



GAHC010011382013

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

MAC APPEAL No.281 of 2013

Mrs. Rumi Saikia,
Wife of Late Harendra Nath Saikia,
Resident of Amguri Town, Ward No.4,
PO & PS: Amguri, District: Sibsagar, Assam.

.....Appellant

-Versus-

1. Shri Bolin Phukan,
Son of Late P. Phukan,
Resident of Lumding Town, PO & PS: Lumding, District:
Nagaon, Assam (*Driver of Vehicle No.AS-09/ A-0515,*
Super Bus).

2. Shri Mukut Chetia,
Son of Late Ratneswar Chetia,
Resident of Village: Amolapatty, Diphu, PS: Diphu,
District: Karbi Anglong, Assam (*Owner of Vehicle*
No.AS-09/A-0515, Super Bus).

3. The Regional Manager, Oriental Insurance Company
Limited, G.S. Road, Ulubari, Guwahati – 781007, Assam
(*Insurer of Vehicle No.AS-09/ A-0515, Super Bus*)

4. The Regional Manager, National Insurance Company
Limited, G.S. Road, Bhangagarh, Guwahati – 781005,
Assam (*Insurer of Vehicle No.AS-04/C-8900, Maruti*
Car).

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE MR. R.M. CHHAYA

For the Appellant	: Mr. A.R. Agarwala, Advocate.
For the Respondent No.1 & 2	: None appears.
For the Respondent No.3	: Mr. A. Dutta, Advocate.
For the Respondent No.4	: Mrs. R.D. Mozumdar, Advocate.
Date of judgment & order	: 19th September, 2022.

JUDGMENT & ORDER

Feeling aggrieved and dissatisfied by the judgment & award dated 31.05.2013 passed by Motor Accident Claims Tribunal, Kamrup at Guwahati in MAC Case No.377/2007 (common judgment & award), the original claimant/appellant has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter after referred to as "1988 Act" for the sake of brevity).

2. The following facts emerge from the record of this appeal. The accident took place on 22.01.2006 near Borhola Bebejia at about 2:50 PM. It is the case of the appellant/claimant that the deceased Harendra Nath Saikia, who is the husband of the appellant/claimant, was driving his Maruti Car bearing registration No.AS-04/C-8900 and was coming from Amguri to Guwahati. It is the case of the appellant/claimant that when the Maruti Car reached the scene of occurrence, a Super Bus bearing registration No.AS-09/A-0515 being driven in rash and negligent manner came from the other side and dashed with the car driven by the husband of the appellant/claimant, Harendra Nath Saikia, because of which he sustained grievous injuries. It is the case of the appellant/claimant that in the said accident,

the claimant and his minor son, who were also travelling with the deceased, also sustained injuries. It is the case of the appellant/claimant that they were brought to Gauhati Medical College & Hospital for treatment, wherein after prolonged treatment, the husband of the appellant/claimant was declared to have died. Thereafter an FIR was lodged with the jurisdictional police station and the claim petition being MAC Case No.377/2007 was filed under Section 166 read with Section 140 of the 1988 Act for total compensation of Rs.33,70,000/-.

3. The oral as well as the documentary evidence was adduced before the Tribunal and the instant MACT case was heard along with other MACT cases arising out of the said accident and upon appreciation of the evidence on record, the Tribunal came to the conclusion that the drivers of both the vehicles involved in the accident, i.e. the driver of the Super Bus and the driver of the Maruti Car (husband of the appellant/claimant), were contributorily negligent to the extent of 50% and on the basis of the oral evidence of the claimant as well as his witness Ananta Kakoti and so also the documentary evidence in form of salary certificate at Exhibit-7, which shows that the deceased was working as a Principal of A.H.D. Higher Secondary School, Ambguri and was drawing salary of Rs.18,401/- per month. The Tribunal deducted Rs.1,000/- towards income tax of the deceased and determined the income of the deceased at Rs.17,000/- per month and applying the multiplier of 9 and after deducting one third towards personal expenses of the deceased, awarded a sum of Rs.12,24,000/- under the head of loss of dependency. Over and above the same, the Tribunal also awarded a sum of Rs.3,17,322/- towards medical expenses; Rs.5,000/- as funeral expenses; Rs.5,000/- under the head loss

of estate and Rs.10,000/- as loss of consortium and thus while partly allowing the claim petition, determined the compensation at Rs.15,61,000/- and after deducting 50% towards negligence of the driver of the Maruti Car, awarded net compensation of Rs.7,80,500/- with 6% interest from the date of filing of the claim petition and also held that the insurer of the Super Bus, i.e. Oriental Insurance Company Limited would, be liable to the extent of 50% of the awarded amount in the claim petition of the appellant/claimant. Being aggrieved by the same, the present appeal is filed by the appellant/claimant.

4. Heard Mr. A.R. Agarwala, learned counsel for the claimant. Also heard Mr. A. Dutta, learned counsel, appearing for the respondent No.3 and Ms. R.D. Mozumdar, learned counsel, appearing for the respondent No.4. Though served, none appears for the respondent Nos.1 & 2, i.e. the driver and owner of the offending vehicle, respectively.

5. Mr. A.R. Agarwala, learned counsel, appearing for the claimant has contended that the Tribunal has committed an error in deducting Rs.1,000/- towards income tax of the deceased. Mr. Agarwala relying upon the salary certificate at Exhibit-7 contended that the deceased was working as a Principal and was earning a sum of Rs.18,410/- as per the said salary certificate and no income tax was ever deducted as it was not within the taxable limit. Mr. A.R. Agarwala further submitted that the only deduction was of Rs. 20/- towards professional tax. Referring to and relying upon the oral evidence of PW-2, Mr. Agarwala, learned counsel appearing for the claimant contended that the Tribunal has committed an obvious error in coming to the conclusion that the driver of the Maruti Car also was

negligent to the extent of 50%. Mr. Agarwala contended that the manner in which the accident had occurred though the driver of the Maruti Car was trying to overtake the bus, the fact remains that the bus involved in the accident is a huge vehicle whereas Maruti Car is a small vehicle. Mr. Agarwala, therefore, contended that the driver of the Maruti Car, i.e. the deceased Harendra Nath Saikia, was not at all negligent. Mr. A.R. Agarwala, learned counsel appearing for the claimant also contended that the Tribunal has committed an error in granting a meager amount towards loss of estate, funeral expenses and loss of consortium.

6. Relying upon the judgment of the Apex Court in the case of ***National Insurance Company Limited -Vs- Pranay Sethi & Ors.***, reported in ***(2017) 16 SCC 680***, it was contended by Mr. A.R. Agarwala, learned counsel appearing for the claimant that appropriate compensation be granted in the head of loss of estate, funeral expenses as well as the loss of consortium. Mr. Agarwala also further contended that the original claimant No. 2 would also be entitled to parental consortium as he was minor on the date of the accident. On the aforesaid ground, Mr. A.R. Agarwala, learned counsel appearing for the claimant contended that the appeal be allowed and the amount of compensation awarded by the Tribunal be enhanced accordingly.

7. Per contra, Mr. A. Dutta, learned counsel appearing for the respondent No.3 and Mrs. R.D. Mozumdar, learned counsel appearing for the respondent No.4 have opposed the appeal. Mr. A. Dutta, learned counsel appearing for the respondent No.3 has contended that as per the admission of PW-2 in his cross-examination and as rightly noted by the

Tribunal, the driver of the Maruti car, i.e. the deceased, tried to overtake the vehicle. According to Mr. Dutta the finding as regards contributory negligence arrived at by the Tribunal is correct appreciation of the evidence on record and no modification is required. Mr. Dutta also contended that there is nothing on record to show that the claimant No.2 was a minor son of the deceased Harendra Nath Saikia, except the version and, therefore, the appellant would not be entitled to any parental consortium as per the judgment of the Apex Court in the case of ***United India Insurance Company Limited -Vs- Satinder Kaur & Ors.***, reported in ***(2021) 11 SCC 780***.

8. Mrs. R.D. Mozumdar, learned counsel appearing for the respondent No.4 has reiterated that as provided by the Tribunal as far as the compensation to the present appellant is concerned, the insurer of the Super Bus involved in the accident, i.e. Oriental Insurance Company Limited, would be liable to satisfy the amount.

9. No other or further submissions, contentions or grounds have been raised by the learned counsels appearing for the respective parties.

10. I have perused the original records in the proceedings and have gone through the judgment & award impugned in this appeal.

11. Upon re-appreciation of the evidence in form of salary slip at Exhibit-7, it clearly transpired that no income tax was deducted from the salary of the deceased. The only deduction as mentioned in the claim petition was towards professional tax, which came to Rs. 20/-. Hence, the income of the deceased would come to Rs. 18,390/-.

12. Following the ratio laid down by the Apex Court in the case of ***Pranay Sethi*** (supra), the appellant would be entitled to Rs.70,000/- on different conventional heads, i.e. loss of estate, consortium as well as funeral expenses. Upon re-appreciation of the evidence and examining the evidence of PW-2, it clearly transpired that the manner in which the accident occurred was due to the excessive speed of the Super Bus involved in the accident. In addition to that even a criminal proceeding has been initiated against the driver of the Super Bus and as informed by the learned counsels appearing for the parties, charge-sheet has been filed against the driver of the Super Bus. However, considering the admission of PW-2 in the cross-examination and as rightly noted by the Tribunal that there was a head on collision between the two vehicles at the juncture when the driver of the Maruti Car, i.e. the deceased was trying to overtake the Super Bus and the manner in which the accident has occurred, it can clearly be seen that due care was not taken also by the driver of the Maruti Car. However, considering the fact that the Super Bus is a huge vehicle whereas the Maruti Car is a small vehicle, even if the drivers of both the vehicles involved in the accident were contributorily negligent, upon re-appreciation of the evidence on record, this Court deems it fit to hold that the driver of the Super Bus being a larger vehicle was negligent to the extent of 80%, whereas the driver of the Maruti Car, i.e. the deceased, was negligent to the extent of 20%.

13. The contention raised by Mr. Agarwala that the claimant No.2, i.e. the son of the deceased was a minor, is not coming out from the record. On the contrary, the claim petition does not mention that the son was a minor as the claim petition is in fact filed in his own name and, therefore, as a

major son he would not be entitled to any parental consortium.

14. Having come to the aforesaid conclusion, the appellant/claimant would be entitled to amounts under the head of loss of dependency as under:-

Income	= Rs. 18,390/- (Rs.18,410/- - Rs.20/- Professional tax)
Yearly Income	= Rs.2,20,600/- (Rs.18,390/- X 12)
Future prospects 15%	= Rs. 33,090/-

	= Rs.1,87,510/-

One third deduction	= Rs. 62,503/-

	= Rs.1,25,007/-
Multiplier	9 (Rs.1,25,007 X 9 = Rs.11,25,063/-)
Conventional Heads	= Rs. 70,000/-
Medical Expenses	= Rs.3,17,322/-

Total	= Rs.15,12,385/-

15. Over and above this, the appellant/claimant would be entitled to medical expenses of Rs.3,17,322/-, as awarded by the Tribunal, and following the ratio laid down by the Apex Court in the case of **Pranay Sethi** (supra), the appellant/claimant would also be entitled to an additional amount of compensation under different conventional heads at Rs.70,000/-. Thus, the appellant/claimant would be entitled to compensation of Rs.11,25,063/- under loss of dependency and medical expenses of Rs.3,17,322/- + Rs.70,000/- towards loss of estate, loss of consortium and funeral expenses. Thus, the appellant/claimant would be entitled to gross compensation of Rs.15,12,385/-. As observed above, the

deceased as driver of the Maruti car is held to be negligent to the extent of 20% and hence the appellant would be entitled to net compensation of Rs.12,09,909/- (Rs.15,12,383 – 3,02,476) being 20% negligent).

16. As the Tribunal has awarded a sum of Rs.7,80,500/-, the Oriental Insurance Company Limited, who is the insurer of the Super Bus shall deposit the additional amount with 6% interest from the date of filing of the claim petition till its realization with proportionate cost. Rest of the award dated 31.05.2013 remain unaltered. The Insurance Company shall deposit such amount within a period of 3(three) months from the date of receipt of the certified copy of this judgment & order.

17. The impugned judgment & award dated 31.05.2013 passed by Motor Accident Claims Tribunal, Kamrup at Guwahati in MAC Case No. 377/2007 (common judgment & award) stands modified to the aforesaid extent. The parties to bear their own cost in this appeal.

18. The Registry is directed to send back the record of the proceedings to the Tribunal forthwith.

CHIEF JUSTICE

Mukut

Comparing Assistant