

(2019) 11 GAU CK 0040

In the Gauhati High Court

Case No : Motor Accident Appeal No. 329 Of 2017, 167 Of 2018

Oriental Insurance Co. Ltd

APPELLANT

Vs

Malina Basumatary And 2 Ors

RESPONDENT

Date of Decision : 15-11-2019

Acts Referred:

Motor Vehicles Act, 1988 — Section 166

Citation : (2019) 11 GAU CK 0040

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : S.K. Goswami, A. Dasgupta, S. R. Nawaz

Final Decision : Disposed Off

Judgement

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1. Heard Mr. S.K. Goswami, learned counsel for the appellant/Insurance Company in MAC Appeal No. 329/2017. Mr. A. Dasgupta, learned Senior",

Counsel appears for the respondent No. 1/claimant in MAC Appeal No. 329/2017. Mr. S.R. Nawaz, appears for respondent Nos. 2 and 3 in MAC",

Appeal No. 329/2017.,

The claimant has in turn filed MAC Appeal No. 167/2018. However, for the sake of convenience, the names of the parties, as reflected in MAC",

Appeal No. 329/2017 are being relied upon, for the disposal of the two appeals.",

2. The two appeals have been filed by the Insurance Company and the claimant respectively against the judgment dated 29.03.2017 passed by the,

learned Member, MACT, Kokrajhar in MAC Case No. 70/2016, by which compensation of Rs. 17,63,000/- along with interest @ 6 % per annum",

from the date of filing the claim petition till final payment was paid.,

3. The brief facts of the case is that the bachelor son of the claimant died in a motor accident on 02.09.2016, when a Tata Indigo car hit the motor", cycle, which the claimant's son was riding. A claim petition under Section 166 of the M.V. Act, 1988 was filed. The claimant in the claim petition", stated that the deceased was 19 years of age at the time of his death, i.e. on 02.09.2016. He was a sub-contractor/manager working for a class-I (A)", contractor (PW No.3). Though the claimant (PW-1) along with the contractor (PW-3) gave evidence to the effect that the deceased was earning Rs., 25,000/- per month, the learned Tribunal fixed the income of the deceased at Rs. 8,000/- per month and awarded the compensation amount of Rs.", 17,63,000/- along with 6 % per annum, as indicated above.",

4. The counsel for the appellant/Insurance Company submits that the appeal filed by the Insurance Company against the compensation amount, awarded is challenged on 3 grounds. Firstly, as the deceased was a bachelor, the learned Tribunal should have deducted 50 % of the income of the", deceased as personal expenses, instead of deducting only 1/3rd of the income. Secondly, as the deceased was not having a permanent job but was", working under a private contractor, the learned Tribunal should have calculated 40 % of the income of the deceased for future prospects instead of", calculating 50 % of the income of the deceased. Thirdly, the learned Tribunal should not have awarded interest on future prospects.",

5. The learned Senior Counsel appearing for the respondent No. 1/claimant submits that the appeal filed by the claimant against the impugned, judgment is only on the question of income of the deceased. He submits that the deceased was working as a manager under the contractor (PW-3)", who was a Class-I(A) contractor under the Govt. of Assam. The contractor did huge govt. contract works with regard to road constructions, buildings", etc. As the contractor (PW-3) had given evidence and proved the income certificate issued by him, which showed that the deceased was earning Rs.", 25,000/- per month, the learned Tribunal should have accepted the income of the deceased at Rs. 25,000/- per month. However, the learned Tribunal", did not accept the income of the deceased at Rs. 25,000/- per month and instead fixed the income of the deceased at Rs. 8,000/- per month, without", any evidence to support such a finding. The learned Senior Counsel also submits that the cross-examination of PW-3 was perfunctory in nature.,

Learned senior counsel also submits that though the claimant had given the age of the deceased as 19 years at the time of his death in the claim,

petition, the deceased was 21 years old at the time of his death, as can be seen from the Birth Certificate of the deceased.",

The learned counsel for the appellant/insurance company submits that the contractor (PW-3) did not prove the Income Certificate issued by him to the, deceased, as no statement of accounts or income tax returns had been furnished by the said contractor.",

6. Mr. S.K. Nawaz, learned counsel for the respondent Nos. 2 and 3 in both the appeals submits that he has got no comments to make.",

7. I have heard the counsels for the parties.,

8. In the case of Sarla Verma & Ors vs DTC & Anr., reported in (2009) 6 SCC 121, the Apex Court has held that when the deceased was a",

bachelor, 50% of the income of the deceased should be deducted for personal expenses. In view of the above, the learned Tribunal committed an",

error in deducting only 1/3rd of the income of the deceased for personal expenses.,

9. In the case of National Insurance Company Pvt. Limited vs Pranay Sethi and Ors., reported in (2017) 16 SCC 680, the Apex Court has held that",

when the deceased was holding a permanent job, 50 % of the income should be calculated towards future prospects. However, if the deceased was",

self employed or on a fixed salary and was below 40 years, an addition of 40 % of the established income should be calculated. In the present case,",

the deceased being below 40 years and being employed on a fixed salary, the learned Tribunal erred in calculating 50 % of the income of the",

deceased for future prospects. The future prospects would have to be considered at the rate of 40 % of the income of the deceased.,

10. In the case of Bhabani Chamua Thakuria V. Akram Ali & Ors. MAC Appeal Case No. 194 of 2013, this Court has held at Para 18 as follows:-",

18. In the case Khusboo Chirania @ Kanta Chirania v. Kamal Kumar Sovasaria, reported in 2018 0 Supreme (Gau) 966 and in the case of",

Nasima Begum v. Keramat Ali, reported in 2019 0 Supreme (Gau) 507, this Court has stated no interest on future prospects should be given.",

Though no reason has been enunciated in the above judgments, the reason for the same seems to be due to the fact that future prospects is",

relatable to an income to be received in the future and as such, there could not be any loss to the claimant for the payment of future",

prospects, at the time the deceased met with the accident. The reason for awarding interest on the compensation amount, minus the future",

prospects is due to the fact that though the loss of dependency starts from the date of the accident and the compensation amount is,

computed on the date of the Award of the Tribunal, interest is awarded to compensate the loss of money value on account of lapse of time",

such as time taken for the legal proceedings and for the denial of right to utilize the money when due. However, future prospects is with",

regard to the probable income to be received in the future and as such there is no requirement to compensate the claimant by way of future,

interest, for the loss that is to occur in the future, as the future is yet to happen. Further, future prospects is given for the entire future and",

as such, the claimant is getting compensation in a lumpsum under future prospects prior to the occurrence of future event. Thus, with regard",

to future prospects, this Court is also of the view that there cannot be any interest on future prospects, as the same relates to an income to",

be given in the future.,

Accordingly, this Court is also of the view that no interest can be awarded on future prospects. The only question that remains to be decided is with",

regard to the determination of the income of the deceased.,

11. In the case of Sanjay Kumar vs Ashok Kumar, reported in (2014) 5 SCC 330, the Apex Court has held that the Tribunals and Courts need not",

accept the claim of the claimants without supporting materials. In the present case, the learned Tribunal did not accept the evidence adduced by the",

claimant (PW-1) and the contractor (PW-3), which was to the effect that the deceased worked as the Manager for the class-I(A) contractor (PW-3)",

on a salary of Rs. 25,000/- per month. The learned Tribunal has fixed the income of the deceased to be Rs. 8,000/-.",

1. Income, "Rs.8,000/- x 12 = Rs. 96,000/-

2. Future prospects@40%, "40/100xRs.8,000/-x12 = Rs. 38,400/-

3. Loss of income, "96,000+38,400x18x2 = Rs.

3

16,12,800/-

4. Loss of estate,"Rs. 15,000/-

5. Loss of consortium,"Rs. 40,000/

6. Funeral expenses,"Rs. 15,000/-

Total,"Rs. 16,82,800/-