(2018) 04 GAU CK 0070

In the Gauhati High Court

Case No : MACApp. 32 of 2013

JITUMONI SAIKIA AND ANR — APPELLANT

Vs

SUNIL KR.VERMA AND ANR. — RESPONDENT

Date of Decision : 19-04-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Indian Penal Code, 1860 — Section 279, 304(A), 338, 427

Citation : (2018) 04 GAU CK 0070

Hon'ble Judges : KALYAN RAI SURANA

Bench : Single Bench

Final Decision : Allowed

Judgement

1.Heard Mr. P. Sundi, learned counsel appearing for the appellant as well as Mr. J. Rahman, learned counsel appearing for the respondent No. 1.

Also heard Mr. R. Goswami, learned counsel appearing for the respondent No. 2.

2. By this appeal under Section 173 of the Motor Vehicles Act, 1988, the appellant has prayed for enhancement of the award vide judgment and order

dated 21.05.2011 passed by the learned Member, Motor Accidents Claim Tribunal, Sonitpur, Tezpur in MAC Case No. 48/2007.

3. As per the claim petition, on 09.12.2006, while the deceased, Kartik Saikia was driving a scooter and reached Milanpur Patiapara, his scooter

developed a mechanical defect. He sought help of one Golap Bora to repair the scooter. At about 8.10 p.m., a dumper truck bearing Registration No.

AS-01Q-5539, driven in a rash and negligent manner hit the scooter and dragged both the persons along with the scooter for about 1 km from the

place of accident. As a result of the accident, the predecessor of the appellants died on the spot. The police registered Tezpur PS Case No. 743/06 under Section 279/338/304(A)/427 IPC against the driver of the truck and the appellants prayed for compensation of Rs.20,00,000/- (Rupees Twenty

lakh only). There is no dispute as regards the death of the victim, age and income of the deceased victim. In the written statement, the appellants had

taken usual pleas and had put the onus on the appellants to prove the claim.

4. The learned Tribunal, on the basis of the decision framed three issues as follows:-

1. Whether the accident had taken place due to rash and negligent driving of the driver of the vehicle?

2. Whether the claimants are entitled to compensation as prayed for?

3. To what relief the parties are entitled?

5. The learned Tribunal while deciding issues No. 1 and 2 had held that the offending vehicle was being driven in a rash and negligent manner and the

issues were decided in favour of the appellants. The learned Tribunal had accepted the age of the deceased 40 years, on the basis of the post-mortem

report and, as such, applied the multiplier of 15. The income of the deceased was held to be Rs.3,000/- from business of truck, grocery shop and

kerosene. In respect of issue No. 3, the learned Tribunal had assessed the compensation as follows:-

Annual dependency Rs.24,000/-

MultiplierÂ X 15

Rs.3,60,000/-

Consortium Rs.5,000/-

Funeral expenses Rs.5,000/-

Loss of love and affection Rs.10,000/-Â

Total Rs.3,80,000/-

6. The learned counsel for the appellant has, amongst others, pressed three grounds for enhancement of award. Firstly, it is submitted that the

deceased had left behind two dependants and, as such, by following the principles laid done by the Honâ??ble Apex Court in the case of Sarla

Verma Vs. DTC and Anr., (2009) 6 SCC 121, the amount deductible towards personal and living expenses ought to be 1/3rd instead of 2/3rd as was

done by the impugned judgment and award. Secondly, it is submitted that the interest in the awarded sum ought to be 9% following various decisions rendered by the Honâ??ble Apex Court. Thirdly, it was submitted that the appellants were entitled to enhancement of compensation on account of

conventional heads of loss of consortium, loss of estate and funeral expenses as well as on account of future prospects.

7. The learned counsel for the respondent No. 2 has made his submissions in favour of the judgment and award and had countered the submissions

made by the learned counsel for the appellant.

8. On the perusal of the materials on record and on considering the submissions made by the learned counsel for the both sides, it is seen that the

grounds on which enhancement of award is prayed are all squarely covered by the ratio laid down by the Apex Court in the case of Sarla Verma

(supra), which have been upheld by the Constitution Bench judgment of Apex Court, rendered in the case of National Insurance Company Limited Vs

Pranay Sethi and Ors, MANU/SC/1366/2017 : (2017) 8 Supreme 107.

9. In the present case, the age of the deceased being forty years, enhancement of income on the basis of future prospects would be 40 % of present

income of the deceased. Therefore, his income would be Rs.3,000.00 + 40 % of Rs.3,000.00 on account of future prospects, i.e., Rs.4,200/-. In terms

of the decision of Sarla Verma (supra), as the deceased had left behind two dependants, the deductions allowable on account of personal and living

expenses would be 1/3rd, which would lead to deductions of Rs.1400/-, as such, the loss of dependency would be Rs.2800/- x 12 x 15=Rs.5,04,000/-.

In terms of the decision rendered by the Honâ??ble Apex Court in Pranay Sethi (supra), the appellant would be entitled to additions on account of

conventional heads as follows:-

1. Loss of estate = Rs.15,000/-

2. Loss of consortium = Rs.40,000/-

3. Funeral expenses = Rs.15,000/-

10. Although the learned counsel for the appellant has prayed for interest @ 9% on the awarded sum by present ration laid down by the Honâ??ble

Apex Court in the case of Municipal Corporation Delhi Vs Upahaar Tragedy Victims Association, (2011) 14 SCC 481, in this connection, this Court is

of the view that at present no nationalized bank in the country is offering interest more than 7.5% on fixed deposits/term deposits. Therefore, in the considered opinion of this court, awarding 9% interest cannot be said to be fair and proper and awarding of higher interest would not be equitable for

the insurer. Therefore, the rate of interest on the award would be 7.5%.

11.Accordingly, the revised award would be as follows:-

1.Loss of dependency =Rs.5,04,000/-

(Rs.2800/- X 12 X15)Â

2.Loss of estate =Rs.15,000/-

3.Loss of consortium =Rs.40,000/-

4.Funeral expenses =Rs.15,000/-

Total =Rs.5,74,000/-

12. The aforesaid award, as enhanced herein, would carry interest at the rate of 7.5% from the date of filing claim petition till recovery. Therefore, the

respondent would not be liable to compensation under the head of award â??loss of love and affectionâ??.

13. The respondent No. 2 may deposit the awarded sum upon adjustment against any payment made towards the award including payment made on

account of no fault liability as well as statutory deposit within a period of six weeks from today before the Registry of this Court. On such deposit

being made, the Registry may permit the Appellant No. 1 to withdraw the same on being duly identified by her learned counsel.

14. The appeal, therefore, stands allowed. Accordingly, the award vide judgment and award dated 21.05.2011, passed by the learned MAC Tribunal,

Sonitpur, Tepur, in MAC Case No. 48 of 2007 stands enhanced on the terms and extent as indicated above.

15. Return back the LCR.

