

(2023) 01 GAU CK 0015
In the Gauhati High Court
Case No : MACApp. No. 236 Of 2017

Reliance General Insurance Co. Ltd	Vs	APPELLANT
Kamala Begum And 8 Ors		RESPONDENT

Date of Decision : 02-01-2023

Acts Referred:

Code Of Civil Procedure, 1908 — Order 41 Rule 33
Motor Vehicles Act, 1988 — Section 168

Citation : (2023) 01 GAU CK 0015

Hon'ble Judges : Arun Dev Choudhury, J

Bench : Single Bench

Advocate : A. J. Saikia, K. Bhuyan

Judgement

1. Heard Mr. A. J. Saikia, learned counsel for the appellant. Also heard Mr. K. Bhuyan, learned counsel for the claimants/respondents.

2. The present appeal is preferred against the Judgment dated 27.01.2017, passed in MAC Case No. 2697/01 (251/08) by the learned Member of MACT, No. 1, Kamrup, Guwahati.

3. The ground of challenge as urged by Mr. A. J. Saikia, learned counsel for the appellant /Insurance Company is that the future prospect ought to have been determined @ 40%, for the reason of the deceased being self employed and was aged below 40 years, however, the learned Tribunal below has fixed it @ 50%. In support of his contention, Mr. Saikia, learned counsel relies on the decision of the Hon'ble Apex Court in the case of National Insurance Company Limited –Vs- Pranay Sethi and Others reported in (2017) 16 SCC 680.

The second ground urged is that the claimant is not entitled for interest on the component of future prospect in view of decision of a Coordinate Bench in Oriental Insurance Co. Ltd –vs- Smti Champabati Ray and 5 Ors. (MACApp./378/2017).

4. Mr. K. Bhuyan, learned counsel for the claimant/respondents in his usual

fairness submits that as the Hon'ble Apex Court and this Court has already settled both the issues, he will abide by the law declared by the aforesaid two judgments inasmuch as the claimants are also entitled for just compensation in terms of the Pranay Sethi (Supra) and Magma General Insurance Company Limited -VS- Nanu Ram Alias Chuhru Ram and Others reported in (2018) 18 SCC 130.

5. Considered the materials available on record. Perused the aforesaid two judgments.

6. In the case of Pranay Sethi & Others (Supra), the Constitution Bench of the Hon'ble Apex Court at paragraph 61 held as follows:-

"61. In view of the aforesaid analysis, we proceed to record our conclusion:-

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the Courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinabove.

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(viii) Reasonable figures on conventional heads, loss of estate, loss of consortium and funeral expenses should be L 15,000/- L 40,000/- and L 15,000/-

respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

7. In the case of Pranay Sethi (Supra), the Apex Court has identified specific conventional heads for payment of compensation and held that the amount to be paid for funeral expense and loss of estate will be Rs. 15,000/-each. It has also held that Rs. 40,000/- should be paid for loss of consortium. The aforesaid amounts should be enhanced at the rate of 10% in every three years from the date of the judgment of Pranay Sethi (supra).

8. The Apex Court in the case of Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram & Ors, Civil Appeal No. 9581 of 2018 has held that the Constitution Bench in Pranay Sethi (supra) has dealt with the various heads under which compensation can be awarded in a death case, which includes loss of consortium. It was further held that the word "consortium" encompasses the following:- (1) Spousal consortium (2) Parental consortium and (3) Filial consortium.

(1) Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."

(2) Parental consortium is granted to the child upon the premature death of parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

(3) Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection companionship and their role in the family unit.

9. A coordinate Bench of this Court in The Future General India Insurance Co. Ltd -Vs- Bobby Bora and Ors. (MACApp./202/2012) in its Judgment & Order dated 04.02.2022, while dealing with an issue whether the claimants are entitled to an enhanced compensation in absence of a cross appeal or a cross objection, after elaborately discussing different judgment of the Hon'ble Apex Court and considering the provisions of Order 41 Rule 33 of the Code of Civil Procedure held that while Order 41 Rule 33 of the Code of Civil Procedure empowers an appellate court to pass appropriate order to do justice but subject to certain limitation as judicially formulated, whereas Section 168 of MV Act imposes a statutory obligation upon the tribunal as well as the appellate court sans way any appeal or cross objection filed to award a compensation which is just and reasonable. Accordingly, it was held that the appellate court is bound to maintain the balance while exercising power under Order 41 Rule 33 of the Code of Civil Procedure within the limitation imposed and also keeping in mind the statutory duty imposed upon it by Section 168 of MV Act, 1988. After holding such, the

learned Bench held in that case that though there was no cross objection however, the benefit of Pranay Sethi & Others (Supra), Magma General Insurance Co. Ltd. (Supra) and Sarla Verma & Others (Supra) can be made applicable keeping in mind the statutory duty imposed upon the appellate court under Section 168 of the MV Act, 1988 to award the just and reasonable compensation.

10. This Court is in total agreement with the aforesaid view. Accordingly, this Court is also of the view that though no cross objection or appeal has been preferred by the present respondent/claimant, the claimant shall be entitled for the compensation given under the dicta of Pranay Sethi (Supra), Magma General Insurance Co. Ltd. (Supra) and Sarla Verma (Supra).

11. Another Coordinate Bench in Champabati Ray (supra) while dealing with entitlement of interest on the amount awarded under the head "future prospect" held the following:-

"Another ground of challenge to the impugned judgment is that the learned Tribunal had awarded interest on future prospects, which could not be done. In the case of 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 reasons have been enunciated in the above judgments, the reasons 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 claimants 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/s. 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". (Emphasis supplied)

12. Such determination is binding upon this Court.

13. In the present case, the admitted fact is that the deceased was aged about 35 years and he was self employed and had an established income of Rs. 4,000/- per month. It is also established that the deceased had left behind his wife and five children.

14. In view of the above fact and settled proposition of law, the compensation payable would be as follows:-

SL

No.

Head

Amount

1.

A. Annual Income

Rs.4,000/-X12 =Rs.48,000/-

B. Future Prospect @ 40% of income.

Rs. 19,200/-

C. Less 1/5th

Rs. 53,760/-

D. Add Multiplier

15X53,760/-= Rs. 8,06,400/-

Total compensation Rs. 8,06,400/-

2.

Loss of Estate

Rs. 16500/-

3

A. Spousal Consortium for wife

Rs. 44,000/-

B. Parental Consortium for childrens

Rs. 44,000/-X5= Rs. 2,20,000/-

C. Funeral expenses

Rs. 16500/-

Total

= Rs.11,03,400/-

15. While not interfering with the award of interest @ 6%, awarded by the learned Tribunal, it is made clear that the interest awarded must not be calculated on the amount of compensation awarded against future prospects in

terms of the decision in Champabati Ray (supra)

16. Consequently, the impugned Judgment dated 27.01.2017, passed in MAC Case No. 2697/01 (251/08) by the learned Member of MACT, No. 1, Kamrup, Guwahati is hereby modified to the extent indicated above.

17. It is directed to the Insurance Company to pay the compensation within a period of 90 days from today. However, it is also made clear that if the payment is not made within the period as stipulated, the same shall carry an additional interest @ 2% from expiry of such period till payment.

18. Statutory deposit be released in favour of the Insurance Company after proper verification.

19. LCR be sent back forthwith to the learned tribunal below.