



IN THE HIGH COURT OF SIKKIM AT GANGTOK
(Civil Appellate Jurisdiction)

DATED : 11-09-2013

CORAM
THE HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

M.A.C.APPEAL NO.07 OF 2013

1. Smt. Urbasi Rai,
W/o Late Sudesh Rai,
Aged about 29 years,
2. Miss Aashista Rai,
D/o Late Sudesh Rai,
Aged about 9 years,
3. Master Aryan Rai,
S/o Late Sudesh Rai,
Aged about 7 years

Residents of Upper Toongsong,
P.O. Dooteriah,
P.S. Jorebunglow,
Distt. Darjeeling,
West Bengal. **... Appellants**

Versus

1. The Branch Manager,
National Insurance Company Ltd.,
31-A National Highway,
(Opp. Tourism Department)
P.O. & P.S. Gangtok,
Gangtok, East Sikkim.
2. Smt. Nima Chezum Tamang,
W/o Shri Nim Tshering Tamang,
R/o Ralap, Khamdong,
P.O. Khamdong & P.S. Singtam,
East Sikkim. **... Respondents**

FOR THE APPELLANTS : MR. AJAY RATHI WITH MS.
SUSHMA PRADHAN AND
MR. RAHUL RATHI,
ADVOCATES.



FOR THE RESPONDENT NO.1 : MR. THUPDEN G. BHUTIA,
ADVOCATE

FOR THE RESPONDENT NO.2 : MR. BHUSAN NEPAL,
ADVOCATE

M.A.C.APPEAL NO.08 OF 2013

1. Smt. Jinata Rai,
W/o Late Kishore Rai,
Aged 30 years,
2. Master Rohan Rai,
S/o Late Kishore Rai,
Aged 12 years,
3. Miss Prativa Rai,
D/o Late Kishore Rai,
Aged 11 years.
Residents of Upper Toongsong,
P.O. Dooteriah,
P.S. Jorebunglow,
Distt. Darjeeling,
West Bengal. **... Appellants**

Versus

3. The Branch Manager,
National Insurance Company Ltd.,
31-A National Highway,
(Opp. Tourism Department)
P.O. & P.S. Gangtok,
Gangtok, East Sikkim.
4. Smt. Nima Chezum Tamang,
W/o Shri Nim Tshering Tamang,
R/o Ralap, Khamdong,
P.O. Khamdong & P.S.Singtam,
East Sikkim. **... Respondents**

FOR THE APPELLANTS : MR. AJAY RATHI WITH MS.
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ADVOCATES.

FOR THE RESPONDENT NO.1 : MR. THUPDEN G. BHUTIA,
ADVOCATE



FOR THE RESPONDENT NO.2 : MR. BHUSAN NEPAL,
ADVOCATE

J U D G M E N T (O R A L)

Wangdi,J.

These two Appeals arise out of the impugned judgments dated 26.06.2013 passed by the learned Member, Motor Accident Claims Tribunal, East and North Sikkim at Gangtok in M.A.C.T. Case No. 05 of 2012 and M.A.C.T. Case No.4 of 2012 and are taken up together as those relate to the same accident in which the deceased persons in both the cases had died.

2. The facts and circumstances leading to the claim petitions are that, a vehicle bearing No.SK-01-J-0316 (Maxx) while travelling from Dikchu to Singtam on 26.10.2011, met with an accident at Aapdara, Dikchu, in which the deceased persons who were skilled masons and the husbands of the Appellant No.1 in both the cases and fathers of the rest of the Appellants, and travelling in that vehicle, sustained grievous injuries to which they succumbed on the way to the District Hospital, Singtam. The vehicle was duly insured with the Respondent No.1. Claim Petitions filed by the Appellants under Section 166 of the Motor Vehicles Act, 1988, culminated in passing of the impugned judgments.



3. The only grievance of the Appellants in both the Appeals is primarily as regards the award of compensation against the loss of earnings which are calculated at Rs.3,60,000/- and Rs.4.08,000/- respectively, fixing the incomes of the deceased persons @ of Rs.300/- per month.

4. Mr. Ajay Rathi, learned Advocate appearing on behalf of the Appellants, submits that the learned Claims Tribunal fell in error in coming to the conclusion that the claimants failed to produce any documents to establish the monthly income of the deceased persons and that no government document/Notification substantiating the rates fixed for masonry works for effective daily rates for masons were produced. Mr. Rathi further submits that in view of the clear admission on the part of the Respondents that the deceased persons were skilled masons, he did not deem it essential to produce the employer under whom the deceased persons were working at the time of their demise. It is further submitted that if the claims of the Appellants that the deceased persons were earning daily wage of Rs.300/- were found to be unacceptable, it was incumbent upon the learned Claims Tribunal to have taken note of the daily wages prescribed by the State Government from time to time. Mr. Rathi referred to Annexure P-8 which is a Notification No. 16/DL dated 06.04.2013 published vide Gazette Notification dated 15.04.2013, wherein the revised



rates of daily wages for labourers and the existing rates at that time were published. He has pointed out that as on the date of the Notification, skilled labourers were entitled to Rs.165/- per day but was revised to Rs.250/- per day from then onwards. Mr. Rathi further submits that reliance placed by the learned Claims Tribunal upon the case of **State of Haryana & Anr. vs. Jasbir Kaur & Ors. : 2003 SCC (Cri) 1671** in order to arrive at its finding was misplaced, as the facts and circumstances obtaining in that case were different. Even the multiplier 17 that was applied by the Claims Tribunal in working out the loss of earning was incorrect in view of the principles laid down in **Sarla Verma & Ors. vs. Delhi Transport Corporation : 2009 ACJ 1298 (SC)** whereby the formula laid down by Lord Wright in **Davies vs. Powell Duffryn Associated Collieries Ltd., (1942) AC 601** had been adopted as a reasonable criteria for working out reasonable and just compensation for claims under Section 166 Motor Vehicles Act, 1988. Mr. Rathi further submits that the grant of compensation against the loss of consortium, loss of love and care and guidance to children and funeral expenses also ought to be enhanced as was done in the case of **Rajesh & Ors. vs. Rajbir Singh & Ors. : 2013 ACJ 1403 (SC)**.

5. Mr. Thupden G. Bhutia, learned Advocate appearing on behalf of Respondent No.1 raises a very limited plea and fairly submits that the RespondentNo.1 -



Insurance Company shall have no objections if the daily wage prescribed by the State Government prevalent at the time when the deceased persons died are applied for arriving at the compensation against loss of earnings. He, however, submits that the deceased persons being daily wage earners, only the actual working days ought to be taken into account while calculating their income, discounting the Sundays that fall in between. This submission does not appear to be sound in view of clause 3 of the Gazette Notification dated 15.04.2013 which prescribes that “If a worker works without being absent during the period of 6 (six) days consecutively in a week, he/she shall be given one paid holiday on either Sunday or any other Haat day”. In other words the Sundays and market days that fall within a week of seven days are to be considered as paid holidays. Under these circumstances, we need not delay ourselves on this.

6. There is no denial of the fact that the accident did take place in which the deceased persons had died and that they were young men of 33 and 35 years of age leaving behind the Appellants who are their wives and minor children.

7. The question as to the multiplier that would be applicable in the case of the deceased persons also does not appear to be *res integra* any longer as the matter appears



to have been set at rest in **New India Assurance Co. Ltd. Vs. Charlie : 2005 ACJ (SC), Tamil Nadu State Road Trans. Corpn. Ltd. Vs. S. Rajapriya, 2005 ACJ 1441 (SC), U.P. State Road Trans.Corpn. vs. Trilok Chandra : 1996 ACJ 831 (SC) and Susamma Thomas 1994 ACJ 1 (SC).**

8. In **Sarla Verma and Ors. (supra)**, the Hon'ble Supreme Court, relying upon those decisions prescribed a table of multiplier that would be applicable for claims under Section 166 of the Motor Vehicles Act, 1988 and we find that for those falling within the age group of 31 and 35 years the multiplier fixed is 16. This will be evident from the following portion of the decision: -

"21. We, therefore, hold that the multiplier to be used should be as mentioned in column 4 of the Table above (prepared by applying *Sasumma Thomas, Trilok Chandra* and *Charlie*), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is, M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 to 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

9. We may, therefore, take the multiplier 16 in respect of the deceased persons as both of them were 33 and 35 years of age when they died in the accident.

10. In **Santosh Devi vs. National Insurance Co. Ltd. 2012 ACJ 1428 (SC)** the Hon'ble Supreme Court



while negating the view that the earning that the wages or total emoluments/income of a person who is self employed or who is employed on a fixed salary would remain static throughout his life, held that it would be reasonable to presume that such person will also get 30% increase in his total income over a period of time and if he/she becomes a victim of an accident then the same formula deserves to be applied for calculating the amount of compensation. This position has, however, been clarified in **Rajesh vs. Rajbir Singh (supra)** by holding that the increase in the income in the case of those groups would not be 30 per cent always; it will also have a reference to the age.

11. In so far as the components on account of loss of consortium and funeral expenses is concerned, I am inclined to follow the principle laid down in **Rajesh & Ors. vs. Rajbir Singh & Ors. (supra)** in as much as, the sum of Rs.5000/- and Rs.2000/- respectively prescribed under those heads have now become quite obsolete and that as held in **Santosh Devi 2012 ACJ 1429 (SC)** it ought to be periodically revisited. As held in that case the term 'consortium' in law "is loss of companionship, love, care and protection, which the spouse is entitled to get, has to be compensated appropriately. Hence, we are of the view that it would be just and reasonable that the Courts award at



least Rs. 1 lakh towards loss of consortium". It is accordingly awarded so in these two Appeals.

As regards the award on account of funeral expenses, it has been observed that -

"21. We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'funeral expenses'. The 'price index', it is a fact, has gone up in that regard also. The head 'funeral expenses' does not mean the fee paid in the crematorium or the fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'funeral expenses', in the absence of evidence to the contrary for higher expenses, to award at least an amount of Rs.25,000."

12. In the facts and circumstances of the present cases, it will be just and reasonable to award Rs.10,000/- on account of funeral expenses.

13. Subject to the above, I am not inclined to interfere with the rest of the awards. Therefore, applying the principles in **Sarla Verma's** case and **Santosh Devi's** case followed in **Rajesh & Ors. vs. Rajbir Singh & Ors. (supra)**, the compensation in the present cases are reassessed as follows: -

- (i) Income per month = Rs.165 x 30 = Rs. 4950.00
- (ii) 50% of (i) above added as Future Prospects = Rs.4950.00 + Rs.2475.00 = Rs. 7425.00



(iii)	30% of (ii) above deducted as personal Expenses of the deceased persons	
	Rs. 7425.00	
	(-) <u>Rs. 2227.50</u>	
	<u>Rs. 5197.50</u>	= Rs. 5197.50
(iv)	Computation after application of Multiplier 16 = 5197.50 x 16	= Rs. 9,97,920.00
(v)	Funeral expenses	= Rs. 10,000.00
(vi)	Loss of Estate	= Rs. 2,500.00
(vii)	Loss of consortium	= Rs.1,00,000.00
(viii)	Transportation charges`	= Rs. 5,000.00
(ix)	Love and affection	= Rs. 50,000.00
(x)	<u>Other amenities</u>	<u>= Rs. 50,000.00</u>
	<u>Total</u>	<u>= Rs.12,32,992.50</u>

14. The award on interest contained in the impugned judgments shall remain unaltered. Needless to state that any advance payments made in the interim shall be deducted from the total amount.

15. In M.A.C. Appeal No.08 of 2013, the same principle as adopted in M.A.C.Appeal No.07 of 2013 would apply, as the age of the deceased is 35 years. Resultantly, the Appellants therein shall also be entitled to compensation of Rs.12,32,992.50.

16. The aforesaid amounts with the accrued interest calculated as on the date of disbursal shall be paid by the Respondent No.1 – Insurance Company to the Appellants in



both the Appeals in equal shares. The shares of the children of the deceased persons being Appellants No.2 and 3 in both the cases shall be kept in fixed deposits in a Nationalised Bank until they attain the age of majority. As regards the Appellant No.1, in both the cases who are the wives of the deceased persons, an amount equal to 50% of their shares also be kept in fixed deposit for a period of not less than five years in a Nationalised Bank. The balance 50% shall be paid to them in order to enable them to meet their daily expenses by opening savings accounts in their respective names in the same bank or such bank as may be convenient to them. The amounts in fixed deposits shall not be pledged against any form of advances, institutional or otherwise.

17. In the event of legal necessity pertaining to the education or other legitimate family necessity, the Appellant No.1 in both the cases are at liberty to approach this Court for release of such further amounts as may be reasonable to meet such expenditure.

18. The Respondent No.1 - Insurance Company shall submit compliance report in respect of the above within a period of four weeks and not later than that.



19. In the result, the M.A.C. Appeals are allowed in part.

20. No order as to costs.

21. Let a copy of this judgment along with the original records be transmitted forthwith to the Learned Claims Tribunal for compliance.

Sd/-

(S. P. Wangdi)
Judge
11.09.2013

Approved for Reporting : Yes / No

Internet : Yes / no

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