(2022) 09 GAU CK 0046

In the Gauhati High Court

Case No : MACApp. No. 171 Of 2020

Oriental Insurance Company Ltd — APPELLANT

Vs

X — RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:
Motor Vehicles Act, 1988 — Section 173(1)

Citation : (2022) 09 GAU CK 0046

Hon'ble Judges : Parthivjyoti Saikia, J

Bench : Single Bench

Advocate : Rd Mazumdar, M.U. Mondal

Final Decision : Disposed Of

Judgement

1. Heard Ms. R.D. Mazumdar, learned counsel representing the appellant as well as Mr. M.U. Mondal, learned counsel appearing for the respondents.

2. This is an appeal under Section 173(1) of the Motor Vehicles Act, 1988 against the judgment dated 18.11.2017 passed by the learned Member, Motor Accident Claims Tribunal, Barpeta in MAC Case No.237/2012.

3. On 14.11.2011 at about 8 P.M., the deceased Hasen Ali was hit by motorcycle driven by Mahidul Islam. As a result of the accident, the deceased sustained serious injuries. He was taken to the hospital where he was declared dead.

4. A claim application was filed seeking compensation. The appellant being the Insurance Company of the aforesaid motorcycle, contested the claim application by filing written statement.

5. The driver of the motorcycle Mahidul Islam also contested the claim application by filing a separate written statement. He has claimed that he had a valid insurance and therefore he has no liability to pay any compensation.

6. On the basis of the pleadings of the parties, the Tribunal framed the following issues:

(i) Whether the alleged motor accident had taken place on 14.11.2011 at about 8:00 P.M. at Mandia Bazar Tiniali due to rash and negligent riding on the part of the rider of the motor cycle bearing registration No.AS-15/E-5032 (Bajaj Pulser) and consequently Hasen Ali died ?

(ii) Whether the claimants are entitled to get compensation, as prayed for ?

(iii) If they are so entitled, by whom it is payable and to what extent ?

7. The respondent examined witnesses. On the basis of the evidence on record, the Tribunal awarded a compensation of Rs.12,95,000/- along with an interest at the rate of 7% per annum with effect from the date of filing of the claim petition.

8. On being aggrieved by the aforesaid judgment, the appellant filed the instant appeal on following grounds:

(a) The Tribunal should not have awarded any compensation for loss of care and guidance as well as for loss of love and affection of parents.

(b) The deceased was 43 years old and the multiplier selected was for the age group of 41 to 45 years and therefore, on account of future

prospect, there should have been addition of 25% of the income, not 40%.

9. I have given my anxious consideration to the submissions made by the learned counsel for both sides.

10. The learned Tribunal has relied upon the judgment of the Supreme Court that was rendered in National Insurance Company Limited v. Pranay Sethi and Ors., reported in (2017) 16 SCC 680. In paragraph 59 of the said judgment, it is mentioned therein that if the age of the deceased is between 40 to 50 years, then the addition of future prospect would be 25% only and if the age of the deceased is below 40 years, then the addition of future income would be 40%.

11. The Tribunal has held that the deceased was 43 years old and added the multiplier of 14 for the age group of 41 to 45 years.

12. This Court is of the opinion that the Tribunal has correctly held the age of the deceased to be 43 years and therefore correctly applied the multiplier 14.

13. The calculation of compensation shows that the Tribunal has correctly added the future prospect at 25% only.

14. In view of the ratio laid down in Pranay Sethi and Ors. (supra), the respondents, on account of non-pecuniary damages, are entitled to get a total of Rs.70,000/- only.

15. Therefore, the calculation would be like this.

(i) Monthly income of deceased = Rs.6,000/-

(ii) 25% of the above income added as future prospect (Rs.6000/- + Rs.1,500/-)

= Rs.7,500/-

(iii) 1/4th of (ii) deducted as personal expenses of deceased (Rs.7,500/- — Rs.1,875/-) = Rs.5,625/-

(iv) Compensation after multiplier of 14 is applied to the above multiplicand (Rs.5,625/- X 12 X 14) = Rs.9,45,000/-

None-pecuniary damages (general damages)

Rs.70,000/-

16. Thus, the respondents are entitled to a total compensation of Rs.10,15,000/-.

17. The appeal is allowed. The judgment of the Tribunal is modified accordingly. The respondents shall be entitled a total compensation of Rs.10,15,000/- along with 7% interest per annum to be calculated from the date of filing of the application.

18. With the above modification, the appeal is disposed of.

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