(2018) 05 GAU CK 0037

In the Gauhati High Court

Case No : MACApp. 119 of 2012

NRIPEN GOGOI and 2 ORS — APPELLANT

Vs

GOVIND SINGH and ORS — RESPONDENT

Date of Decision : 07-05-2018

Acts Referred:

Citation : (2018) 05 GAU CK 0037

Hon'ble Judges : MIR ALFAZ ALI

Bench : Single Bench

Final Decision : Allowed

Judgement

1.Heard Mr. S.K. Goswami, learned counsel for the appellant and Mr. AJ Saikia and Mr. R. Goswami, learned counsel for the respondents.

2. Unsatisfied with the award made by the MACT No. 2, Kamrup, Guwahati in MAC Case No. 813/2009, the claimant/appellant filed the instant

appeal praying for enhancement of the award.

3. One Monoj Gogoi died on 11/02/2009 in a motor vehicle accident involving vehicle bearing registration number NL-05-D-1929, owned by the

respondent No. 1 and insured with respondent No. 3 ICICI Lombard General Insurance Co. Ltd. The legal representative of the deceased Monoj

Gogoi filed an application for compensation before the Motor Accident Claims Tribunal and the tribunal made an award of Rs. 3,80,000/- which

comprised of Rs. 3,74,400/-towards loss of dependency and Rs. 5,600/- towards funeral expenses.

4. Aggrieved by the above award, the claimant filed this appeal for enhancement.

5. Learned counsel, Mr. S.K. Goswami for the appellant submits that multiplier 13 applied by the tribunal was not proper in view of the age of the

deceased and appropriate multiplier should have been 14. The income of the deceased was also not properly considered by the tribunal. Learned

counsel, Mr. Goswami further contends that the amount given towards funeral expenses was also on lower side and no amount was granted towards

future prospects as well as towards loss of estate. Therefore, the learned counsel urged for enhancement of the award on the above counts.

6. The death of the victim involving the offending vehicle aforementioned was not in dispute. The age of the deceased as revealed from the document,

more particularly, the school certificate (exhibit -4), was 41 years, and as such, the multiplier in this instant case ought to have been taken as 14, in

view of the age of the deceased. The claimant adduced evidence both oral and documentary, showing that the deceased was working as a driver in a

private organization and earning a monthly salary of Rs. 4,235/- and such evidence of the claimant remained unshaken. However, learned tribunal took

the notional income of the deceased as Rs. 3,600/- without any basis, with the observation that the claimant ought to have adduced further evidence.

When the income of the deceased, who was a professional driver and an employee of the tea estate, was proved by oral as well as documentary

evidence, there is no scope for disbelieving the income of the deceased, who was a professional driver. Apparently the tribunal did not add any amount

towards future prospects. In view of evidence on record, there was no scope for presuming a notional income on mere surmise and conjectures, giving

a go-bye to the uncontroverted evidence adduced by the claimant. Therefore, the income of the deceased in the instant case has to be taken as Rs.

4,235/- as proved by the claimant by adducing oral and documentary evidence and to such income, addition of 25% of the actual income has to be

made, on account of future prospects. The claimant shall also be entitled to an amount of Rs. 15,000/- towards funeral expenses as well as Rs.

15,000/- towards loss of estate. Accordingly, the enhanced compensation which the claimant shall be entitled in the instant case is assessed as under :-

7. Loss of dependency = (Rs. 4,235-1/3) = Rs. 2823x 12x14

= Rs.4,74,264/-

Future Prospects = 25% of Rs.4,84,400/-

= Rs. 1,18,566/-

For Loss of Estate = Rs. 15,000/-

For Funeral Expenses = Rs. 15,000/-

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Total = Rs. 6,22,830/-

Say- Rs. 6,23,000/-

(six lakh twenty three thousand)

8. The above amount of Rs. 6,23,000/- shall carry an interest @ 6% from the date of filing of the claim petition, as ordered by the tribunal. The award

shall be satisfied by the respondent No. 3 ICICI Lombard General Insurance Co. Ltd by depositing the awarded amount with the tribunal within six

weeks. Any amount already paid by the insurance co. towards satisfaction of the award shall be adjusted and out of the remaining award to be

deposited by the insurance co., the tribunal shall ensure that 40% be fixed deposited for one year in the name of the claimants and 30% be fixed

deposited for 2 years. In both cases, the amount shall be fixed deposited in a nationalized bank. The appeal stands allowed.

9. Send back the LCR.