
(2019) 02 GAU CK 0100
In the Gauhati High Court
Case No : MACApp. 299 Of 2017

Binita Baruah Phukan And Anr

APPELLANT

Vs

Ajit Borah And 2 Ors

RESPONDENT

Date of Decision : 28-02-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166, 168, 173
Indian Penal Code, 1860 — Section 279, 388, 304A

Citation : (2019) 02 GAU CK 0100

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : Y S Mannan, S Bhuyan

Final Decision : Allowed

Judgement

1. This is an appeal under Section 173, Motor Vehicles Act, 1988, as amended (hereinafter referred to as the Act), preferred against the judgment and award dated 25.05.2016 passed by the learned Member, Motor Accident Claims Tribunal No. 2, Kamrup (M), Guwahati (hereinafter referred to as the Tribunal) in MAC Case No. 2219/2014. By the said judgment and award dated 25.05.2016, the learned Tribunal has awarded an amount of Rs. 16,32,400/- only as compensation to the claimants therein along with interest @ 9% per annum from the date of filing of the claim application till the date of payment.

2. A narration of the necessary and relevant facts, in brief, is necessary. On 16.06.2014, at about 1-10 p.m., one Nitumoni Phukan was travelling as a passenger in a vehicle bearing registration No. AS-03/AS-6019 (Maximo) which was proceeding from Jhajhi towards Jorhat by the National Highway No. 37. When the said vehicle reached near Kenduguri bypass, an area under the territorial jurisdiction of Jorhat Police Station, the said vehicle first dashed against a motor cycle and thereafter, dashed against a truck, which was coming from the opposite direction. As a result of the accident, the vehicle in which the deceased was travelling as the passenger, turned turtle on the road and Nitumoni

Phukan sustaining grievous injuries on his person, succumbed to the injuries instantaneously on the spot. It was alleged that the said accident occurred due to rash and negligent driving on the part of the vehicle, AS-03/AS-6019 (Maximo). In connection with the said accident, a case being Jorhat Police Station No. 984/2014 was registered under Sections 279/388/304-A, Indian Penal Code (IPC, in short) against the driver of the vehicle (Maximo) and the case was investigated.

3. The appellants herein, who are the wife and the daughter of the deceased, Nitumoni Phukan respectively as claimants instituted a claim application under Section 166 of the Act before the Claims Tribunal seeking compensation for the death of their husband and father respectively in the motor vehicular accident occurred on 16.06.2014. In the claim application, the claimants had sought an amount of Rs. 50 lakhs as compensation from the owner, the driver and the insurer of the vehicle bearing registration No. AS-03/AS-6019 respectively. The said claim application was registered as MAC Case No. 2219/2014.

4. On institution of MAC Case No. 2219/2014, notices were issued to the opposite parties i.e. the driver, the owner and the insurer of the vehicle bearing registration bearing No. AS-03-AS-6019 alleging the same to be the offending vehicle. On receipt of notices, the opposite parties entered appearances and contested the case by filing 2 (two) sets of written statement - one joint written statement by the owner and the driver as opposite party No. 1 and opposite party No. 2 and the other by the insurer of the offending vehicle as opposite party No. 3.

5. Upon consideration of the pleadings, the Claims Tribunal framed 2 (two) number of issues:

"I. Whether the victim Lt. Nitu Moni Phukan died in the alleged road accident dated 16.06.2014 involving vehicle No.AS-03/AC-6019 and whether the said accident took place due to rash and negligent driving of the driver of the offending vehicle?

II. Whether the claimant(s) are entitled to get any compensation and if yes, to what extent and by whom amongst the opposite parties, the said compensation amount will be payable?"

In the proceedings before the Claims Tribunal, the claimants' side examined 2 (two) number of witnesses and exhibited a number of document. The opposite parties did not examine any witness but the witnesses of the claimants' side were cross-examined on behalf of the opposite party-insurer.

6. The claimant No. 1 i.e. the wife of the deceased examined herself as C.W.1. In her evidence on affidavit, C.W.1 reiterated the incident, as has already been mentioned hereinabove. She further exhibited the documents, Ext.-1 - First Information Report (FIR), Ext.-1A - Accident Information Report, Ext.-2 - Post Mortem Examination Report, Ext.-2A - Death Certificate, Ext.-3A - Charge-Sheet

submitted in Jorhat Police Station Case No. 984/2014, apart from the documents related to the employment of the deceased, Nitumoni Phukan as Area Business Manager in SIGNOVA Pharma (P) Ltd. She deposed that the deceased was appointed as a Business Executive of the said Company on 20.04.2010 with Sibsagar as the Headquarter and at that time, his salary was Rs. 7,560/- with other daily allowances. On 06.08.2012, the deceased was promoted as Area Business Manager with financial benefits and was posted at Sibsagar as his Headquarter for his consistently high standard of performance. She further testified that on 31.03.2014, the employer company enhanced the monthly salary of the deceased by Rs. 1,000/- w.e.f. 01.04.2014. Apart from salary and allowances, the deceased used to earn some extra money as bonus from time to time from the employer. C.W.1 further stated that the deceased at the time of his death, drew an amount of Rs. 23,805/- as gross total salary and in addition, an amount of Rs. 576/- was used to be deposited in his provident fund account. The deceased was about 34 (thirty-four) years of age at the time of his death and there was ample scope for him to be promoted to higher posts with enhanced financial benefits in future had he been alive. In support of her statement about the age of the deceased, the Admit Card of HSLC examination of the deceased was exhibited as Ext.-9A wherein his date of birth was mentioned. She also exhibited the Birth Certificate of the claimant No. 2 i.e. the daughter of the deceased who was a minor at that point of time. She was cross-examined on behalf of the opposite No. 3-insurer. In the cross-examination, she stated that she was not an eye-witness to the accident. The testimony of C.W.1, as has been mentioned above, could not be discredited by the opposite party No.3-insurer in any manner whatsoever. The opposite party No. 3-insurer neither put any question about the FIR and the charge-sheet filed in respect of Jorhat Police Station Case No. 984/2014 nor about income, age, etc. of the deceased. Except to the extent that she was not aware about the persons who had issued the documents related to the employment of the deceased on behalf of the employer company, nothing further was sought to be elicited by the opposite party-insurer.

7. The claimants' side had also examined one Mr. Siddharth SS Purkayastha, Manager-HR, Signova Pharma (P) Ltd., the company where the deceased was employed, as C.W.2. C.W.2, in his deposition, had stated that the deceased was an employee of the company having joined service on 20.04.2010 as Business Executive. At the time of his joining, his salary was Rs. 7,560/- along with other daily allowances. On 06.08.2012, the deceased was promoted as Area Business Manager with financial benefits for his consistently high level of performance. The deceased was awarded with increased monthly salary w.e.f. 01.04.2014 by the management of the company because of his impressive performance. C.W.2 exhibited, inter-alia, documents as regards career of the deceased viz. Ext.-1A - letter of joining, Ext.-1C - Salary details Certificate, Ext.-1E - Provident Fund Registration Slip, Ext.-2A - Enhanced Financial Benefit Certificate, Ext.-3A - Enhancement of Monthly Salary Certificate and Ext.-3A - Pay Slip for the month of May, 2014. C.W.2 further stated that apart from salary and allowances, the

deceased used to earn some extra benefits as bonus from time to time from the company and in September, 2013, the company paid an amount of Rs. 6,000/- to the deceased as bonus. He further stated that the deceased who was aged only 34 years at the time of his death, had ample scope of promotion to higher posts in his lifetime with increased financial benefits, had he been alive. In his cross-examination by the opposite party-insurer, C.W.2 had stated that the company used to pay the salaries to the deceased through the Bank. He also deposed that though he had brought the original records of the company to prove the documents which were exhibited, he did not submit the original documents. Based on the aforesaid evidence, the Claims Tribunal had decided the claim application by the judgment and award dated 25.05.2016 by arriving at an amount of Rs. 16,32,000/- as the total amount of compensation to the claimants. Apart from that amount, the Claims Tribunal also directed payment of interest @ 9% per annum from the date of filing of the application till the date of payment. Assailing the said judgment and award dated 25.05.2016, the instant appeal has been preferred by the claimants as the appellants under Section 173 of the Act.

8. I have heard Mr. Y.S. Mannan, learned counsel for the appellants and Mr. R. Goswami, learned counsel appearing for the respondent No. 3. The materials available in the LCR have also been perused.

9. Mr. Mannan, the learned counsel appearing for the appellant while assailing the judgment and award dated 25.05.2014, has confined his submissions in respect of the issue No. 2, whereby, the Claims Tribunal has assessed the amount of compensation. In the absence of any challenge as regards rash and negligent driving on the part of the driver of the offending vehicle bearing registration No. AS-03/AS-6019, the learned counsel has not made any submission since, according to him, the finding on the issue has already attained finality. Referring to the relevant parts of the judgment of the learned Tribunal wherein discussions were made in respect of assessment of compensation, Mr. Mannan has submitted that while deciding about the monthly salary of the deceased, the Claims Tribunal had reduced the same without assigning any reason. When the evidence led during the proceedings in respect of the monthly salary of the deceased have sufficiently established the exact amount which the deceased was earning at the time of his death, deductions of the allowances from the said salary which were not permissible to be deducted, were made by the Claims Tribunal improperly. The Claims Tribunal referring to the document exhibited by C.W.2, mentioned that on 10.06.2012, the deceased was promoted to the post of Area Business Manager and his salary was shown as Rs. 14,000/- per month including some allowances and benefits. As the salary of Rs. 14,000/- included allowance of Rs. 6,800/- the Claims Tribunal had held that the said amount of Rs. 6,800/- could not be considered as a part of the salary. By deducting the said amount of Rs. 6,800/- from the salary of Rs. 14,000/- the Claims Tribunal had determined the actual take home amount of salary of the deceased at Rs. 7,200/- and consequently, his annual income at Rs. 86,400/-. It

is submitted by the learned counsel for the appellant that the document which the Claims Tribunal had referred to, to find out the salary of the deceased, did not reflect the actual salary which the deceased was earning prior to his death. As the deceased died in an accident which had occurred on 16.06.2014, it is the salary certificate for the month of May, 2014 which is relevant for the purpose of determining the monthly income of the deceased. Referring to the salary statement for the month of May, 2014 [Ext.-3A], the learned counsel has submitted that the same has to be taken into consideration for determining the monthly income of the deceased and accordingly, the loss of annual dependency is to be calculated and the final amount of compensation is to be arrived at. The break-up of the salary statement made it clear about the various allowances. In so far as the additions made in respect of the conventional heads he submits that the same shall not be disturbed in the absence of any appeal from the other sides. He submits that the increase in respect of future prospect has rightly been made as well as the deduction towards personnel expenses.

10. On the other hand, Mr. Goswami appearing for the respondent No. 3-insurer submits that in so far as the increase in respect of future prospects is concerned the issue has already been settled by the Constitution Bench of the Apex Court and in such view of the matter, the increase in respect of future prospects is to be, accordingly, determined. Mr. Goswami has further submitted that as regards the deductions permissible to be made from the salary of the deceased, the same may be looked into by this Court and determine the compensation which appear to be just and reasonable in the fact situation obtaining in the present case. In so far as the issue regarding the deduction for personal expenses are concerned, there appears to be no dispute between the parties.

11. Ext.-3A which is a salary statement issued in favour of the deceased by the employer is perused and it is noticed that the gross total salary of the deceased for the month of May, 2014 was Rs. 23,805/- and the net total salary was mentioned as Rs. 23,229. From the figures reflected in the said salary statement of the deceased for the month of May, 2014, it can be seen that an amount of Rs. 8,805/- was paid to the deceased for the month of May, 2014 towards travel expenses and mobile allowance. It appears that the said amount of Rs. 8,805/- was paid to the deceased at the actuals. As such, the said amount of Rs. 8,805/- cannot be considered to be a part of the salary, as such amounts were variables which were only to be reimbursed in case the employee incurred such expenses. The other figure of Rs. 15,000/- comprises of the components like basic salary, dearness allowance, house-rent allowance, medical allowance, education allowance and some other allowances.

11. In my considered view, apart from the basic salary, the other allowances which were parts of the figure of Rs. 15,000/- should be considered to be a part of the monthly income of the deceased in computing the amount of compensation. The allowances payable to the deceased as has been found within the said amount of Rs. 15,000/- in the instant case, should have also been taken

into consideration within the monthly income of the deceased. The document which the Claims Tribunal had referred to pertained to the year 2012 and the same reflected the monthly income of the deceased during May, 2012 when the deceased was promoted to the post of Area Business Manager wherein his salary was shown as Rs. 14,000/- per month. But even then, the deduction of Rs. 6,800/- from that amount of Rs. 14,000/- appears to be bereft of any reason. In such view of the matter, no deduction towards allowances from the said figure of Rs. 14,000/- could have also been made in determining the monthly income and in arriving at the annual income of the deceased. Taking into consideration the monthly income shown in Ext.-3A for the month of May, 2014 as well as the other documents right from his date of employment, the monthly income of the deceased can be considered to be Rs. 15,000/- per month immediately prior to his death. There is no reason available to disbelieve the documents as the opposite party-insurer also did not make any challenge to those documents. A person working in a medicine company for a number of years with promotion in the meantime, can be paid Rs. 15,000/- by the employer company and the same appears to be reasonable without any doubt. It is, accordingly, taken as the monthly income of the deceased at the time of his death on the basis of which compensation is to be assessed. As regards the amount of Rs. 576 towards deposit in provident fund is concerned, a perusal of Ext.-3A - salary statement shows that amount of Rs. 576/- deducted as provident fund contribution was already part of the amount of Rs. 15,000/- and as such, the same cannot be considered additionally.

12. In so far as future prospects are concerned the deceased was in private employment whereas the Claims Tribunal had added an amount of 50% of the monthly income and annual income towards future prospects. As has been settled by the Constitution Bench of the Apex Court in *National Insurance Company Limited vs. Pranay Sethi and others*, reported in (2017) 16 SCC 680, an addition of 50% of the income of the deceased towards future prospects is permissible if the deceased had a permanent job and was below the age of 40 years. The Apex Court has further observed that in case the deceased was self employed or was on a fixed salary, an addition of 40% of established income should be added to the income of the deceased towards future prospects where the deceased was below the age of 40 years. The deceased, in the instant case, was admittedly below the age of 40 years at the time of his death. But the deceased cannot be considered to be in a permanent job. The deceased being in employment of a private company under a contract of employment, his service cannot be said to be of permanent nature like in a Government job since such contract of employment is not specifically enforceable. In such situation, an addition of 40% of the established income should be added to the income of the deceased towards future prospects.

As the deceased had left behind 2 (two) dependents at the time of his death in the form of his wife and the minor daughter, the deduction towards personal expenses should be 1/3rd. As at the time of his death, the age of the deceased

was below 35 years, the multiplier of '16' is the appropriate multiplier to be adopted in terms of the decision of the Supreme Court in *Sarla Verma (Smt.) and others vs. Delhi Transport Corporation and another*, reported in (2009) 6 SCC 121.

13. While considering the amount required to be added under the conventional heads, the Claims Tribunal quoted the following paragraph from the decision of the Supreme Court in *Shashikala vs. Nangamma*, reported in (2015) 9 SCC 150 :-

"31. In *Rajesh and Ors. vs. Rajbir Singh and Ors.* (supra), and *Jiju Kuruvila and Ors. vs. Kunjamma Mohan and Ors.* (2013) 9 SCC 166, this Court has awarded substantial amount of Rs. 1,00,000/- towards loss of consortium and Rs. 1,00,000/- towards loss of love and affection and Rs. 25,000/- towards funeral expenses. Following the same, Rs. 1,00,000/- is awarded towards loss of consortium and Rs. 1,00,000/- towards loss of love and affection to the minor children and Rs. 25,000/- towards funeral expenses and Rs. 25,000/- towards loss of estate totaling to Rs. 2,50,000/-. Thus, the compensation awarded to the claimants is enhanced to Rs.19,32,310/-.

14. Considering the above, the Claims Tribunal had added amounts of Rs. 25,000/- towards funeral expenses and Rs. 25,000/- towards loss of estate. The Claims Tribunal had mentioned that the claimant No. 1 was entitled to receive Rs. 1,00,000/- towards loss of consortium and the claimant No. 2 was entitled to receive Rs. 1,00,000/- towards loss of love and affection of her father. By adding total amount of Rs. 2,50,000/- to the aforesaid amount of Rs.13,82,400/- towards loss of dependency, the Claims Tribunal had assessed the total compensation payable at Rs. 16,32,000/-.

15. In *National Insurance Company Limited vs. Pranay Sethi and others* (supra), the Constitution Bench of the Apex Court after referring to almost all the earlier decisions in that regard, has observed that reasonable figures on conventional heads viz. loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The Apex Court has considered the concept of just compensation in terms of Section 168 of the Act and has observed that the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in mathematical exactitude. While discussing the aspect on conventional heads, the Constitution Bench considered the three-Judges Bench decision in *Rajesh vs. Rajbir Singh*, reported in (2003) 9 SCC 54, wherein an amount of Rs. 1,00,000/- towards loss of consortium and Rs. 1,00,000/- towards loss of love and affection were awarded. After taking the observations made in *Rajesh vs. Rajbir Singh* (supra) into consideration, the Constitution Bench in *National Insurance Company Limited vs. Pranay Sethi and others* (supra), has expressed the opinion that what has been laid down in *Reshma Kumari vs. Madan Mohan*, reported in (2013) 9 SCC 65, also a three-Judge Bench decision, being earlier in point of time, would be a binding

precedent and the decision in Rajesh vs. Rajbir Singh (supra) is not a binding precedent.

16. In such view of the matter, the amount to be awarded in the instant case under conventional heard are to be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. In the light of the above-mentioned discussion, the respondent No. 1 and 2 are entitled to the following amounts :-

Heads

Compensation awarded

I

Income

Rs. 15,000/-

Ii

Future prospects (40 percent of the income)

Rs. 6,000/-

Iii

Deduction towards personal Expenditure [1/3rd of (Rs.15,000+Rs.6,000)]

Rs. 7,000/-

iv

Total income [2/3rd of (Rs.15,000+Rs.6,000)]

Rs. 14,000/-

V

Multiplier

16

Vi

Loss of future income (Rs.14,000x12x16)

Rs. 26,88,000/-

Vii

Loss of Estate

Rs. 15,000/-

Viii

Loss of Consortium

Rs. 40,000/-

Xi

Funeral Expenses

Rs. 15,000/-

Total

Rs. 27,58,000/-

The said amount of Rs. 27,58,000/- is to carry interest @ 9% from the date of filing the claim application till the payment. The respondent No. 3-insurer is directed to pay the said amount of compensation along with interest till the date of payment within a period of 3 (three) months from today before the Registry of this Court. If the earlier awarded amount has already been paid by the respondent No. 3-insurer, in the meantime, and the appellant-claimants have received the same, then the appellants-claimants shall be paid the enhanced amount of Rs. 11,25,600/- along with the interest amount. It is further provided that out of the enhanced amount calculated in terms of the directions made above, an amount of Rs. 5,00,000/- shall be kept in fixed deposit in the name of the appellant-claimant No. 2 i.e. the minor daughter of the deceased.

17. With the above observations, this appeal stands allowed to the extent indicated above. LCR be returned accordingly. No order as to costs.