-examination which was lacking in the instant case and therefore, the deposition made in chief were almost unrebutted and should have been accepted. In this regard, the learned counsel cites the judgment of Hon'ble Calcutta High Court in **AEG Carapiet vs. AY Derderian** reported in **AIR 1961 Cal 359**.

17. Shri Lal, the learned counsel accordingly submits that the present is a fit case wherein this Court in exercise of its appellate jurisdiction would interfere

and direct adequate enhancement of the award.

18. *Per contra*, Shri Dutta, the learned counsel for the Insurance Company has submitted that none of the grounds cited are able to be substantiated by the appellants in the instant case. By dealing with the aspect of the age, it is submitted that admittedly there were five children of the deceased and if his date of birth is taken to be 1970, it would be almost unreasonable to come to a situation that the same was the actual date of birth of the deceased. He has also referred to a Trade License of the year 1987 which was exhibited in which a figure 34 has been mentioned which according to him would be the age of the deceased. As regards the Transfer Certificate of the school, he submits that while exhibiting the same, objections were recorded and therefore the same was rightly not relied upon by the learned Tribunal. The certificate of insurance by Peerless which was exhibited as Exhibit-9 also states that the age of the deceased was 40 years as on 1999.

19. Shri Dutta, the learned counsel submits that in fact a higher multiplier of 15 has been taken which according to the judgment of the Hon'ble Supreme Court in the case of ***Sarla Verma vs. DTC*** reported in ***(2009) 6 SCC 121***, the actual multiplier should have been 14.

20. As regards, the Income Certificates, Shri Dutta, the learned counsel submits that both were issued in the year 2008 which is long after the accident which was in the year 2004 and were issued respectively by the village Headman and one organization which does not have evidentiary value. In this connection, the learned counsel for the Insurance Company has placed reliance

upon the judgment of ***Oriental Insurance Co. Ltd. vs. Cicilia Marbaniang and Ors.*** reported in ***2009 SCC Online Gau 74***, in paragraph 19 of which, it has been held that village Headman is not the authority to give an Income Certificate. He has also cited the judgment of ***New India Assurance Co. Ltd. vs. Kawllian Thanga and Anr.*** reported in ***2007 3 GLT 444*** in this regard.

21. The learned counsel for the Insurance has also submitted that when there are no concrete materials to establish the income of the deceased, the minimum wages are to be adopted and in the instant case, the approach of the learned Tribunal in holding the income to be Rs. 4000/- (Rupees Four Thousand) per month cannot be faulted with. In this regard, the learned counsel has relied upon the case of ***Kirti & Anr. vs. Oriental Insurance Company Ltd.*** reported in ***(2021) 2 SCC 166***. In the aforesaid case of ***Kirti*** (supra), the Hon'ble Supreme Court in paragraph 11 has laid down as follows.

“11. Second, although it is correct that the claimants have been unable to produce any document evidencing Vinod’s income, nor have they established his employment as a teacher; but that does not justify adoption of the lowest tier of minimum wage while computing his income. From the statement of witnesses, documentary evidence-on-record and circumstances of the accident, it is apparent that Vinod was comparatively more educationally qualified and skilled. Further, he maintained a reasonable standard of living for his family as evidenced by his use of a motorcycle for commuting. Preserving the existing standard of living of a deceased’s family is a fundamental endeavour of motor accident compensation law. Thus, at the very least, the minimum wage of Rs 6197 as applicable to skilled workers during April 2014 in the State of Haryana ought to be applied in his case.

III. Addit of future prospects”

22. Reliance has also been made on a judgment of this Court dated 20.02.2023 passed in MAC Appeal No. 539/2018 (***Miss Rushi @ Ruchi Thapa vs. M/S Oriental Insurance Co. Ltd & Ors.***) wherein it has been held that minimum wages are to be taken as the standard.

23. With regard to the ground of rate of interest, Shri Dutta, the learned counsel has submitted that the relevant factor which is to be taken into consideration is the current academic scenario and under such scenario, grant of interest @ of 6% cannot be said to be on the lower side. He relies upon a case of the Hon'ble Supreme Court reported in ***(2001) 2 SCC 9 Kaushnuma Begum vs. New India Assurance Co. Ltd.*** in paragraph 24 of which the Hon'ble Supreme Court has laid down:

“24. Now, we have to fix up the rate of interest. Section 171 of the MV Act empowers the Tribunal to direct that “in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as may be specified in this behalf”. Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalized banks are now granting interest at the rate of 9 % on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9 % per annum from the date of the claim made by the appellants. The amount of Rs. 50,000/- paid by the Insurance Company under Section 140 shall be deducted from the principal amount as on the date of its payment, and interest would be recalculated on the balance amount of the principal sum from such date.”

24. The rival submissions made by the learned counsel for the parties have



been duly considered and the materials placed before this Court including the records have been duly perused.

25. As recorded above, the accident and the claim as such were not the subject matter of dispute. The Insurance Company did not dispute the fact of the accident and also had not taken up any point on the violation of any policy conditions. The dispute is with regard to the quantum which according to the claimants-appellants is on the lower side.

26. As has been recorded above, the challenge which has been made is on the grounds of the monthly income, the age and the rate of interest.

27. Let us deal with the aforesaid three aspects in seriatim.

28. With regard to the age, as per the claimants, the age of the deceased at the time of the accident was 34 years and only because of the fact that in the postmortem report, the age was recorded as 45 years, a wrong multiplier has been adopted. The materials which have been relied upon by the claimants apart from the oral evidence is a Transfer Certificate by the school in which the date of birth of the deceased has been stated to be 15.12.1970 as per which the age at the time of the accident would be about 34 years. However, it is seen that the said Transfer Certificate was objected to. Though a Tribunal adjudicating a motor accident claims or this Court acting as a Court of appeal may not be too rigid in the manner of proof of such certificate, since the age was specifically objected to, it was incumbent upon the claimants to bring on record other materials to substantiate the age. To the contrary, the exhibits

which were produced by the claimants themselves would show that the projection regarding the age of the deceased made by them as 34 years would not be consistent with such materials. The Trade License of the year 1987 contains a figure 34 in the year 1987. Even if it is held that the said reference to 34 may not be the age of the deceased, the Trade License was admittedly of the year 1987 and even if the deceased is assumed to be born on 15.12.2017, during that time of issuance of the certificate, he would have been less than 17 years of age which appears to be an unreasonable stand. This Court has also noticed that the Insurance Policy by Peerless has also been exhibited by the claimants and in that exhibit, the age of the deceased has been clearly stated to be 40 years and the documents is of the year 1999. In view of such materials, this Court is not inclined to accept the submissions made on behalf of the appellants that the Tribunal had erred in taking the age of the deceased to be in the slab of 40-45 years.

29. As regards the income, the claim made on behalf of the appellant-claimants is that the deceased was earning an amount of Rs. 15000/- (Rupees Fifteen Thousand) per month and was the sole bread winner of the family consisting of 7 numbers of dependants.

30. Shri Lal, the learned counsel has also tried to impress upon this Court that taking into account that the deceased had also made certain investment, assuming an income of Rs. 4000/- (Rupees Four Thousand) per month would be on the lower side.

31. Juxtaposed, the two documents which were exhibited in the Tribunal may



not be conclusive with regard to the income as both these documents are issued by persons who do not have such authority. This Court is in agreement with the argument advanced by Shri Dutta, the learned counsel by relying upon the case laws that such documents will not have any evidentiary value. However, even without those documents, when there is a categorical assertion by all the witnesses regarding the monthly income which was said to be Rs. 15000/- (Rupees Fifteen Thousand) per month of the deceased and also taking into account that the deceased was the sole earning member of a family of 7 dependants, the finding and conclusion of the learned Tribunal to hold the income of the deceased to be Rs. 4000/- (Rupees Four Thousand) per month appears to be on the lower side.

32. With regard to the interest part, this Court has noticed that Section 171 of the Act does not prescribed any particular rate of interest and it is the settled law that such rate are normally to be awarded from the date of filing of the claim petition. Awarding of interest therefore would lie on the discretion of the Tribunal and this Court being an appellate court is only required to see whether such discretion was exercised in a judicious manner.

33. Shri Lal, the learned counsel has submitted that in all other similar enactments, the minimum rate of interest is 12% and therefore, grant of 6 % is absolutely on the lower side. He has also placed a number of case laws as recorded above in which reference has been made to the ***Upahar Tragedy*** case as per which 9 % interest has been considered to be a standard rate of interest. Considering the above facts and circumstances, this Court is of the opinion that the rate of interest is liable to be enhanced.

34. After consideration of the aforesaid facts and circumstances and taking into account the case laws cited, this Court is of the opinion that interest of justice would be served if the monthly income of the deceased which has been held to be Rs. 5000/- (Rupees Five Thousand) is enhanced to Rs. 7500/- (Rupees Seven Thousand Five Hundred) per month and the rate of interest is enhanced to 9% per annum.

35. It is however clarified that this Court has not interfered with the finding of the Tribunal as regard the date of application of such interest which would be from the date of filing of the claim petition.

36. At this stage, Shri Lal, the learned counsel has also raised the aspect of grant of compensation on the heads of consortium as laid down by the Hon'ble Supreme court.

37. Accordingly, the award stands modified in the following manner.

| Sl. No. | Head | Compensation Awarded |
|---------|---|--|
| 1 | Monthly Income | Rs. 7,500/- per month |
| 2 | 25 % Future Prospects | Rs. 1,875/- |
| 3 | Total monthly income | Rs. 9,375/- |
| 4 | Deduction 1/5 th personal expenses | Rs. 1,875/- (i.e. -1/5 th of Rs. 9,375/-) = Rs. 7,500/- |
| 5 | Annual Income | Rs. 7,500 x 12 x 14 |

| | | |
|---|--|---|
| | | = Rs. 12,60,000/- |
| 6 | Conventional Head, Loss of Estate and Funeral expenses | Rs. 16,500/- + Rs. 16,500/- = Rs. 33,000/- |
| 7 | Loss of Spousal Consortium | Rs. 44,000/- |
| 8 | Loss of Parental Consortium to each of the five children | Rs. 44,000/- each Rs. 44,000 x 5 = Rs. 220,000/- |
| 9 | Total Compensation to be paid | Rs. 15,57,000/- |

Future Prospect amount of Rs. 3,37,500/- (1875 x 15 x 12) will not carry any interest as per the case of Oriental Insurance Company Ltd. - vs- Champabati Ray [Judgment dated 01.10.2019 of Gauhati High Court in MAC Appeal No. 378 of 2017]. It is made clear that the amount of compensation already paid in terms of the Award of the Tribunal shall be adjusted in the total amount of compensation.

38. The appeal accordingly stands disposed of.

JUDGE

Comparing Assistant