



GAHC010137012017

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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. 401 of 2017

Oriental Insurance Company Limited,
A Company registered and incorporated
Under the Companies Act, 1956, having its
Registered Office at Oriental House, A-25/27 Asaf Ali Road,
New Delhi-2, with one of its Regional office at G. S. Road, Ulubari,
Guwahati-7, represented by its Regional Manager.

.....Appellant

VERSUS

1. Md. Gahar Mullah,
S/o Late Jabed Mullah,
R/o of Village- Sakirvita,
P.O.- Kayakuchi, P.S.- Barpeta,
Mouza:- Betbari,
District – Barpeta, Assam.

.....Respondent/Claimant

2. Md. Badsha Bhuyan
S/o Md Aziz Bhuyan,
R/o- Vill:- Sakirvita, P.O.- Kayakuchi,
P.S.- Barpeta, District- Barpeta, Assam.



3: Md Fulchand Ali,
S/o:- Mazid Ali,
R/o:- Vill:- Sakirvita, P.O:- Kayakuchi,
P.S.- Barpeta, District:- Barpeta, Assam.

.....Respondents.

Advocates for the appellant : Mr R C Paul
Advocate for the respondent : Mr R Dhar.

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Judgment : 10.03.2023

JUDGEMENT AND ORDER (CAV)

Heard Mr R C Paul, learned counsel appearing for the appellant/Insurance Company and Mr R Dhar, learned counsel appearing for the respondent/claimant.

2. The Insurance Company/appellant is on appeal filed under Section 173 of the Motor Vehicles Act, 1988, challenging the Judgment and Order dated 22.07.2015, passed by the learned Member, MACT No. 3, Kamrup, at Guwahati, awarding an amount of Rs. 7,73,000/-, against the appellant, along with an interest @ 6% per annum, from the date of filing till payment.

3. The brief facts of the case is that on 05.02.2005, the respondent No. 1/claimant's son, i.e., the deceased, Md Karim Mullah was travelling from Barpeta towards Guwahati by the Vehicle No. AS-15-1438 (Truck), as a labour of the said vehicle. At about 07:30 am, said



vehicle met with an accident at village Sariha Chakla on 31 No. National Highway, under Patacharkuchi Police Station, due to rash and negligent driving of the driver of the said vehicle and as a result, the deceased, Md Karim Mullah, the son of the respondent No. 1/claimant died on the spot. Immediately, after the occurrence, a case was registered before the Patacharkuchi Police Station vide Patacharkuchi PS Case No. 26 of 2005, under Sections 279/304 (A) IPC.

4. The further case of the respondent No. 1/claimant was that his deceased son was 18 years of age at the time of accident and he was a labour of the vehicle No. AS-15-0438 and thereby earning Rs. 6,000/- per month. The deceased died leaving behind the respondent No. 1/claimant, his mother, his grand-mother and his sister.

5. On receipt of the notices, the appellant/Insurance Company as opposite party No. 1, and respondent Nos. 2 and 3 as opposite party Nos. 2 and 3, appeared and filed their respective written statements.

6. The appellant/Insurance Company in their written statement has denied the statement of allegations and wanted strict proof of facts and documents, such as age, occupation of the deceased, valid and effective driving license of the driver of the vehicle and prayed to dismiss the claim of the claimant against opposite party No. 1.

7. The respondent Nos. 2 and 3, i.e., the owner and driver of the vehicle No. AS-15-0438, in their written statement have denied the statement of allegations and stated that the deceased was not the labour or employee of the vehicle and his monthly income was not Rs. 6,000/-. Further, they stated that the respondent No. 3/driver drove the vehicle with due risk, but it is quite unknown how the deceased fell in the accident. Moreover, at the relevant time



of accident, the driver had valid license and the truck was duly insured with the appellant/Insurance Company and the insurer, i.e., the appellant/Insurance Company is wholly responsible as well as liable to make payment of the claim, if awarded in favour of the claimant/respondent No. 1.

8. During trial, the claimant/respondent No. 1 had examined one witness. However, no witness was examined by the opposite parties. After hearing both sides, the learned Tribunal, vide Judgment and Order dated 22.07.2015, passed the Judgment and Award as aforesaid

9. Being highly aggrieved and dissatisfied with the Judgment and Order dated 22.07.2015, the appellant/Insurance Company has preferred this appeal.

10. Learned counsel for the appellant/Insurance Company, Mr R C Paul, has argued that respondent No. 1/claimant has impleaded the owner and the driver of the vehicle bearing Registration No. AS-15-0438 (Truck) and the owner of the said vehicle in his written statement had denied the statement of allegations and also stated that at the time of accident, i.e., on 05.02.2005, the deceased Md Karim Mullah was not the labour or employee of his vehicle and his monthly income was also not known to him and that his driver also did not know about the deceased who met with the accident. Further, the owner of the offending vehicle, i.e., respondent No. 2 stated that at the time of accident, his driver, i.e., respondent No. 3 was driving the said vehicle and he had the valid driving licence, but neither the owner nor the driver submit the said valid driving licence before the learned Tribunal. Moreover, the respondent No. 1/claimant has not mentioned the driving licence of the driver. Under such circumstances, the learned Tribunal ought to have directed the owner and the driver, i.e., the respondent Nos. 2 and 3 to produce the driving licence of the driver of the

said offending vehicle, but the learned Tribunal without considering the same, came to an erroneous finding and passed the Judgment and Award against the appellant/Insurance Company. Therefore, as such the impugned Judgment and Award is liable to be set aside.

11. On the other hand, learned counsel for the claimant/respondent No. 1 has argued that the deceased Md Karim Mullah was travelling in the offending truck at the relevant time of accident. Immediately after the accident, one GD Entry was recorded vide Patacharkuchi PS G D E No. 63 dated 05.02.2005. Though the appellant/Insurance Company has denied the fact that the deceased was the labour in the said truck, but the factum of accident has not been challenged in the case. The learned Tribunal has rightly delivered the Judgment dated 22.07.2015, by holding that the deceased was travelling in the alleged offending truck on the date of accident.

12. I have considered the submissions made by the learned counsel for both the parties and also gone through the Judgment and Award dated 22.07.2015 and the record of MAC Case No. 2179 of 2008 and the documents available thereon.

13. In the Judgment and Award dated 22.07.2015, the learned trial Court has stated that though the owner and driver has denied the engagement of the deceased Md Karim Mullah as labour in the said truck, but no evidence has been adduced in support of their claim. Hence, the learned Tribunal, in absence of any evidence adduced by the owner and driver, awarded compensation, as aforesaid, in favour of the claimant/respondent No. 1, i.e., the father of the deceased. The father of the deceased, i.e., PW-1 while deposing before the Tribunal, had specifically stated that he along with his deceased son and 15/20 labours were travelling in the said alleged offending truck from Barpeta to Nalbari and that fact was not



denied by the appellant/Insurance Company by putting any suggestion to PW-1 in cross-examination. So, the learned Tribunal has rightly considered the evidence of PW-1, that his deceased-son was travelling in the said offending truck as labour.

14. From the accident information report, vide Exhibit-1, it also appears that on the date of accident, one GD Entry was recorded at Patacharkuchi Police Station, vide Patacharkuchi PS G D E. No. 63 dated 05.02.2005. Subsequently, ejahar was lodged by the claimant/respondent No. 1, who is the father of the deceased and the case was registered as Patacharkuchi P S Case No. 26 of 2005, under Sections 279/304 (A) IPC. The Post-Mortem Examination of the deceased Md Karim Mullah was conducted at Barpeta Civil Hospital on 05.02.2005, i.e., on the date of accident, vide Patacharkuchi PS G D E. No. 63 dated 05.02.2005.

15. In view of the above, it can be said that the deceased Md Karim Mullah died in connection with the accident involving the vehicle bearing No. AS-15-1438 (Truck), while he was travelling in the said truck, which met with an accident, due to rash and negligent driving of the driver of the said vehicle.

16. In the instant case, as the claimant has failed to prove the income of the deceased by producing any documents or adducing any evidence, the income of the deceased be considered as Rs. 9,246/- as unskilled labour, vide latest Government of Assam notification No. GLR.503/81/Pt-I/252 dated 16th March, 2022.

17. 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 a 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.

18. Regarding age of the deceased Md Karim Mullah, Admit Card is available on record, vide Exhibit- 3, which shows that the deceased Md Karim Mullah was born on 01.01.1987 and the accident occurred on 05.02.2005, which makes it clear that at the time of accident, the deceased, Md Karim Mullah was 18 years of age. Hence, 40% should be added along with his established income of Rs. 9,246/-. As such, monthly income of the deceased is considered as Rs. 9,246/- + Rs. 3,698/- (40%) = Rs. 12,944/-.

19. As the age of the deceased was 18 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.

20. In the instant case, the deceased was a bachelor at the time of accident. As such, the standard deduction towards personal and living expenses is applicable as stated in the case of ***Sarala Verma (supra)***, and 50% income is required to be deducted with the presumption that had the deceased been alive, he could have spent 50% for her personal and living expenses.

21. In the case of ***Magma General Insurance Company Limited –Vs- Nanu Ram reported in (2018) ACJ 2782***, Hon'ble Supreme Court has held that MV Act is a beneficial legislation aimed at providing relief to the victims or their families in cases of genuine claims. In case, where a parent has lost their minor child or unmarried son or daughter, the parents are entitled to be awarded for loss of consortium under the head of filial consortium.

22. In the said case, Hon'ble Supreme Court awarded a sum of Rs. 40,000/- each, towards loss of filial consortium to the father and sister of the deceased.

23. In the case in hand, Ms Kulsan Nessa, who is the mother of the deceased, is entitled to get the filial consortium for the death of her son.

24. 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, and funeral expenses should be Rs. 15,000/- 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.

25. In view of the aforesaid discussions, the computation of compensation is awarded as follows-

A. Annual income of the deceased- Rs. 12,944/- x 12 = Rs. Rs. 1,55,328/-

B. After deducting 50 % of the income of the deceased, the amount comes to = Rs. 77,664/-

C. After multiplying with multiplier, the amount comes to Rs. 77,664/-x 18= Rs. 1,3,97,952/-.

D. Funeral expenses = Rs. 16,500/-

E. Filial Consortium = Rs. 40,000/-



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

Total – Rs. 14,70,952/- (Rupees Fourteen Lakhs Seventy Thousand Nine Hundred and Fifty-Two) Only.

26. In the result, appeal is disposed of, with the aforesaid modification, awarding Rs. 14,70,952/- (Rupees Fourteen Lakhs Seventy Thousand Nine Hundred and Fifty-Two) Only, along with interest thereon @ 6% per annum, from the date of filing of the case till full and final realization. The Oriental Insurance Company Limited is directed to discharge the liability of the award within a period of 30 days from the date of receipt of the order.

27. The Insurance Company is directed to make payment of the amount of compensation to the savings account of Ms Kulsan Nessa, through NEFT. She is directed to furnish her bank details of any nationalized bank to the Oriental Insurance Company Limited for necessary payment.

28. The amount already paid be adjusted accordingly.

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

30. Send down the LCR.

JUDGE

Comparing Assistant