



GAHC010137502016

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THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

MAC Appeal No. 906 of 2018

1 M/S UNITED INDIA INSURANCE COMPANY LIMITED, HAVING ITS REGISTERED HEAD OFFICE AT 24 WHITES ROAD, CHENNAI 600014 AND ITS REGIONAL OFFICE AT G.S. ROAD, DISPUR, GUWAHATI, REPRESENTED BY THE SENIOR REGIONAL MANAGER, GUWAHATI REGIONAL OFFICE, G.S. ROAD, BHANGAGARH, DISPUR, GUWAHATI 781005

.....APPELLANT

VERSUS

1. SMT SUMI BODO

W/O LATE NAYAN BODO

2. MISS BARAKHA BODO

D/O LATE NAYAN BODO

(Respondent No. 2 being the minor is represented by the respondent No. 1, Smt Sumi Bodo)

3. HAREN BODO

S/O LATE JARUWA BODO

4. SMT. BUDDHE BODO

W/O SRI HAREN BODO

ALL ARE R/O VILL. ANDHERI

P.S. CHAYGAON

DIST. KAMRUP

ASSAM



PIN 781124

.....CLAIMANTS/RESPONDENTS

5. NIRMAL CH. DAS
S/O LATE BEBORU RAM DAS
R/O VILL. BALASIDDHI
P.S. CHAYGAON
DIST. KAMRUP
ASSAM
PIN 781124
6. NARMOHAN DAS
S/O LATE LEBORU RAM DAS
R/O VILL. BALASIDHI
P.S. CHAYGAON
DIST. KAMRUP
ASSAM
PIN 781124

.....RESPONDENTS.

Advocate for the appellant : V K Barooah.
Advocate for the respondents : Mr A Mannaf.

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Hearing : 28.03.2023

Date of Judgment : 17.05.2023

JUDGEMENT AND ORDER (CAV)

Heard Mr V K Barooah, learned counsel appearing for the appellant and Mr A Mannaf, learned counsel appearing on behalf of the respondents.

2. The Insurance Company has preferred this appeal under Section 173 of the Motor



Vehicles Act, 1988, challenging the Judgment and Award dated 29.04.2016, passed by the learned Additional District Judge No. 2, Kamrup (M), Guwahati, in MAC Case No. 234/2014, awarding compensation amounting to Rs. 13,23,500/- (Rupees Thirteen Lakhs Twenty-Three Thousand Five Hundred) only in favour of the respondents/claimants.

3. The factum of accident has not been challenged in this case. The learned counsel for the Insurance Company has argued that the learned Tribunal committed illegality in making statutory deduction of one-fourth from the income of the deceased. In fact, there were three dependants and accordingly, such deduction should have been one-third in place of one-fourth. The father cannot be treated as a dependant. As such, the deduction should be one-third of his income.

4. It is also submitted by the learned counsel for the appellant that the learned Tribunal has failed to calculate the Award on conventional heads properly, which is liable to be modified.

5. Regarding income of the deceased, the learned Tribunal has stated in the Judgment that in absence of cogent evidence on occupation and income of the deceased, notional income of Rs. 4,500/- was accepted as the monthly income of the deceased. However, after hearing learned counsel for both sides, Rs. 6,500/- was taken as monthly income of the deceased.

6. As per the judgment of the Hon'ble Supreme Court rendered in the case of ***Syed Sadiq & Others Vs. Divisional Manager, United India Insurance Company Ltd.;*** reported in **(2014) 2 SCC 735**, the compensation of the vegetable vendor was determined as Rs.

6,500/- per month. It was held in the said case that the said employee labour in unorganized section, i.e., the claimant/vegetable vendor sustaining disability cannot be expected to produce documents of his monthly income. Considering present state of economy in agricultural products reasonably capable of earning of Rs. 6,500/- per month and compensation was awarded accordingly.

On the basis of judgment of the Hon'ble Supreme Court regarding income of the vegetable vendor, in the case in hand also, the income of the deceased be considered as Rs. 6,500/- per month.

7. In the case of ***National Insurance Company Limited –Vs- Pranay Sethi & Ors., Reported in SLP (Civil) No. 25590/2014***, it was observed that while determining the income of the deceased in case of 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 40-50 years and 10%, where the deceased was between the age of 50-60 years, should be regarded as the necessary method of computation.

8. In the instant case, as the deceased was 22 years of age when the accident took place, which is not agitated by the appellant/ Insurance Company. Hence, 40% should be added along with his established income of Rs. 6,500/-. As such, monthly income of the deceased is considered as Rs. 6500/- + Rs. 2,600/- (40%) = Rs. 9100/-.

9. As the age of the deceased was 22 years at the relevant time of accident, as per the Judgment of ***Sarala Verma –Vs- DTC; reported in (2009) 6 SCC 121***, the multiplier

would be 18.

10. In the instant case, the deceased has left behind three dependants. As such, the standard deduction towards personal and living expenses is applicable as stated in the case of **Sarala Verma(supra)**, as such one-third of income is required to be deducted with the presumption that if the deceased would have been alive, he could have spent two-third for his personal and living expenses.

11. As per the case of **Pranay Sethi (supra)**, the Hon'ble Supreme Court has fixed the 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. 40,000/- and Rs. 15,000/- respectively. As per the impugned judgment, the aforesaid amount shall be enhanced @ 10% in every 3 years. Hence, the amount of loss of estate and funeral expenses would come to Rs. 16,500/- on each count and loss of consortium as Rs. 44,000/-.

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

- A. Annual income of the deceased- Rs. 9100 x 12 = Rs. 109200/-
- B. After deducting one-third of the income of the deceased, the amount comes to -
Rs. 72,800/-
- C. After multiplied with multiplier, the amount comes to Rs. 72,800/- x 18= Rs. 13,10,400/-.
- D. Funeral expenses = Rs. 16,500/-
- E. Loss of Consortium = Rs. 44,000/-



F. Loss of Estate = Rs. 16,500/-

Total – Rs. 13,87,400/- (Rupees Thirteen Lakhs Eighty Seven Thousand Four Hundred) only.

13. In the result, the appeal is disposed of with aforesaid modification. The Insurance Company is directed to deposit the amount of Rs. 13,87,400/- (Rupees Thirteen Lakhs Eighty Seven Thousand Four Hundred) only, in the savings account of the claimant No. 1/wife, Smt Sumi Boro, through NEFT. The amount of compensation shall carry an interest @ 6% per annum, from the date of filing of the case till full and final realization. The Insurance Company is directed to discharge the liability of the award within a period of 30 days from the date of receipt of the order. The claimant No. 1/wife, Smt Sumi Boro is directed to furnish her bank details of any nationalized bank to the Insurance Company for necessary payment. The amount of compensation, if any, paid earlier, be adjusted accordingly.

14. Send down the LCR.

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

JUDGE

Comparing Assistant