IN THE GAUHATI HIGH COURT
THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR,
TRIPURA, MIZORAM AND ARUNACHAL PRADESH
SHILLONG BENCH

R.F.A. No. 1(SH) of 2011.

The New India Assurance Co Ltd.
Having its registered and Head Office
At New India Assurance Building,
87, Mahatma Gandhi Road, Fort,
Mumbai 400001 and one of its
Branches at Beltola
Guwahati, C/o Divisional Office of the
New India Assurance Co Ltd. Opp Bawri Mansion,
Dhankheti, Shillong-793001 : Appellant

-vs-

1. Smti Menuka Devi
w/o (L) L Raju Sharma (Pandey)
alias Ananta Sharma,
R/o Khimusiang Village,
Jowai, Jaintia Hills District and
Presently c/o Bharati Joshi,
Upper Motinagar, Shillong
(Claimant in MAC Case No. 35 of 2007)

2. Shri Harbajan Singh,
s/o Sdr. Gurmit Singh
C/o Prakash Weigh Bridge
Beltola, Guwahati
(Regid. Owner of Truck No. AS 01 R 9997) : Respondents

BEFORE
THE HON'BLE MR JUSTICE T VAIPHEI

For the Petitioner	:	Mrs T Yangi, Mr FA Khongsit, Mrs N Gurung, Advs
For the Respondents	:	Mr S Rana, Adv.
Date of hearing	:	08.02.2012
Date of Judgment & Order	:	17.02.2012

JUDGMENT AND ORDER

In this appeal, the appellant-insurer is questioning the legality of the judgment dated 31-3-2011 passed by the Motor Accident Claims Tribunal, Shillong in MAC Case No. 35 of 2007 awarding a sum of `10,55,000/- with interest at the rate of 12% per annum to the claimant-respondent by way of compensation for the death of her deceased husband, namely, Raju Shama (Pandey) alias Ananta Sharma in a vehicular accident. On 16-4-2007 at about 7.30 AM, while the deceased was waiting on the roadside for a vehicle at 7th Mile near Petrol Pump at National Highway 44 to go to Jowai, he was hit by a Tata Truck bearing No. AS 01 R 9997 driven by one Sahdev Ch. Das having a driving license No. 46173 issued by the DTO, Makokchung. Having sustained serious injuries in the accident, he was shifted to KJP Hospital, Jowai, but he succumbed to his injuries later in the day. The accident was reported to Jowai Police Station, which registered as Jowai P.S. Case No. 44(4)2007 under Section 279/304 IPC against the driver of the truck. The claimant-respondent, who is none other than the wife of the deceased, thereafter filed the claim case before the Motor Accident Tribunal, Shillong impleading the owner of the offending truck and the appellant-insurer as party-respondents. According to the claimant-respondent, her husband was a milkman by occupation and used to earn `12,000/- per month, and was 28 years old at the time of his death. The deceased is survived by the claimant-respondent, a minor son and the parents of the deceased. The claim petition was not contested by the owner of the offending truck. The appellant-insurer, however, contested the claim petition and filed its written statement and also obtained from the Tribunal permission under Section 170 of

the Motor Vehicles Act, 1988 ("the Act") to contest the claim case on any grounds. On the basis of the pleadings of the parties, the following issues were framed by the Tribunal:

1. Whether there an accident on 16-4-2007 at 7.30 AM at 8th Mile, Jowai involving Tata Truck No. AS 01 R 9997? If so, whether the husband of the claimant sustained injuries in the said accident and later succumbed to his injuries.
2. Whether the accident took place due to rash and negligent driving of the driver of the Tata Truck No. AS 01 R 9997?
3. Whether the Opp. Party New India Assurance Co. Ltd. is liable to pay compensation to the claimant and to indemnify the Opp. Party owner of Truck No. AS 01 R 9997?
4. Whether the claimant is entitled to compensation? If so, to what extent?

2. In the course of trial, five witnesses were examined on behalf of the claimant including herself, but no witness was examined by the appellant-insurer. At the conclusion of the trial, the Tribunal passed the impugned judgment awarding the compensation to the claimant-respondent. In this appeal, no dispute is raised by the appellant-insurer on the factum of the accident resulting in the death of the deceased. It is only about the quantum of compensation. It is contended by Mrs. T. Yangi, the learned counsel for the appellant, that the Tribunal grossly erred in determining the income of the deceased at `. 12,000/- per month when there is no shred of evidence to prove it. She also contends that the Tribunal has wrongly adopted a multiplier of 17, which is on the high side. It is also contended by the learned counsel that the Tribunal exorbitantly awarded interest at the rate of 12% per annum, which is against the permissible limit fixed by the Apex Court. As the impugned judgment suffers from many infirmities, contends the learned counsel, the same is liable to be interfered with by this Court to prevent the claimant-respondent from getting a bonanza

or an unjust enrichment. The impugned judgment is, however, supported by Mr. S. Rana, the learned counsel for claimant-respondent, who submits that once there is no dispute about the case of the claimant that the deceased was a milkman, running a dairy farm with six cows, the Tribunal did not commit any illegality in holding that the deceased was earning a sum of ` 12,000/- per month as no rebuttal evidence was led by the insurer. He further submits that when the age of the deceased was found to be 28 years, the adoption of a multiplier of 17 by the Tribunal for determination of the quantum of compensation does not need any interference; in fact, the Tribunal ought to have adopted a multiplier of 18 instead of 17 in terms of the structured formula given in the Second Schedule to the Act.

3. There is no dispute about the age of the deceased. There is also no dispute about the death of the deceased following the vehicular accident caused by the offending truck. In so far as the income of the deceased is concerned, CW 1, who is the wife of the deceased, in her deposition, stated that her husband was running a Dairy farm and used to earn `12,000/- per month as net profit and that he had around 6 cows which yielded about 60 litres of milk per day. Her statement is fully corroborated by the statement of CW 2, who is the father of the deceased and who lived with him under the same roof. Their cross-examinations by the appellant-insurer did not elicit anything to demolish their statements. Suggestion no denied is no evidence and does not help the cross-examiner. Similarly, CW 3, who was the ocular witness to the vehicular accident, also proved that the deceased was a milkman and used to deliver milk to their pump; in fact, this was revealed by him during his cross-examination. True, there is no

documentary evidence, as contended by the learned counsel for the appellant, to substantiate the claim of the claimant that the deceased was earning `12,000/- per month. But then, when the cross-examination of the CWs did not demolish or falsify their testimonies, it is reasonably safe to conclude that their oral evidence is acceptable and cogent. Once there is no dispute that that the deceased was running a dairy farm with six cows, it does not need much imagination to come to the conclusion that the deceased must have earned `12,000/- per month as the sale proceeds for selling the milk from his six cows keeping in mind the fact that a litre of milk fetched `20/- in those days. The appellant does not dispute that the deceased was 28 years old when he died of the vehicular accident. At this stage, I may reproduce hereunder the findings of the Tribunal with regard to assessment of the amount of compensation payable to the claimant-respondent:

> "11. With regard to Issue No. 4, that is, whether the claimant is entitled to compensation? If so, to what extent?
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> The claimant has claimed compensation for the death of the deceased, as well as on other heads as detailed in the Claim Petition. The evidence on record establishes that the deceased was earning `12,000/- in his profession which could not be demolished by cross-examination. It is admitted that the deceased was rearing milching cow and he must be spending over the feeding, etc. of the cows. Therefore, out of his income of `12,000/- the deceased in all fairness have been spending minimum of `4,000/- per month on the six numbers of cows which he was rearing. Thus, his income which he could have utilized for himself would come down to `8,000/- per month out of this, half is deducted for his personal expenses and the balance would be`5,300/-. It would be reasonable to hold that the deceased was contributing to the family `5,000/- per month which comes to `60,000/- per annum. It may also be noted that the father of the deceased Shri Homnath Sharma C.W. 2 is a Class II heir under Hindu Law and would not entitled to inherit anything in presence of Class I heir who in this case is the wife of the deceased, the mother of he deceased and the child. Over and above, the father C.W. 2 as per his own deposition is an earning member of the family being a Government servant as such, he must be maintaining his wife, that is, the mother of the deceased

and him, and the other unmarried sons and daughters. This leads to the conclusion that the deceased was maintaining his wife and his only child and for their expenditures of `5000/- per month would be sufficient to the status of he deceased and his family. Therefore, the dependency of the Claimant/Wife and the child would be `60,000/- per annum as observed earlier.

12. The age of the deceased is not challenged that he was 28 years at the time of his death. The deceased was fairly young and the expectancy of life is higher, thus the multiplier will be 17 as approved by the Hon'ble Supreme Court in the case of Sarla Verma. As such, `60,000/- x 17 = `10,20,000/- together with loss of consortium `5,000/-. The loss of love and affection cannot be measured in terms of money, however, the claim in respect of this loss which is claimed by the Claimant @ `25,000/- is considered moderate, and the funeral expenses is assessed @ `5,000/-. Thus, in total of all the above comes to `10,55,000/- (Rupees Ten lakh, fifty five thousand)only."

In my opinion, the aforesaid reasoning and conclusion of the Tribunal do not suffer from any infirmity calling for my interference. The multiplicand of `5,000/- adopted by the Tribunal on the facts and circumstances of the case is quite reasonable. Similarly, the Tribunal also correctly applied the law laid down by the Apex Court in ***Sarla Devi v. DTC, (2009) 9 SCC 121*** by adopting a multiplier of 17, which led her to arrive at just compensation. However, keeping in mind the interest usually awarded by the Apex Court these days, awarding 12% per annum is definitely on the high side, and the same needs to be interfered with. Therefore, instead of awarding interest @ 12% per annum, the ends of justice will be met if an interest @ 9% per annum is awarded.

4. In the premises set forth above, the amount of compensation of `10,55,000/- awarded by the Tribunal to the claimant-respondent is

hereby upheld. However, the interest awarded by the Tribunal @ 12% per annum stands reduced to 9%, which shall be effect from the date of the claim petition. The appeal stands modified and disposed of in the manner and only to the extent indicated above. No costs. Any payment/deposit made by the appellant-insurer heretofore shall be adjusted accordingly.

JUDGE

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