
(2018) 03 GAU CK 0130
In the Gauhati High Court
Case No : MACApp. 29 of 2011

ESIMON BEWA and 2 ORS

APPELLANT

Vs

THE ORIENTAL INSURANCE CO.LTD.and ANR

RESPONDENT

Date of Decision : 26-03-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 173

Citation : (2018) 03 GAU CK 0130

Hon'ble Judges : SONGKHUPCHUNG SERTO

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. This is an appeal under section 173 of M.V. Act, 1988, directed against the judgment and order dated 21.08.2010, passed by the learned Member

MACT, Dhubri, in MAC Case No. 27/2007. The prayer of the claimant herein is mainly for enhancement of the award granted in the judgment.

2. Heard Mr. A.R Agarwala, learned counsel for the appellants and also heard Mr. S.K Goswami, learned Sr. counsel for the respondent No. 1 i.e.

Oriental Insurance Company Ltd.

3. The brief facts leading to the filing of this appeal are stated as follows; On 30.12.2006 at about 9:00 A.M., the husband of the appellant late Kalu

Miah was knocked down by a Mahindra Safari bearing Registration No. AS-01/AA-3982 while he was travelling on his bicycle at Garerhat, Sonakhuli

Pt.II. As a result of the same Kalu Miah died at the spot. Following the incident Golokganj P.S Case No. 357/06, u/s 279/304-A/427 IPC was

registered and post mortem was conducted on the dead body of late Kalu Miah. The appellant/claimant thereafter, filed a claim case being MAC No.

27/2007 before the MACT, Dhubri, claiming compensation for the death of her husband under the appropriate section of the M.V. Act. After the

parties had adduced evidence and were heard, the learned Tribunal found the owner of the vehicle liable to pay compensation which was worked out

as Rs. 3,21,500/- but since the vehicle was insured with third party policy, the respondent No. 1 in this appeal was directed to pay the amount. The

operative portion of the judgment and award is given here below; The deceased is 45 years old and he has two sons, about 22 years and 20 yrs

respectively. In absence of other cogent evidence I am inclined to accept notional income of the deceased as Rs. 3000/-. As he has two major sons,

aged 22 and 20 years respectively and his wife is also 39 years old for which the age is considered as above 45 years and multiplier is taken as 13. As

such, the total compensation comes as under;

Rs. 3000 x 12 Rs. 36,000/-

1/3rd of Rs. 36,000/- Rs. 12,000/-

Multiplied by 13 x 13

Rs. 3,12,000/-

Funeral expenses Rs. 2,000/-

Loss consortium Rs. 5,000/-

Loss of estate Rs. 2,500/-

Rs. 3,12,500/-

As Insurer M/s Oriental Insurance Co is liable to pay the compensation.

ORDER

In the result, claim petition is allowed awarding Rs. 3,12,500/- (Rupees three lacs twenty one thousand five hundred) only to the claimants payable by

the OP M/s Oriental Insurance Co Ltd with direction to the OP Insurance Co to clear the amount within a period of 30 days failing which the OP

Insurance Co shall be liable to pay interest at the rate of 6% per annum from the date of order till realization. Dictated and corrected by me. Not

being satisfied the appellant/claimant has come to this court filing the present appeal praying for enhancement of the award given by the learned

Tribunal. The grounds on which the appellant/claimant has sought for enhancement of the award amount as submitted by her learned counsel Mr. A.R

Agarwala are given one after the other;

(i) That income of the deceased husband of the appellant/claimant was proved by the claimant in her evidence as CW No. 1 and the same was not

controverted by the respondent in the cross examination and besides the claim of the appellant/claimant was supported by the certificate issued by

panchayat, therefore, instead of taking his income as Rs. 3,000/- it should have been taken as Rs. 5,000/-. In support of his submission Mr. A.R

Agarwala, learned counsel for the appellant cited the decision of this High Court in the case of Smti. Lakhi Das & 6 Ors., -Vrs- Raju Sarmah &

Anrs., reported in 2014 (3) TAC 941(Gau). The relevant paragraphs are 6, 9 & 10 of the judgment. The learned counsel also cited contents of the

para-14 of the judgment of the Honâ??ble Supreme Court passed in the case of Syed Sadiq Etc -Vrs-Divisional Manager, United Ins. Company,

reported in 2014 2 SCC 735, para-14.

(ii) That the learned Tribunal had erred in not granting any amount in lieu of future prospect. According to him, the deceased was a cart puller and self

employed, therefore, he had the prospect of increasing his income in future, as such, taking into account his age at the time of his death at least 25%

of his income should have been added to future prospect.

(iii) That the age of the deceased was proved as 45 years by post mortem report, therefore, his age should have been fixed at 45 and multiplier 14

should have been adopted but the learned Tribunal had wrongly adopted 13 as multiplier.

(iv) That the appellant should also be given the benefits under the heads; funeral expenses, loss of consortium and loss of estate as has been decided

or fixed by the Honâ??ble Supreme Court in Special Leave Petition No. 25590 of 2014.

(v) That the interest should be from the date of filing and not from the date of order as given in the impugned judgment and award.

4. Mr. S.K Goswami, learned counsel appearing for the respondent No. 1 submitted that the learned Tribunal had correctly fixed the age of the

deceased by taking into account the age of the wife and the two major sons who are 22 and 20 years, therefore, the multiplier 13 was correctly

fixed. Mr. S.K. Goswami further submitted that since there was no concrete evidence on the income of the deceased the correct method of determining of his income would be by taking into account the minimum wage prevailing at that time. In support of his submission, the learned counsel cited the judgment of Honâ??ble Supreme Court as reported in (2012) ACJ 28, the relevant para-17. Mr. S.K. Goswami however, conceded that the claimant/appellant herein would be entitled to the compensation under the heads of funeral expenses, loss of consortium and loss of estate as per the judgment of the Honâ??ble Supreme Court passed in Special Leave Petition No. 25590/2014.

5. Regarding the income of the deceased, the learned Tribunal fixed at Rs. 3,000/- by taking the notional income on the ground that there was no cogent evidence. The appellant/claimant stated in her evidence that her husband was buffalo cart puller and a famer having 12 bighas of land. She also stated that out of these two professions he was able to earn a sum of Rs. 5,000/- monthly and after keeping Rs. 1,000/- for his own expense he used to give her Rs. 4,000/- for maintenance of the family. This statement of the witness was not controverted in the cross-examination and no better evidence proving otherwise was also produced by the respondents. A man having a buffalo cart and 12 bighas of land can reasonably be expected to earn at least a sum of Rs. 5,000/- p.m. or else he would not been able to look after his family consisting of his wife i.e. the appellant/claimant, two sons and himself. Therefore, I am inclined to accept the claim of the appellant/claimant that the income of her deceased husband was Rs. 5,000/- p.m. and not Rs. 3,000/- as fixed by the learned Tribunal in the impugned judgment. It may be mentioned here that strict rules of evidence as in criminal case need not be applied in claim cases. It would be sufficient if preponderance of probabilities is proved. In this case, the evidence of the claimant has sufficiently shown preponderance of probabilities in respect of the income of her deceased husband and there is no other evidence showing otherwise. Therefore, the monthly income of the deceased husband of the appellant is fixed at Rs. 5,000/- as claim by her.

6. Now coming to the age of the deceased, the learned Tribunal after taking into account the age of the appellant/claimant i.e. 39 years and the age of their two sons as 20 and 22 years came to the conclusion that the age of the deceased at the time of his death was more than 45 years. In the

evidence, the appellant/claimant did not specifically claim that her husband's age was 45 but only stated that it was around 45 years. Mr. A.R

Agarwala, learned counsel for the appellant/claimant submitted that the age of the deceased was 45 years at the time of his death as the same is

supported by the post mortem report. The post mortem report is not a prove for age unless ossification was done at the same time. Therefore, what

was written in the post mortem report cannot be relied upon. Considering the fact that the appellant/claimant was also not so sure of the age of her

husband, the conclusion drawn by the learned Tribunal in my opinion is quite reasonable. Therefore, the age of the deceased at the time of his death is

considered to be more than 45 years.

7. Now regarding the claim of future prospect, funeral expense, loss of consortium and loss of estate they are no longer rest integra. The judgment of

the Hon'ble Supreme Court passed in Special Leave Petition No. 25590/2014, (at para-61(iv) and (viii) of the judgment), has determined that 25%

of the income of a deceased having a fix income or self employed belonging to the age group of 46 years to 50 years has to be added as future

prospect, and Rs. 15,000/- each has to be added for funeral expense, and loss of estate and a sum of Rs. 40,000/- for loss of consortium.

8. In view of the above, compensation to be given to the appellant/claimant shall be as follows; $Rs.5000 \times 12 = Rs.48,000$ (Multiplicant

determine for deceased who are between 46 to 50 years by the Hon'ble Supreme Court in the case of Sarla Verma) $= Rs.6,24,000 + Rs.1,56,000/-$

i.e. (25% of the total income of the deceased) $= Rs.7,80,000 + Rs.15,000/-$ (funeral expense) $+ Rs.15,000/-$ (loss of estate) $+ Rs.40,000/-$ (loss of

consortium) $= Rs.8,50,000/-$. The judgment and award of the learned Tribunal stands modified to the extend given above. The compensation amount

arrived at should be paid by the respondents/Insurance Company within a period of 2(two) months from today with interest at the rate 6% p.a from

the date of filing of the claim petition. With this, the appeal is disposed. Return the LCR.