(2018) 06 GAU CK 0084

In the Gauhati High Court

Case No : MACApp. 254 of 2012

National Insurance Co Ltd — APPELLANT

Vs

Puspa Lachit And Ors — RESPONDENT

Date of Decision : 18-06-2018

Acts Referred:

Citation : (2018) 06 GAU CK 0084

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : D. Saikia, B.K.Jain, K. Baruah, B.K. Purkayastha, U K Purkayastha

Final Decision : Partly Allowed

Judgement

1. Heard Mr. B.K. Purkayastha, learned counsel for the appellant. Also heard Mr. D. Saikia, learned counsel for the respondent Nos. 1, 3, 4 & 5, Mr.

B. K. Jain, learned counsel for the respondent No. 6 and Mr. K. Baruah, learned counsel for the respondent No. 8.

2. This appeal is by the claimant against the judgment and award dated 18-07-2012 passed by the MACT No. 1, Kamrup, Guwahati in MAC Case

No. 2199/2008.

3. The brief facts of the case are that one Milanjyoti Lachit was proceeding by riding his motorcycle and when he reached a place near Beer Lachit

Borphukan College, the offending vehicle bearing registration No. AS-23/G-1048, which was coming from the opposite direction in a high speed,

having lost control, moved to the wrong track and hit the motorcycle of the deceased. As a result of the accident, the victim Milanjyoti Lachit

sustained injury and died.

4. The wife and children being the legal representatives of the deceased filed a

claim petition before the tribunal and the learned tribunal by the

impugned judgment, awarded a compensation of Rs.18,87,000/- along with interest @ 6% from the date of filing of the claim petition.

5. Aggrieved, the appellant Insurance Co. preferred the instant appeal praying for reduction of the compensation.

6. Learned counsel, Mr. Purkayastha for the Insurance Co. assailed the impugned award basically on the following grounds (i) the deceased who was

riding the motorcycle also contributed to the accident, which was not taken into consideration by the learned tribunal, though, the accident occurred

due to head on collision of both the vehicles. (ii) multiplier in view of the age of the deceased ought to have been taken 15, whereas, learned tribunal

applied multiplier 16 which inflated the award. (iii) The learned tribunal added 50% of the salary as future prospect, which ought to have been 40% as

per decision of the Apex Court in National Insurance Co. Ltd. â?"VS- Pronoy Setty and Ors. reported in (2017) 14 SCC 663.

7. Ground No. 1. The claimants stated in the claim petition that the deceased was proceeding on the left side of the road and the accident occurred

due to rash and negligent driving of the offending vehicle. In support of the claim, the claimant examined one PW 2, Huntu Phukan, who was an eye

witness of the occurrence. PW 2 stated, that while the victim was proceeding by riding his motorcycle, through the extreme side of the road, the

offending oil tanker, which was coming in excessive speed, moved to the wrong lane and hit the motorcycle of the victim and the accident took place

solely due to the fault of the driver of the oil tanker. The PW 2 further stated that initially the oil tanker hit another vehicle and when it was trying to

run away in a rash and negligent manner, hit the motorcycle of the deceased. The evidence of this witness remained uncontroverted in the cross-

examination. Evidently the driver and owner of the offending vehicle neither filed any written statement, nor adduced any evidence. The driver of the

offending vehicle, who had personal knowledge about the accident, could have come to the witness box to controvert the evidence and pleadings of

the claimants. But the driver of the offending vehicle neither filed any written statement, nor adduced any evidence to challenge the evidence and

pleadings of the claimants that the accident occurred solely due to rash and negligent driving of the offending vehicle. When there was pleadings and candid evidence of the claimants, that the accident occurred solely due to rash and negligent driving of the offending vehicle and the owner/driver of

the offending vehicle neither filed any written statement, nor came to the witness box to challenge the pleadings and evidence of the claimants, there

could be no presumption of contributory negligence on surmises and conjectures. Negligence or contributory negligence as the case may be, being the

question of fact, the same needs to be proved by adducing cogent evidence. In the instant case neither there was pleadings, not any evidence

regarding contributory negligence and as such, in absence of any pleadings or evidence, the findings of the learned tribunal cannot be faulted.

8. Ground No. 2 : So far the application of multiplier is concerned, admittedly the age of the deceased was 39 years and as such, the multiplier ought

to have been 15. However, the learned tribunal applied multiplier 16 which certainly inflated the award. I find merits in the submission of the learned

counsel, Mr. Purkayastha that the compensation should be re-assessed by applying appropriate multiplier.

9. Ground No. 3. So far the future prospect is concerned learned tribunal added 50 % of the income as future prospect. However, as per the decision

of the Apex court in National Insurance Co. Ltd. â?"VS- Pronoy Setty and Ors (supra), in view of the age of the deceased in the instant case future

prospect should be 40% and not 50%/.

10. As no other issue is involved in the instant appeal, applying the multiplier 15 and adding 40% of the income as future prospect to the actual income,

the compensation, to which the claimants shall be entitled, is re-assessed as under :-

Loss of Dependency = Rs. 8779/- -

40%- Â¼ X12x15 = Rs. 16,59,240/-

Funeral Expenses = Rs. 15,000/-

Loss of Estate = Rs. 15,000/-

Loss of Consortium = Rs. 40,000/-

Total = Rs. 17,29,240/

(Say Rs. 17,29,000/-)

11. The Insurance Co. shall satisfy the said award of Rs. 17,29,000/- by depositing the same with the tribunal within six weeks with interest, as fixed

by the tribunal. The amount awarded as future prospects shall not carry any interest. The learned Tribunal shall ensure that Rs. 5,00,000/- out of the

awarded amount be fixed deposited in the name of the wife of the deceased in a nationalized bank for a period of 4 (four) years and Rs. 2,00,000/-

each shall be also fixed deposited in the name of the minors in a nationalized bank till they attain majority and rest of the amount shall be released to

the claimants by way of Account Payee Cheque. The payment, if any, already made to the claimant by the respondent/ Insurance Company in the

meantime, shall be adjusted.

12. Appeal is partly allowed.

13. Send back the LCR immediately.

