(2018) 06 GAU CK 0057

In the Gauhati High Court

Case No : MACApp. 177 of 2016

National Insurance Company Ltd APPELLANT

Vs

Sri Uttam Deka And Ors RESPONDENT

Date of Decision : 13-06-2018

Acts Referred:

Citation : (2018) 06 GAU CK 0057

Hon'ble Judges : MIR ALFAZ ALI, J

Bench : Single Bench

Advocate : R Goswami, J. Mollah

Final Decision : Allowed

Judgement

1. Heard Mr. R. Goswami, learned counsel for the appellant and Mr. J. Mollah, learned counsel for the respondent/claimant.

2. This appeal is by the Insurance Co. against the judgment and award dated 08-02-2016 passed bythe MACT No. 2, Guwahati in MACÂ Case No.

1030/2014.

3. One Ganakanata Deka died in a motor vehicle accident on 23-02-2014, involving the vehicle bearing Engine no. 2292530 Chassis No. 458011,

owned by the respondent No. 1 and insured with the appellant.

4. Elder brother and sister of the deceased filed a claim petition before the tribunal praying for compensation and the learned tribunal by the impugned

award, granted a compensation of Rs. 7,55,000/-, which comprised of Rs. 7,20,000/- towards loss of dependency, Rs. 25,000/- towards funeral

expenses and Rs. 10,000/- towards loss of estate and the incidental expenses for transportation of the dead body.

5. Aggrieved by the said award, the appellant Insurance Co. preferred the appeal

praying for reducing the quantum of compensation.

6. Learned counsel, Mr. R. Goswami placing reliance on a decision of the Apex Court in Manjuri Bera-VS- Oriental Insurance Co. and Another

reported in (2007) 10 SCC 643, submits, that the claimants in the instant case were not the dependents on the earning of the deceased, and as such,

learned tribunal ought not to have determined the compensation on the basis of loss of dependency. Further contention of Mr. Goswami is that the

claimants in the instant case, being legal representatives of the deceased would not be entitled to more than what is permissible under the heads

â??loss of estateâ??. Mr. Goswami further submits, that no future prospect should have been added in the instant case.

7. It is trite law, that dependency is not the sole criteria for seeking compensation under the MV Actand the legal representatives of the deceased,

though not dependents, on the income of the deceased, are entitled to maintain claim petition for the death, in a motor vehicle accident. Therefore,

liability to pay compensation under the Motor Vehicle Act does not cease, with the absence of dependency. Even in absence of dependency, the legal

representatives are entitled to compensation for loss of estate suffered by them due to death of their near and dear one in a motor vehicle accident.

8. There is no dispute that the claimants are the legal representatives of the deceased, being elder brother and sister. Therefore, only question to be

considered in this appeal is what should be the quantum of compensation ? Dependency and â??â?estateâ? of the deceased are two different

concepts. There is no difficulty in determining the loss of dependency by applying multiplier method and the settled principles set for the same.

However, there is no established method to determine the loss of estate. Though, there is no settled principle to decide, as to what constitute the loss

of estate of the deceased, it is not difficult to comprehend, that what a person, after defraying all his expenses, can save, can be considered as loss of

estate. This Court in Ranjan Narzary â?" VS-- United India Insurance Co. Ltd and Ors. reported in 2014 (3) GLT 601, assumed 1/4th of the income

of the deceased as estate. Therefore, following Ranjan Narzaryâ??s case, I am also inclined to assume the 1/4th of the income of the deceased as

estate in the present case. Evidently the claimants were not dependents and as such, the compensation in the instant case has to be determined on the basis of the loss of estate. The tribunal on the basis of the evidence on record accepted the monthly income of the deceased as Rs. 5,000/- and there

is no dispute with regard to income of the deceased.

9. Learned counsel, Mr. Goswami submits that future prospect should not be added in a case where there is no loss of dependency. In my considered

view, the future prospect has no relation with the loss of dependency. It refers to the income what a person is reasonably expected to earn in future.

Therefore even in case of determining compensation on the basis of loss of estate, future prospect has to be taken into consideration. As per the

guidelines laid down by the Apex Court in National Insurance Co. â?"VSPranoy Sethi & Ors. reported in (2017) 14 SCC 663 and having regard to the

age of the deceased, Â 40% of the income has to be added to the actual income of the deceased as future prospect. Adding 40% of the income, to

the actual monthly income of Rs. 5,000/-, total income of the deceased comes to Rs. 7000/- and 1/4th of the said income being the estate, the monthly

estate shall be Rs. 1750/-. In view of the age of the deceased tribunal applied multiplier 16 and there is no dispute with regard to the application of

multiplier. Therefore, the total loss of estate by applying multiplier 16 shall be Rs. 1750x12x16 =Â Rs. 3,66,000/-. In addition to the said amount, the

claimant shall also be entitled to an amount of Rs. 15,000/- each on account of loss of estate and funeral expenses. Thus, the total compensation

towards loss of estate, including the compensation on conventional heads shall be Rs. 3,96,000/- (Rs. 3,66,000/- + Rs. 15,000/- + Rs. 15,000/-).

10. The appellant Insurance Co. shall satisfy the above award of Rs. 3,96,000/- by depositing thesame with the tribunal within six weeks with interest

as fixed by the tribunal. The amount already paid shall stand adjusted.

11. Statutory deposit of Rs. 25,000/- made by the appellant shall be returned.

12. With the above modification in the award, the appeal filed by the Insurance Co. stands allowed.

13. Send back the LCR.Â Â Â Â Â

