
(2022) 03 GAU CK 0032
In the Gauhati High Court
Case No : MACApp. No. 455 Of 2017

National Insurance Co. Ltd.	Vs	APPELLANT
Deva Bala Baruah And 3 Ors		RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2022) 03 GAU CK 0032

Hon'ble Judges : Malasri Nandi, J

Bench : Single Bench

Advocate : R. Goswami, H. Buragohain

Final Decision : Dismissed

Judgement

1. Heard Mr. R. Goswami, learned counsel appearing for the appellant/petitioner as well as Mr. H. Buragohain, learned counsel appearing for the respondent no. 4 and none appears for the other respondents.
2. This appeal has been filed by the National Insurance Company Limited, insurer of the offending vehicle bearing no. AS-04/E-3239 (Mini Truck) challenging the award of compensation on the head of deduction for personal and living expenses of the deceased, against the judgment and order dated 25.08.2014 passed by the learned Member, MACT, Sivasagar in MAC case no. 17/2008.
3. There is no dispute with regard to accident and the liability fixed by the Tribunal. It is only on the submission that the Tribunal was not following the law while deducting towards personal and living expenses of the deceased on calculating award. No other point has been raised in the appeal. As such, the point to be decided in this appeal that what will be the deduction for personal and living expenses while mother is the sole survivor.
4. It was urged by the learned counsel for the appellant that while assessing compensation for death of a person where the claimant is the mother, 50% of the income of the deceased is deducted for his personal and living expenses. The

instant case being similar to the case for compensation for the death of a bachelor because the mother is the only claimant, the learned member ought not to have deviated from the principle applicable for bachelors as per the decision of the Hon'ble Apex Court in Sarla Verma and Ors. Vs. DTC reported in (2009) 6 SCC 121. The erroneous assessment has resulted in overcompensation to the respondent no.1/claimant.

5. I have gone through the judgment of the learned Trial Court and also perused the documents available in the record.

6. Hon'ble Supreme Court in the case of National Insurance Company Limited Vs. Pranay Sethi and Ors. reported in SLP (Civl) No. 25590 of 2014 has rendered the guidelines on the issue of just compensation which reads as follows:-

Section-168 of the Act deals with the concept of "just compensation" and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of "just compensation" has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, "just compensation".

7. In the said case, it was also held that three aspects need to be clarified pertaining to deduction towards personal and living expenses. In paragraphs 30, 31 and 32 of Sarla Verma lays down:-

30. Though in some cases the deduction to be made towards personal and living expenses is calculated on the basis of units indicated in Trilok Chandra, the general practice is to apply standardized deductions. Having considered several subsequent decisions of this Court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3rd) where the number of dependent family members is 2 to 3, one-fourth (1/4th) where the number of dependent family members is 4 to 6, and one-fifth (1/5th) where the number of dependent family members exceeds six.

31. Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parents and siblings is likely to be cut drastically. Further, subject to evidence to the contrary, the father is likely to have his own income and will not

be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.

32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependent on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as 2/3rd."

8. In the case in hand, the situation is something different. The deceased was a married person. In the accident he died along with his wife and children. The claimant mother is the sole survivor who claimed compensation on account of death of her deceased son. The Tribunal deducted 1/3rd for personal and living expenses. According to learned counsel for the appellant as the mother is the sole survivor, 50% be deducted on personal and living expenses of the deceased treated to be bachelor.

9. It is the admitted case of the respondent/claimant that at the time of the accident, the deceased was married having wife and one daughter. After death of his wife and child in the same accident, the mother is the only person dependent on the income of the deceased.

10. In view of the law laid down in the case of Sarla Verma Vs. DTC reported in (2009) 6 SCC 121 and approved in Pranay Sethi's case (supra) 1/3rd income of the deceased is liable to be deducted towards personal and living expenses.

11. Under such backdrop, I do not find any irregularity in the judgment delivered by the learned Tribunal, Sivasagar, on the point of deduction towards personal and living expenses. However, it is noticed that the calculation of award and compensation has not been properly shown which is required to be rectified.

12. It is an admitted fact that the deceased was a Government employee working as an Assistant Teacher in Assam Vidyapith M.E. School, Chabua and his monthly salary was Rs. 8464/-.

13. The learned Tribunal has considered the income of the deceased by adding 30% as future prospect on the established income of the deceased on the basis of the ratio laid down in the case of Santoshi Devi Vs. National Insurance Company Limited and Ors. reported in (2012) 6 SCC 421.

14. But the latest judgment of the Hon'ble Apex Court in the case of National Insurance Company Vs. Pranay Sethi and Ors. reported in SLP (Civil) No. 25590 of 2014, it was held that while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the

deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%.

15. In the present case, age of the deceased was 43 years when the accident took place. Hence, 30% be added to the established income of the deceased.

16. As per SLP(Civil) No. 25590 of 2014 (National Insurance Co. Ltd. Vs- Pranay Shethi & Ors.) the Hon'ble Supreme Court has fixed compensation in case of death reasonable figures on conventional heads namely- Loss of estate and Funeral expenses should be Rs. 15,000/-, and Rs. 15,000/- respectively.

17. In view of the above discussion, the computation of compensation is awarded as follows:-

(a) Annual income of the deceased=Rs. 8464/-X12=1,01,568/-

(b) 30% by adding as future prospect the amount comes to Rs. 1,32,038/-

(c) After deducting 1/3rd from the income of the deceased the amount comes to Rs. 88,026/-.

(d) After multiplied with multiplier the amount comes to Rs. 88,026/- X 14= Rs. 12,32,364/-.

(e) Funeral Expenses= Rs. 15,000/-

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

Total =Rs. 12,62,364/- (Rupees Twelve Lakhs Sixty Two Thousand Three Hundred Sixty Four) only.

18. In the result, the appeal is dismissed.

19. Statutory amount in deposit be returned accordingly.

20. Send down the LCR along with a copy of this judgment.