(2018) 06 GAU CK 0080

In the Gauhati High Court

Case No : MACApp. 47 of 2015

Namita Barman And Anr APPELLANT

Vs

Subhash Chandra Das And Anr RESPONDENT

Date of Decision : 15-06-2018

Acts Referred:

Citation : (2018) 06 GAU CK 0080

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : A.R. Agarwal, L. Sarma

Final Decision : Disposed Off

Judgement

1. Heard Mr. A.R. Agarwal, leaned counsel for the appellant and Ms. L. Sarma, learnedcounsel for the Respondent/Insurance Company.

2. This appeal is by the claimant against the judgment and award dated 29.11.2013passed by the MACT, Dhubri in MAC Case No. 246/2010.

3. The undisputed facts, which may be relevant for disposal of this appeal are that NimaiBarman, the husband of the appellant No. 1 died in a motor

vehicle accident on 12.03.2009 involving vehicle bearing registration No. AS-01-L-6292, owned by the respondent No. 1 and insured with the

respondent No. 3, oriental Insurance Co. Ltd. The deceased was working as a conductor of a bus at the time of accident and his age was 37 years.

The wife and daughter of the deceased filed an application before the MACT, Dhubri, praying for compensation and the learned Tribunal granted a

compensation of Rs. 5,80,000/-, which consisted of Rs. 5,40,000/towards loss of dependency, Rs. 30000/- for loss of consortium and Rs. 10000/-

towards funeral expenses.

4. Unsatisfied with the award, the claimant preferred the instant appeal seekingenhancement of the compensation.

5. Learned counsel Mr. A.R. Agarwal submits, that the claimant was working as conductorand his monthly income was Rs. 5000/-. However, learned

Tribunal ignoring the evidence adduced by the claimant with regard to income of the deceased, assessed the compensation on the basis of a

hypothetical notional income of Rs. 3000/- per month and thereby failed to award a just and fair compensation. It is also submitted that the quantum of

award towards funeral expenses was also on lower side and no amount was granted on account of loss of estate and urged for enhancement of

compensation.

6. Learned counsel for the respondent/insurance company submits that the claimant failedto adduce convincing evidence to prove the income and as

such the learned Tribunal rightly assumed notional income of Rs. 3000/- per month.

7. The claimant No. 1 examining herself on oath deposed that her husband was workingas a conductor of a bus and he was getting monthly salary of

Rs. 5000/-. Claimant also proved the salary certificate purportedly issued by the employer of the deceased, which was marked as Ext.3. A co-

employee of the deceased being handyman of the same vehicle, was also examined as witness No. 2, who testified that he himself was getting Rs.

3000/- per month and the deceased was getting Rs. 5000/- per month as salary. Learned Tribunal declined to accept the Ext.3 as the author of Ext.3

was not examined. Be that as it may, evidently, the oral testimony of the claimant and the PW-2 that the deceased was working as a conductor

remained unimpeached. Even though Ext.3, the salary certificate was not duly proved by its author, learned Tribunal ought to have considered the

income of the deceased taking into consideration, that the deceased was an earning person working as a conductor, inasmuch as, the occupation of the

deceased was not disputed.

8. When there was some evidence that the deceased was an earning person, there was noscope for assuming a notional income, which is intended for

un-earning person. Even though, salary certificate was not proved by the author, having considered the evidence of PW-2 that he being a handyman

was getting a salary of Rs. 3000/- and the occupation of the deceased as well as, point of time when the accident occurred, the income of the

deceased could not be less than Rs. 4000/-. Having considered all the ground realities, I am inclined to accept the income of the deceased as Rs.

4000/- per month for determining the loss of dependency.

9. In view of the deceased being 37 years, an amount equal to 40% of the income isrequired to be added to the actual income as future prospect.

Evidently, there was no dispute with regard to the age of the deceased, multiplier applied and the deduction towards personal expenses of the

deceased. Therefore, taking the monthly income of Rs. 4000/- adding 40% thereto as future prospect and also the amount needs to be awarded on

account of conventional heads as per the guideline of the Apex Court in National Insurance Co. Vs.

Pranay Sethi reported in (2017) 16 SCC 680, the enhanced compensation, to which the claimant shall be entitled is re-assessed as under:

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Loss of dependency (Rs. 4000+40%X12X15)=10,08,000/-

Â Personal expenses 1/3rd Â -3,36,000/-

Â Â Â Â Â Â Â Â Â Â Â Â TotalÂ Â Â Â Â Â Â Â Â

Â Rs.672,000/-

Â Â ConsortiumÂ Rs.

Â 40,000/-

Â Loss of estateÂ Rs. 15,000/-

funeral expensesÂ Rs. 15,000/-

Â Â Â Â Â Â Â TotalÂ Â

Â Rs. 7,42,000/-

10. The respondent No. 3, Oriental Insurance Company shall satisfy the above award of Rs.7,42,000/- with interest 8% from the date of filing the

claim petition as fixed by the Tribunal, by depositing the same with the Tribunal within 6 weeks. However, the future prospect added to the actual income shall not carry any interest. The amount which has already been paid by the Insurance Company towards satisfaction of the award shall stand

adjusted.

11. The appeal allowed and stands disposed of.

12. Send back the LCR.

