



GAHC010106772019

Page No.# 1/10



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

Case No. : MACApp./691/2019

SRI JITUMONI REGON AND 2 ORS
S/O- SRI RAJEN REGON

2: RIPUMONI REGON
S/O- SRI JITUMONI REGON

3: JIYAMONI REGON
D/O- SRI JITUMONI REGON
ALL ARE RESIDENTS OF KANCHAN NAGAR
VIP ROAD
BARBARI
P.O. HENGRABARI
P.S. DISPUR
GUWAHATI- 36
DIST.- KAMRUP(M)
ASSAM. (AS THE PETITIONER NO. 2 AND 3 ARE MINOR THEREFORE THEY
ARE REP. BY PETITIONER NO. 1 AS THEIR FATHER/NATURAL GUARDIAN)

VERSUS

M/S UNITED INDIA INSURANCE CO. LTD.
REP. BY ITS REGIONAL MANAGER, REGIONAL OFFICE, G.S. ROAD,
CHRISTIANBASTI, GUWAHATI, DIST.- KAMRUP(M), ASSAM, PIN- 781005.
(INSURER OF THE MOTOR CYCLE).

Advocate for the Petitioner : MR. R Deka

Advocate for the Respondent : MR. A J SAIKIA



**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

Date of hearing : 19.09.2023
Date of judgment : 22.09.2023

JUDGMENT & ORDER

The instant appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 in respect of a judgment and order dated 27.11.2018 passed by the learned Motor Accident Claims Tribunal, Kamrup (Metro) in MAC case no. 381/2015. The appellants are aggrieved with regard to the adequacy of the Award.

2. While the appellant no. 1 is the husband of the deceased, the appellant nos. 2 and 3 are the minor sons. It is the case projected by the appellants that the wife of the appellant no. 1 - Amiya Das had expired in a motor vehicles accident occurring on 05.12.2014, involving a motorcycle bearing registration number AS – 01/80–0863, which had occurred under the Bhangagarh Police Station in the district of Kamrup (M). She was rushed to the Guwahati Medical College & Hospital and she had ultimately passed away on 07.12.2014. The claim was to the tune of Rs.20 lakhs.

3. The claim was resisted by the opposite parties by filing written statements. The owner cum driver of the vehicle who was arrayed as opposite party no. 1 had denied the claim. However, he had admitted that he was the registered

owner and driver of the vehicle in question, which was duly insured with the United India insurance Co. Ltd. and held all the valid documents of the vehicle at the time of the accident. The Insurance Company which was arrayed as opposite party no. 2 had submitted that its liability would not be accepted if there was any violation of the policy conditions or if the driver did not have any valid driving license.

4. The learned Tribunal, upon consideration of the pleadings had framed the following two issues:

- i. Whether the victim, Late Amiya Das, died in the alleged road accident dated 05.12.14, involving vehicle no. AS-01/AT-0863 (Motorcycle) and whether the accident took place due to rash and negligent driving of the driver of the offending vehicle?
- ii. Whether the claimants are entitled to receive any compensation and if yet, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?

5. While the claimant had examined himself as PW-1, the opposite parties did not adduce any evidence. The learned Tribunal after discussion of the materials on record had come to a finding that the claimants are entitled for compensation on account of the death of Amiya Das. The compensation however, has been assessed at Rs.8,95,000/- with interest @ 7% per annum from the date of filing of the claim petition. The monthly income of the deceased has been assumed to be Rs.5,000/- and so far as compensation under the Head – “loss of consortium” is concerned, a lump sum amount of Rs.40,000/- has been awarded. No award has been made on the medical



expenses.

6. I have heard Shri R. Deka, learned counsel for the appellants. I have also heard Shri AJ Saikia, learned counsel for the contesting respondent - Insurance Company. The materials placed before this Court have also been carefully examined.

7. Shri Deka, the learned counsel for the appellant has submitted that the award is inadequate as certain relevant aspects have been overlooked while making the assessment by the learned Tribunal. He submits that the deceased was a Laboratory Technician working in a private institute and in this regard, the Nursing Course Completion Certificates were proved as Exhibits 8 and 9 before the learned Tribunal. Further, the Employment Certificate was proved as Exhibit 11 and the Identity Card as Exhibit 15. In the evidence, it was deposed that the deceased was working in the Health Care Diagnostic Centre Private Limited, Guwahati and was getting a monthly salary of Rs.10,000/-. However, the learned Tribunal had accepted a notional income of Rs.5000/- per month.

8. As regards the amount on the loss of consortium wherein a lump sum amount of Rs.40,000/- has been granted, the learned counsel for the appellants has submitted that such compensation is liable to be granted to each of the claimants as spousal consortium and parental consortium @ Rs.40,000/- each. He further submits that as per the guidelines in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi*** reported in ***(2017) 16 SCC 680***, such consortium is to be enhanced @ 10% after three years.

9. The learned counsel for the appellants also submits that with regard to the medical expenses, there were documents to show an expense of Rs.5,320/-.



However, nothing has been granted in this respect. He submits that though the accident was occurred on 05.12.2014, the deceased had passed away on 07.12.2014 at the GMCH.

10. With regard to the rate of interest awarded which is @ 7% per annum, the learned counsel for the appellant submits that the normal practice is to grant interest @ 9% by following the direction of the Hon'ble Supreme Court in the case of ***MCD v. Uphaar Tragedy Victims Assn.***, reported in ***(2011) 14 SCC 481***.

11. In support of his submission, the learned counsel has placed reliance on the case of ***Magma General Insurance Co. Ltd. v. Nanu Ram***, reported in ***(2018) 18 SCC 130*** wherein the Hon'ble Supreme Court has adequately explained the assessment of compensation on the Head of consortium wherein it has been laid down that such consortium is to be separately paid to all the claimants depending on their relationship with the deceased.

12. It is further submitted that no assessment or compensation has been given under the Head "Loss of Estate" which is fixed at Rs.15,000/- with enhancement @ 10% after three years and therefore the same should have been Rs.16,500/-

13. With regard to the claim for increase in the rate of interest, the learned counsel has placed reliance upon a recent judgment of this Court in the case of ***Durga Vati Devi and Ors. Vs. United India Insurance Co. Ltd. passed in MACApp./68/2010 on 10.08.2023***. In the said case, this Court after referring the case of the Hon'ble Supreme Court in ***Uphaar Tragedy*** (supra) has laid down that 9% interest should be paid which has been held to be a

standard rate of interest.

14. Appearing for the Insurance Company, Shri A. J. Saikia, in his usual fairness has submitted that all the claims made in this appeal by the appellants in support of their prayer for enhancement may not be tenable. He submits that while the monthly income has been claimed to be Rs.10,000/- there is no supporting documents except for the oral evidence. He submits that Exhibits 8 and 9 are only certificates regarding completion of the nursing course. He further submits that there is no Appointment Letter which was placed before the learned Tribunal and the Identity Card which was exhibited as Exhibit 15 was of the year 2009 whereas the accident was of the year 2014. He submits that under such conditions, the action of the learned Tribunal in holding the monthly income at Rs.5,000/- cannot be held to be unreasonable.

15. With regard to the claim of "loss of consortium", Shri Saikia, learned counsel has fairly submitted that as per the settled law, such consortium would be available to all the three appellants who were claimants @ Rs.40,000/- and the same would also increase @ 10% after three years as per the case of **Pranay Sethi** (supra). Similarly, there is no objection made with regard to the claim for Loss of Estate which is Rs.15,000/- with 10% enhancement after three years which would come to Rs.16,500/-.

16. Shri Saikia has also fairly conceded to the claim for medical expenses to the tune of Rs.5,320/- for which there are documentary evidence.

17. With regard to the claim for enhancement of the interest, Shri Saikia has however resisted this claim by submitting that 7% per annum is a reasonable one taking into account the present day economic condition of the country. He

submits that the claim for enhancement of interest is not justified.

18. The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court had been carefully examined.

19. After consideration of the submissions made and the materials placed before the Court, it appears that certain claims for enhancement are not in dispute. Those are compensation on the head of Loss of Consortium which has been given as lump sum amount of Rs.40,000/- whereas it has to be given individually to all the three appellants-claimants under the Head "loss of spousal consortium" and "loss of parental consortium". Further, by following the judgment of **Pranay Sethi** (supra), the same has to be enhanced @ 10% after three years. The medical expenses of Rs.5,320/- is required to be paid as the same is supported by documentary evidence and Loss of Estate of Rs.15,000/- is to be paid with 10% enhancement after three years which would come to Rs.16,500/-

20. The dispute would, therefore remain over the aspect of monthly income and the rate of interest.

21. With regard to the aspect of monthly income, the oral evidence is that the deceased used to earn Rs.10,000/- per month. In this regard, the Nursing Course Completion Certificates were proved as Exhibits 8 and 9 and the Employment Certificate as Exhibit 11. An Identity Card was also proved as Exhibit 15. However, the appointment letter was not proved and Shri Saikia, learned counsel, has also pointed out that the Identity Card is of the year 2009, whereas the accident had occurred in 2014. After due consideration of the

arguments advanced and the objections raised, this Court is of the view that in a death case, it may not be always possible for the family members to trace out all the documents relating to the employment of the deceased and the learned Tribunal is required to look into the aspect of veracity of the claim and come to a *prima facie* satisfaction. Further, it may not be necessary for an Identity Card to be renewed every year. At the same time, this Court has seen that the income was held to be Rs.5000/- per month which is on the basis of a notional income. The aforesaid conclusion of the learned Tribunal cannot be held to be unreasonable as there is no document to show that the deceased was receiving an amount of Rs.10,000/- per month as monthly salary. Even if the Identity Card of 2009 is not discarded, the same does not disclose the monthly salary. Juxtaposed with a person who may be in some business, a person who is working with a Concern at a monthly salary would definitely have some document to ascertain the amount of such salary and therefore oral evidence of only the claimant and not even of the employer in respect of monthly income may not be sufficient in all cases.

22. With regard to the rate of interest awarded which is 7% per annum, this court has noticed that the Hon'ble Supreme Court in the case of ***Uphaar Tragedy*** (supra) has held that 9% interest per annum should be paid. In the case of ***Josphine James Vs. United India Insurance Company*** reported in ***(2013) 16 SCC 711***, the interest rate was enhanced to 9% in terms of the ***Uphaar Tragedy*** (supra) case. In view of the said position, this Court directs that the rate of interest should be enhanced from 7% per annum to 9% per annum to be paid from the date of filing of the claim petition.

23. In view of the aforesaid discussions, the instant appeal is allowed by directing enhanced payment of the compensation in the following manner:

| LOSS OF CONSORTIUM | |
|---|--|
| Loss of spousal consortium | Rs.40,000/- plus 10% enhancement =Rs.44,000/- |
| Loss of parental consortium for 2 sons | Rs.40,000/- plus 10% enhancement each = Rs.88,000/- |
| Amount granted by the judgment | Rs.40,000/- |
| Balance amount | Rs.92,000/- |

| | |
|----------------|---------------|
| LOSS OF ESTATE | = Rs.16,500/- |
|----------------|---------------|

| LOSS OF FUNERAL EXPENSES | |
|-------------------------------------|-------------|
| Rs.15,000/- plus 10% enhancement | Rs.16,500/- |
| Amount granted | Rs.15,000/- |
| Balance amount | Rs.1,500/- |



| | |
|---------------|------------|
| MEDICAL BILLS | Rs.5,320/- |
| | |

24. Since the awarded amount has already been paid, the balance amount of Rs.1,15,320/- (Rupees One Lakh Fifteen Thousand Three Hundred and Twenty) is to be deposited in the Registry of this Court within a period of 60 days from today, which would also carry interest @ 9% per annum to be paid from the date of filing of the claim petition.

25. The appeal accordingly stands allowed.

26. No order as to cost.

JUDGE

Comparing Assistant