



GAHC010143582018

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

Case No. : MACApp./690/2018

MRS LAKHI DEKA AND 2 ORS
W/O SRI HARESWAR DEKA, R/O VILL. 2 NO. BHAWANIPUR, NOONMATI,
P.O. AND P.S. NOONMATI, DIST. KAMRUP (M), ASSAM.

2: SMT. MINAKHI DEKA
D/O SRI HARESWAR DEKA
R/O VILL. 2 NO. BHAWANIPUR
NOONMATI
P.O. AND P.S. NOONMATI
DIST. KAMRUP (M)
ASSAM.

3: SMT. BHABANI DEKA
D/O SRI HARESWAR DEKA
R/O VILL. 2 NO. BHAWANIPUR
NOONMATI
P.O. AND P.S. NOONMATI
DIST. KAMRUP (M)
ASSAM

VERSUS

1. THE NEW INDIA INSURANCE CO. LTD AND 4 ORS
REGIONAL OFFICE G.S. ROAD, GUWAHATI-5 (INSURER OF THE VEHICLE
NO. NL-01G-8933)

3: SRI JAGJEET SINGH
S/O SHAVINDER SINGH
VPO
KOTLA
TEH BATALA
DIST. URDASPUR (PANJAB)
(DRIVER OF THE VEHICLE NO. NL-01G-8933)



4:UNITED INDIA INSURANCE CO. LTD.
REGIONAL OFFICE
G.S. ROAD
GUWAHATI-07 (INSURER OF THE VEHICLE NO. AS-01FC-0605)

5:SRI KAUSHIK KASHYAP
S/O JOGENDRA KALITA
R/O 2 NO. BHAWANIPUR
H/NO 36
NEAR BHABANIPUR L.P. SCHOOL
P.S.NOONMATI
DIST. KAMRUP (M)
GUWAHATI
ASSAM (INSURER CUM DRIVER OF THE VEHICLE NO. AS-01FC-0605)

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : MR. C K NATH (R5)

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

Date of hearing : 13.09.2022.

Date of judgment : **13.09.2022.**

JUDGMENT & ORDER (Oral)

Heard Mr. H. Das, learned counsel appearing for the appellants. I have also heard Mr. R. Goswami, learned counsel representing the respondent No.1 i.e. the New India Assurance Co. Ltd. and Mr. A. Saikia, learned counsel representing the respondent No.4 i.e. the United India Insurance Co. Ltd. Mr. A. Sarma, learned counsel has appeared for the respondent No.5. The remaining respondents have not appeared in this case.

2. The instant appeal is directed against the judgment and award dated



09.04.2018 passed by the learned Motor Accident Claims Tribunal No.1, Kamrup, Guwahati in connection with MAC Case No.2372/2015 awarding a sum of Rs.5,25,000/- along with interest at the rate of 7% per annum calculated on the aforesaid amount from the date of filing of evidence-on-affidavit till payment, in favour of the claimants on account of death of deceased Dimbeswar Deka.

3. Mr. Das, learned counsel for the appellants submits that the learned Tribunal has applied the wrong multiplier and has also not granted taken into account future prospect as well as the notional income of the deceased while calculating the amount of compensation. As such, this appeal has been filed only on quantum and not on the merit of the decision with regard to other issues.

4. The facts and circumstances of the case, in a nutshell, are as follows. In a motor accident that took place on 24.11.2013, the son of the claimant/appellant No.1 and the brother of the claimants/appellant Nos.2 and 3 viz., Dimbeswar Deka had suffered fatal injuries resulting into his death. The accident took place when the deceased Dimbeswar Deka was coming from Jalukbari side towards Basistha in a porter-600 van bearing registration No.AS-01/FC-0605 along with two vegetable bags and being accompanied by other vegetable vendors. When the van reached near Boragaon L.P. School, a truck bearing registration No.NL-01/G-8933, which was coming from the same direction, being driven in a rash and negligent manner, took a sudden turn towards the left side as a result of which, the driver of the porter-600 van was caught unaware and lost control of the vehicle. The van had hit the truck resulting in a motor accident in which the deceased had received grievous injuries

leading to his death.

5. Both the Insurance Companies had contested the case by filing written statements. The fact that the deceased had died in a motor accident that took place on 24.11.2013 involving the two offending vehicles is not in dispute. It is also not in dispute that the offending truck bearing registration No.NL-01/G-8933 was insured with the respondent No.1 (New India Assurance Co. Ltd.) whereas the porter van bearing registration No.AS-01/FC-0605 was insured with the respondent No.4 (United India Insurance Co. Ltd.).

6. After considering the evidence available on record the learned Tribunal had arrived at the conclusion that the accident took place due to default on the part of both the vehicles and hence, directed that compensation be paid to the claimants which was to be apportioned between the respondent Nos.1 and 4 at the rate of 70% and 30% respectively. The learned Tribunal has also noticed that as per evidence available on record the age of the deceased on the date of the accident was 23 years 10 months 23 days. Although there was no school certificate on record, according to the post-mortem report, the age of the deceased was 25 years at the time of the accident. Notwithstanding the same, the learned Tribunal had treated the deceased to be in the age group of 26 to 30 years and accordingly, applied the multiplier of 17 in purposed observance of the ratio laid down in the decision of the Supreme Court in the case of **Sarla Verma (Smt) and others vs. Delhi Transport Corporation and another** reported in **(2009) 6 SCC 121**. The learned Tribunal has also held that although the claimants have not been able to prove that the monthly

income of the deceased was Rs.10,000/- yet, considering that he was a young man of 24 years and was capable of earning money, his income was assumed to be Rs.5000/- per month and hence, the annual income of the deceased was calculated as Rs.60,000/-. According to the learned Tribunal, the annual loss of dependency, after deducting half the earnings of the deceased was calculated as Rs.30,000/-. Adding an amount of Rs.15,000/- as funeral expenses by applying the multiplier of 17 to the annual income of the deceased, the learned Tribunal had arrived at a figure of Rs.5,25,000/- as compensation payable to the claimants. The respondents were directed to make payment of the compensation to the claimants and the respondent No.4 was granted liberty to recover the amount from the owner of the vehicle by following due process of law. The impugned award has not been challenged by either on the insurance companies or the owner of the vehicles.

7. A careful reading of the impugned award passed by the learned Tribunal undeniably goes to show that the age of the deceased at the time of his death was below 25 years and the said fact has also been accepted by the learned Tribunal. The multiplier to be applied in case of compensation to be paid in a motor accident claims case has been laid down in paragraph 42 of the case of **Sarla Verma and others** (supra) which is reproduced herein below for ready reference :-

“42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas [(1994)2 SCC 176], Trilok Chandra [(1996) 4 SCC 362] and Charlie [(2005) 10 SCC 720]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41

to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

8. From the observations made by the Hon'ble Supreme Court in the above paragraph, it is evident that the multiplier that would be applicable for the deceased person's upto the age of 25 years would be 18. Therefore, the learned Tribunal was apparently not correct in applying the multiplier 17 while computing the amount of compensation amount payable to the claimants in this case.

9. In so far as the other heads of compensation are concerned, in the case of **National Insurance Company Limited vs. Pranay Sethi and others** reported in **(2017) 16 SCC 680** the Hon'ble Supreme Court has categorically held that in case of deceased persons who were self-employed or on a fixed salary, an addition of 40% of the established income should be computed as future prospect in the case of the deceased below the age of 40 years. In other words, the decision in the case of **Pranay Sethi and others** (supra) clearly lays down that future prospect is to be computed for all category of persons, be it self-employed or persons with fixed salary. However, in the present case, no compensation has been awarded on the head of future prospect.

10. Mr. Das submits that considering the age of the deceased and the scale of commercial activities that takes place in a City like Guwahati, an income of Rs.5500/- per month for a vegetable vendor can be treated as the minimum income even without any definite proof in that regard. Mr. Das has also submitted that the learned Tribunal has not awarded any compensation on the head of loss of parental

consortium or loss of estate and the funeral expense of Rs.15,000/- awarded by the learned Tribunal is also liable to be enhanced at the rate of 10% every three years as per the law laid down in the case of **Pranay Sethi and others** (supra). The learned counsel for the respondents could not demonstrate before this Court that the above submission of the appellants' counsel were untenable in law as well as in the facts and circumstances of this case. Therefore, this Court is inclined to accept the contention advanced by the appellants' counsel.

11. From a reading of the decision rendered in the case of **Pranay Sethi and others** (supra), I find that the following observations have been made in paragraph 59.8 :-

“59.8. 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. The aforesaid amounts should be enhanced at the rate of 10% in every three years.”

If that be so, this Court is of the considered opinion that the appellants/claimants have made out a good case for enhancement of the amount of compensation awarded by the learned Tribunal.

12. In so far as the award of interest at the rate of 7% per annum is concerned, this Court is of the opinion that the interest has been awarded at a reasonable rate. However, there is no justification for the learned Tribunal to award the interest from the date of filing the evidence on affidavit. Rather, interest ought to have been granted with effect from the date of filing the claim petition.

13. In view of the discussions made in the foregoing paragraphs, this Court is of the opinion that the amount of compensation awarded by the learned Tribunal deserves

to be revised in the following terms :-

1.	Income per month	:	Rs.5500/-
2.	Future prospect @ 40%	:	Rs.2200/-
			Rs.7700/-
	Deduction for personal expenses @ 50%	:	7700 – 3850 = 3850/-
	Annual Income	:	3850 X 12 = 46200/-
	Multiplier 18 (for age 24 years)	:	46200 X 18 = 831600/-
	Parental Consortium	:	40000/-
	Funeral	:	16500/-
	Loss of Estate	:	16500/-
	Total	=	9,04,600/-

14. Therefore, it is held that the appellants/claimants would be entitled to a sum of Rs.9,04,600/- (Rupees Nine Lakh Four Thousand Six Hundred) as compensation on account of the accidental death of deceased Dimbeswar Deka. The above amount will also carry interest at the rate of 7% per annum from the date of filing the claim petition till realization. Since the appellants/claimants have already received a sum of Rs.5,25,000/- (Rupees Five Lakh Twenty Five Thousand) with interest awarded by the learned Tribunal, the respondent Nos.1 and 4 shall now calculate the balance amount payable to the appellants/claimants under the order of this Court and disburse the same by maintaining the same ratio of 70 : 30, as directed by the learned Tribunal. The balance amount be released in favour of the appellants/claimants after verifying their identity, as expeditiously as possible, but not later than six weeks from the date of receipt of a certified copy of this order.

In so far as the liberty granted to the respondent No.4 to recover the amount



from the owner of the vehicle concerned, the said direction shall remain undisturbed.

With the above observation, the appeal stands disposed of.

Send back the LCR.

JUDGE

T U Choudhury/Sr. PS

Comparing Assistant