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**(2021) 12 GAU CK 0031**  
**In the Gauhati High Court**  
**Case No : MACApp. No. 392 Of 2018**

Husna Begum

APPELLANT

Vs

National Insurance Company Ltd

RESPONDENT

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**Date of Decision :** 22-12-2021

**Acts Referred:**

Motor Vehicles Act, 1988 — Section 166

**Citation :** (2021) 12 GAU CK 0031

**Hon'ble Judges :** Malasri Nandi, J

**Bench :** Single Bench

**Advocate :** M.H. Rajbarbhuiyan, R. D. Mozumdar

**Final Decision :** Partly Allowed

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## Judgement

1. This appeal is directed against the Judgment and Award dated 19.09.2014 passed by learned Member, M.A.C.T., Karimganj, in MAC Case No. 19/2013 awarding compensation amounting to Rs. 5,53,000/- in favour of the appellant/claimant Husna Begum. The appellant has challenged the judgment and order in respect of quantum of compensation which is required to be enhanced.

2. As there is no dispute regarding death of one Mutlubur Rahaman in a road traffic accident which occurred on 24.10.2012 at about 5:45 A.M. due to rash and negligent driving by the driver of the offending vehicle bearing Registration No. AS-10(A)/3678 (EECO) and liability of the insurer of the offending vehicle, the only point remains for consideration in the appeal is-

Whether the quantum of compensation awarded by the Tribunal is just and reasonable or does it call for reduction or enhancement.

3. I have gone through the judgment as well as the record of MAC Case No. 19/2013.

4. Learned counsel for the appellant/claimant has argued that the Tribunal/the Court is competent to award compensation in excess of what is claimed in the

application under Section 166 of the Motor Vehicles Act, 1988. The duty of the Tribunal/Court is to fix a just compensation which has now become settled law that the Tribunal/Court should not succumb to niceties and technicalities in such matters. The attempt of the Tribunal/Court should be to equate as far as possible, the misery on account of the accident with the compensation so that the injured dependants should not face the vagaries of life on account of the discontinuance of the income earned by the victim.

In support of his submission, learned counsel has placed on a case law (2013) 9 SCC 54 *Rajesh And Others v. Rajbir Singh and Others*.

5. As per claim petition the deceased was a business man dealing with the business of betel-nut and his monthly income was Rs. 10,000/-. As no document was available in the record in support of the fact of the income of the deceased, learned Tribunal has assessed his monthly income as Rs. 5,000/- by observing the fact that the deceased had no permanent shop. In my opinion, income of the deceased has been rightly assessed by the learned Tribunal.

6. Regarding age of the deceased, the claimant has produced Pan Card of her deceased husband showing the date of birth as 15.04.1958. The accident occurred on 24.10.2012. It transpires that the age of the deceased was 54 years when the accident took place.

7. As per the case of *Sarla Verma Vs. DTC*, reported in [AIR 2009(6) SC 121] the multiplier would be 11.

8. In the case of *National Insurance Company Ltd. v. Pranay Sethi and Ors.* reported in SLP (Civil) No. 25590/2014 it was observed that while determining the income of the deceased in 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.

9. In the case in hand, the age of the deceased was 54 years when the accident took place. So 10% should be added along with his established income of Rs. 5,000/-. Hence monthly income of the deceased is considered as Rs.5,000/- +500= Rs. 5,500/-.

10. In the instant case, the deceased left behind his wife and eight children. As such, the standardized deduction towards personal and living expenses of deceased is applicable as stated in the case of *Sarla Verma (supra)*.

Considering the aforesaid mandate in the instant case, since there is nine members of dependants, so 1/5th of the income is required to be deducted with a presumption that had the deceased been alive, he would have spent 4/5th for his personal and living expenses.

11. As per the case of National Insurance Company Ltd. v. Pranay Sethi (supra) the Hon'ble Supreme Court has fixed compensation in case of death 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.

12. In view of the aforesaid discussion in the instant case, the computation of compensation is awarded as follows:-

(a) Annual income of the deceased =  $5,500 \times 12$  = Rs. 66,000/-

(b) After deducting 1/5th of the annual income of the deceased amount comes to = Rs. 52,800/-

(c) After multiplied with multiplier amount comes to Rs. 52,800/-  $\times 11$  = Rs. 5,80,800/-

(d) Funeral expenses = Rs. 15,000/-

(e) Loss of consortium = Rs. 40,000/-

(f) Loss of estate = Rs. 15,000/-

Total Rs. 6,50,800/-

13. In the result, the appeal is partly allowed with aforesaid modification awarding Rs. 6,50,800/- (Rupees Six Lakhs Fifty Thousand Eight Hundred) only with interest therein @ 6% p.a. from the date of filing of the case till full and final realization. The National Insurance Company is directed to pay the aforesaid amount of compensation in the Savings Account of the Claimant No.1, Husna Begum, through NEFT. She is directed to furnish her bank details of any nationalized bank to the Insurance Company for necessary payment.

14. Any amount of compensation if paid earlier be adjusted accordingly.

15. LCR be returned back.