(2018) 06 GAU CK 0036

In the Gauhati High Court

Case No : MACApp. 258 of 2014

National Insurance Co. Ltd. — APPELLANT

Vs

Smt. Manju Mazumdar And Ors — RESPONDENT

Date of Decision : 08-06-2018

Acts Referred:

Citation : (2018) 06 GAU CK 0036

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : S. Roy, C. Sharma

Judgement

1. Heard Ms. S. Roy, learned counsel for the appellant and Mr. C. Sharma, learned counselfor the respondent.

2. This appeal is filed by the Insurance Company against the judgment and award dated 29.03.2005,passed by the MACT, Bongaigaon, in MAC Case

No. 177/2002.

3. The undisputed facts in this appeal are that Debendra Majumdar, who was a bachelor,died in a motor vehicle accident on 12.05.2002, involving

vehicle bearing registration No. AS19-4968. The accident took place due to rash & negligent driving of the driver of the said vehicle. The parents of

the deceased filed an application before the MACT, Bongaigaon and the learned Tribunal by the impugned award, granted a compensation of Rs.

4,39,700/-.

4. Aggrieved by the said award, the Insurance Company preferred the appeal.

5. The contention of the learned counsel Ms. S. Roy is that while determining thecompensation, learned Tribunal applied multiplier 17 on the basis of

the age of the deceased, which ought to have been on the basis of the age of the parents. Further contention of the learned counsel is that since the

deceased was a bachelor, reduction towards personal expenses ought to have been 50% of the income, whereas, learned Tribunal erroneously

deducted 1/3rd of the income and as such, sought for reduction of the compensation by deducting 50% of the income.

6. So far the first point raised by the learned counsel with regard to the multiplier isconcerned, the controversy is no longer res-integra as the same is

already set at rest by a Division Bench of this court in Eunish Ali Vs. Bajaz Allianz General Insurance Co. Ltd. reported in 2017 (2) GLT 817 and as

such, the multiplier applied by the learned Tribunal requires no interference. Learned counsel for the Insurance Company further submits that even if

the age of the deceased is considered, the multiplier ought to have been 16, whereas, the learned Tribunal applied multiplier 17 and as such, for the

purpose of determining just and reasonable compensation, multiplier 16 should be applied.

7. Evidently, the deceased was a bachelor and as such deduction towards personalexpenses ought to have been 50% and not 1/3rd of the income.

However, it has been pointed out by the learned counsel for the respondent, that while calculating the loss of dependency, learned Tribunal did not

take into account the future prospect and the quantum of amount awarded on account of conventional heads were also extremely meager.

8. What therefore transpired is that the learned Tribunal committed gross error, whiledetermining the compensation by not taking into account the

future prospect. Evidently, the quantum of amount towards conventional heads were also extremely meager, and even not in consonance with the

principle and guideline of the Apex Court in National Insurance Co. Vs. Pranay Sethi reported in (2017) ACJ 2700. Had the Tribunal added future

prospect to the extent of 40% of the actual income in view of the age of the deceased and awarded just amount on conventional heads, the quantum

of award would have remained almost the same as awarded by the Tribunal.

9. Keeping in view the above aspects of the matter, I am not inclined to interfere with thequantum of compensation granted by the learned Tribunal.

Accordingly, the appeal is dismissed.

10. The appellant National Insurance Company Ltd. shall satisfy the award with interest asfixed by the Tribunal by depositing the same with the

learned Tribunal within 6 weeks. Any payment made by the Insurance Company in the meantime, towards satisfaction of the award shall stand

adjusted.

11. The Tribunal shall ensure that 50% of the awarded amount with interest be fixeddeposited in the name of the claimant for a period of two years in

a nationalized bank. Rest of the amount shall be released to the claimant by A/C payee cheque.

10. Statutory deposit be returned to the appellant.

13. Send back the LCR.