
(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 seeking enhancement of the compensation.

5. Learned counsel Mr. A.R. Agarwal submits, that the claimant was working as conductor and 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 failed to 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 working as 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 no scope 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 is required 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/-

Personal expenses 1/3rd -3.36.000/-

Category	Value
Category 1	10
Category 2	20
Category 3	30
Category 4	40
Category 5	50
Category 6	60
Category 7	70
Category 8	80
Category 9	90
Category 10	100
Total	500

Rs.672,000/-

Consortium
 Rs.

Â 40.000/-

Loss of estate Rs. 15,000/-

funeral expensesRs. 15,000/-

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 104

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.