



GAHC010014772017

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

**Case No. : MACApp./85/2017**

BISWAJIT CHOWDHURY and ANR  
S/O LATE N.G. CHOWDHURY

2: MST. YASHASHREE CHOWDHURY

S/O SRI BISWAJIT CHOWDHURY  
BOTH ARE PERMANENT R/O WARD NO. 14  
L.D.S. ROAD  
TEZPUR  
P.S. TEZPUR  
DIST. SONITPUR AND APPELLANT NO. 2 BEING MINOR REPRESENTED BY  
HIS FATHER AND NATURAL GUARDIAN APPELLANT NO.

VERSUS

AKLESH SAH and 2 ORS,  
S/O LATE GOLAP SAH, R/O DHING ROAD, P.O. HAIBARGAON, NEAR JANTA  
PRESS, NAGAON DIST. NAGAON 782002, ASSAM OWNER OF VEHICLE NO.  
AS-02-E-5159 TRUCK

2:RAJENDRA RAY

S/O LATE SHEW RAY  
C/O SRI AKLESH SAH  
DHING ROAD  
P.O. HAIBARGAON  
NEAR JANTA PRESS  
NAGAON DIST. NAGAON 782002  
ASSAM AND ALSO R/O VILL. BERIYA  
P.S. KESARIYA  
DIST. EAST CHAMPARAN  
BIHAR.

3:THE REGIONAL MANAGER



NATIONAL INSURANCE CO. LTD. G.S. ROAD  
BHANGAGARH  
GUWAHATI 781005  
KAMRUP M  
ASSAM

**Advocate for the Petitioner : MR.N BHATRA**

**Advocate for the Respondent :**

**BEFORE  
HONOURABLE MR. JUSTICE SUMAN SHYAM**

**JUDGMENT & ORDER (ORAL)**

**Date : 04-08-2022**

Heard Mr. G. Jalan, learned counsel for the appellants. Also heard Ms. S. Roy, learned counsel for the respondent No. 3/ Insurance Company. None has appeared for the respondent Nos. 1 and 2.

2. By filing this appeal the appellants have assailed the impugned judgment and award dated 30-11-2016 passed by the learned Member, MACT No. 2, Kamrup (M) at Guwahati in connection with MAC Case No. 551/2013 whereby the learned Tribunal had awarded compensation on the conventional heads but had ruled that the claimants/ appellants Nos. 1 and 2 were not dependents of the deceased and therefore, were not entitled to claim compensation on account of deprivation of dependence.

3. The facts of the case, in a nutshell, are that late Ispita Chowdhury, i.e. the wife of the appellant No. 1 and the mother of appellant No. 2 had suffered death in a motor accident which took place on 03-03-2013 at about 05:30 p.m. on the NH-37-A while she

was travelling on a pillion in a scooty bearing registration number AS-12/G-9769. The speeding truck belonging to the respondent No. 1, being driven in a rash and negligent manner by the respondent No. 2, came from behind and hit the scooty, which had resulted into grievous injury on all the riders leading to death of the victim. It was projected before the learned Tribunal that the deceased was a dynamic young lady, aged about 32 years and at the time of her death, she was an earning member of the family. According to the claimants due to her premature death, the family was plunged into serious financial crisis. The appellant No. 1, i.e. the husband of the deceased had projected himself as a businessman having an earning between Rs. 10,000/- to Rs. 12,000/- per month but the appellant No. 2 Miss Yashashree Chowdhury i.e. the minor daughter of the victim had no income. The defaulting vehicle was insured with the National Insurance Company Ltd. As such, the appellants as claimants had filed the claim petition seeking an amount of Rs. 50,00,000/- (Rupees Fifty Lakhs) as compensation with a further prayer to award a sum of Rs. 50,000/- as no fault liability as per Section 140 of the Motor Vehicles Act, 1988.

4. The respondent No. 3 had appeared and contested the claim by filing written statement. However, the claim petition proceeded *ex-parte* against the respondent Nos. 1 and 2, i.e. the owner and the driver of the vehicle respectively.

5. Based on the pleadings of the parties, the learned Tribunal had framed two issues which are as follows:

*I. Whether the victim Ispita Chowdhury died out of the accident which occurred on 03-03-2013 due to vehicle No. AS-02-E-5159 (Truck) and whether the said accident occurred due to rash and negligent driving by the driver of the aforesaid Truck*

*bearing No. AS-02-E-5159?*

*II. Whether the claimants are entitled to get any compensation, if so to what extent and from whom payable?*

6. During trial, the appellants/ claimants had adduced evidence in support of their claim which included the evidence adduced by PW-3 Satyajit Das, i.e. the Income Tax Inspector, Tezpur to show that the deceased was filing income tax return and therefore, was having a decent earning. According to the appellants the gross income of the deceased, as per assessment made in the year 2011-12, was Rs. 2,88,439/-. The respondents, however, did not adduce any evidence.

7. Upon conclusion of the trial, the learned Tribunal had decided the issue No. I in favour of the appellants by holding that the accident occurred on 03-03-2013 due to the fact that the vehicle bearing registration number AS-02-E-5159 was being driven in rash and negligent manner by its driver thereby causing death of the victim Ispita Chowdhury. Accordingly, compensation for a total amount of Rs. 3,25,000/- was awarded to the appellants on the conventional heads. However, insofar as the issue No. II is concerned, the learned Tribunal was of the view that since appellant No. 1, i.e. the husband of the victim was having a monthly income of Rs. 10,000/- to Rs. 12,000/-, hence, he was not dependent on the deceased. It was also held that the appellant No. 2, i.e. the minor daughter of the victim was a dependent on her father, i.e. the appellant No. 1 and hence, not a dependent on the deceased. On such ground compensation on account of loss of dependency has been denied to the appellants. Aggrieved by the finding recorded in respect of issue No. II, the instant appeal has been filed.



8. Mr. Jalan, learned counsel for the appellant has referred to a decision of the Hon'ble Supreme Court of India rendered in the case of **National Insurance Co. Ltd. Vs. Birender & Ors.** reported **(2020) 11 SCC 356** to submit that merely because the husband of the deceased was having some income, that by itself would not be sufficient to deny compensation to the appellant No. 1 for loss of dependency. Insofar as the appellant No. 2 is concerned, Mr. Jalan submits that the reason for denying such relief to the minor daughter of the deceased by taking note of the income of the appellant No. 1 was perverse in the eye of law and therefore, is liable to be set aside by this Court. Mr. Jalan has also placed reliance on two other decisions rendered in the case of **Sunil Sharma & Ors. Vs. Bachitar Singh & Ors.** reported in **(2011) 11 SCC 425** and decision of this Court rendered in the case of **Samir Bhattacharjee & Anr. Vs. Ganeswar Boro & Ors.** reported in **2013 (4) GLT 39** to submit that compensation for loss of dependency was granted to the husband and other family members of the deceased who were the legal representatives although those persons were having some income.

9. Responding to the above, Ms. Roy, learned counsel for the respondent No. 3 has submitted that the learned Tribunal had taken note of the fact that the appellant No. 1 was a earning member and therefore, the relief for compensation on account of deprivation of dependency was not granted. Ms. Roy has, however, submitted in her usual fairness that in view of the decision rendered in the case of **Birender & Ors.** (Supra) issue No. II may call for a fresh consideration.

10. I have considered the submission advanced by the learned counsel for both sides

and have also gone through the materials available on record. As noticed above, the learned Tribunal has awarded compensation of an amount of Rs. 3,25,000/- to the appellants/ claimants under the various conventional heads. The learned counsel for the appellants has not questioned the award made by the learned Tribunal on such count nor is the award under challenge at the behest of the Insurance Company. Therefore, the validity of findings recorded in respect of issue No. I and the award of compensation under the conventional head need not detain this Court. Therefore, the only controversy arising in this appeal is pertaining to the legality of the decision rendered with regard to issue No. II.

11. A careful reading of the impugned judgment leaves no manner of doubt that the only ground on which the learned Tribunal had declined the compensation on account of deprivation of dependency was on account of the fact that the appellant/ claimant No. 1, i.e. the husband of the deceased was having monthly income and therefore, according to the learned Tribunal the appellant/ claimant No. 2, i.e. the minor daughter was also dependent upon him. On such count, by relying on the decision in the case of **Smt. Manjuri Bera Vs. The Oriental Insurance Co. Ltd. & Anr.** reported in **(2007) 10 SCC 643**, the learned Tribunal was of the view that there was no loss of dependency in this case. However, in the case of **Birender & Ors.** (Supra), while dealing with the issue of similar nature, the Hon'ble Supreme Court has further expounded the law declared in the case of **Manjuri Bera** (Supra) and observed that liability to pay compensation under the Act does not cease because of absence of dependency of the legal representative concerned. The observations made in paragraphs 13 and 14 of the said decision would be

relevant and therefore, is reproduced here-in-below for ready reference:

*“13. In paragraph 15 of the Manjuri Bera, while adverting to the provisions of Section 140 of the Act, the Court observed that even if there is no loss of dependency, the claimant, if he was a legal representative, will be entitled to compensation. In the concurring judgment of Justice S.H. Kapadia, as his Lordship then was, it is observed that there is distinction between “right to apply for compensation” and “entitlement to compensation”. The compensation constitutes part of the estate of the deceased. As a result, the legal representative of the deceased would inherit the estate. Indeed, in that case, the Court was dealing with the case of a married daughter of the deceased and the efficacy of Section 140 of the Act. Nevertheless, the principle underlying the exposition in this decision would clearly come to the aid of the respondent Nos. 1 and 2 (claimants) even though they are major sons of the deceased and also earning.*

*14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs. 1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”*

12. In view of the above observations made by the Supreme Court in the case of **Birender & Ors.** (Supra) there can be no manner of doubt that merely because the legal representative of deceased person is having some income or there is partial dependency on the deceased, the same cannot be a ground to deny the relief on account of deprivation of dependency to the claimants, if it is established that the claimants were legal representatives of the deceased person. The quantum of compensation on the ground of loss of dependency would, however, depend on the facts and circumstances of the case as well as the evidence available on record. However, the learned Tribunal has failed to examine the claim of the claimants from the above perspective. As such, this



Court is of the opinion that the decision with regard to issue No. II rendered by the learned Tribunal suffers from legal infirmity having a vitiating effect on the impugned judgment.

13. In view of the reasons cited above, the impugned judgment and order dated 30-11-2016, is, hereby, set aside. The matter is remanded to the learned Tribunal for fresh decision of the claim petition in the light of the law laid down in the case of ***Birender & Ors.*** (Supra).

Since the incident had occurred in the year 2013, the learned Tribunal is requested to hear the matter as expeditiously as possible and decide the claim petition preferably within a period of 06 months from the date of receipt of the record.

Parties to appear before the learned Tribunal on 05-09-2022 and produce a certified copy of this order.

With the above observation, this appeal stands allowed.

Registry to send back the records.

**JUDGE**

GS

**Comparing Assistant**