

THE HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

MAC APP. No.28 of 2007
along with MAC APP.29 of 2007

A) MAC APP. No.28 of 2007

Sri Ratnamani Reang,
S/o Jambabu Reang
(Father of deceased Asharam Reang)
of Hazacherra, P.S. Kanchanpur,
District - North Tripura.

..... Appellant.

– Versus –

- 1. Smt. Chandra Reang,**
W/o Sri Harendra Reang of
Satnala Bazar, Satnala,
P.S. Kanchanpur,
North Tripura District (Owner of TR-02-3945 Jeep).
- 2. Smti Rupa Barua,**
W/o Tapan Kumar Barua of
Machmara, P.S. Pecharthal,
North Tripura District (Owner of TR-02-2733).
2(a) Shri Rabindra Nath,
S/o Ramani Mohan Nath of
Netajinagar, P.S Kanchanpur,
North Tripura District (Owner of TR-02-2733).
- 3. The Oriental Insurance Company Ltd.,**
(Represented by Branch Manager,
Oriental Insurance Co. Ltd.)
Dharmanagar, P.S. Dharmanagar, North Tripura District,
Pin - 799250 (Insurer of both offending vehicles i.e.
TR-02-3945 and TR-02-2733).

..... Respondents.

B) MAC APP. No.29 of 2005

- 1. Sri Ratnamani Reang,**
S/o Jambabu Reang
(Husband of deceased Phunirung Reang).

- 2. Sri Allaram Reang,**
 S/o Sri Ratnamani Reang
 Both are resident of Hazacherra,
 P.S. Kanchanpur, District - North Tripura,
 (Appellant No.2 being minor is represented
 By his father, Appellant No.1, as natural guardian).

..... *Appellant.*

– *Versus* –

- 1. Smt Chandara Reang,**
 W/o Sri Harendra Reang,
 Resident of Satnala Bazar, Satnala,
 P.S. Kanchanpur, District - North Tripura.
 (Owner of TR-02-3945 Jeep)
- 4. Smti Rupa Barua,**
 W/o Tapan Kumar Barua of
 Machmara, P.S. Pecharthal,
 North Tripura District (Owner of TR-02-2733).
- 2(a) Shri Rabindra Nath,**
 S/o Ramani Mohan Nath of
 Netajinagar, P.S Kanchanpur,
 North Tripura District (Owner of TR-02-2733).
- 5. The Oriental Insurance Company Ltd.,**
 Represented by Branch Manager,
 Oriental Insurance Co. Ltd.
 Dharmanagar, P.S. Dharmanagar, North Tripura District,
 Pin - 799250 (Insurer of both offending vehicles i.e.
 TR-02-3945 and TR-02-2733).

..... *Respondents.*

B E F O R E
THE HON'BLE CHIEF JUSTICE MR. DEEPAK GUPTA

For the appellant s	: Mr. A K Deb, Advocate, Mr. P B Chakma, Advocate.
For the respondents	: Mr. P Gautam, Advocate.
Date of hearing and delivery of judgment.	: 20.12.2013.
Whether fit for reporting	: Yes.

JUDGMENT & ORDER (ORAL)

Both the appeals are being disposed of by a common judgment since they arise out of the same accident and the facts are similar.

2. The undisputed facts are that in an accident involving vehicle Nos.TR-02-3945 and TR-02-2733 the deceased Aharam Reang alias Rambaliha Reang who was 2(two) years old and his mother Phunirung Reang died. Claim petition No.T.S(MAC)37 of 2006 was filed by the father Ratnamani Reang in respect of the death of his minor 2(two) year old son. Claim petition No.T.S(MAC)39 of 2006 was filed by Ratnamani Reang and his minor son Allaram Reang in respect of the death of Phunirung Reang. The learned Tribunal awarded compensation of Rs.60,000/- in T.S(MAC)37 of 2006 and Rs.1,35,000/- in the second case in T.S(MAC)39 of 2006. The claimants dissatisfied by both the awards have filed the present appeal.

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3. This appeal arises out of the death of a minor 2 year old child. The learned Tribunal awarded only Rs.60,000/- as compensation. The accident in question took place on 09.02.2006 by which time Section 163-A had already been introduced in Motor Vehicles Act. This Section deals with the payment on account of 'no fault liability' and as per the Second Schedule, compensation

has to be assessed in accordance with the schedule whenever a claim petition is filed under Section 163-A. Under this Schedule if the age of the victim is below 15 years then a multiplier of '15' has to be applied and the minimum notional income has to be taken at Rs.15,000/- per annum. Therefore, the loss would work out to $15 \times \text{Rs.15,000/-} = \text{Rs.2,25,000/-}$, out of which one third will have to be deducted for the expenses of the deceased leaving a balance of Rs.1,50,000/-. In addition thereto a sum of Rs.2,000/- is to be paid as funeral expenses and Rs.2,500/- as loss to the estate in case of death. Therefore, the minimum compensation payable in a claim petition filed under Section 163-A would have been Rs.1,54,500/-.

4. It would be a travesty of law if a person files a petition under Section 166, leads evidence, proves negligence of the opposite party and is awarded less compensation than is payable under '*no fault liability*'. This Court has repeatedly held that the compensation payable under Section 166 after proving negligence cannot be less than the compensation payable under Section 163-A. Therefore, I am of the considered view that the award should be enhanced. The appeal is accordingly allowed. The award of the learned Tribunal is modified and the compensation is enhanced from Rs.60,000/- to Rs.1,54,500/-.

5. The insurance company has already satisfied the amount and it is directed to deposit the enhanced amount of **Rs.94.500/-** along with interest @ 6% per annum from the date of filing of the claim petition till payment/deposit of the amount. The amount be deposited in the Registry of this Court on or before **31st March, 2014**.

The appeal is disposed of in the aforesaid terms.

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6. In this appeal the claimants were awarded a sum of Rs.1,35,000/- which is again much less than what would have been awarded under Section 163-A. In the affidavit of the husband it was stated that the deceased was a housewife aged 20 years at the time of the accident. The learned Tribunal accepted the age to be 20 years but assessed the wages at Rs.50/- per day or Rs.1,500/- per month. He applied a multiplier of '16' and, thereafter, awarded compensation of Rs.1,35,000/-. I am afraid that the learned Tribunal did not follow the well settled principles with regard to assessment of compensation in case of housewives.

7. In India, the Courts have always recognized that a housewife makes a great contribution to the household. The contribution of an Indian housewife can never be measured in terms of money. How can one value the love and affection and care that a mother gives to the children? No amount of maid-servants

can provide that same care, love and affection. The gratuitous service rendered by a wife and a mother with true love and affection to the children and her husband in managing the household affairs can never be equated with services rendered by other persons employed to carry out the chores of cooking, looking after house works etc. An employee/domestic servant will work for a fixed number of hours. A mother, a wife, works 24 hours a day, 7 days a week without any break. She is in constant attendance of her husband and children. She takes care of all their requirements including cooking of food, washing of clothes etc. In case, she is educated she despite her household chores will devote some time to teach her children and dons the role of a tutor. She not only teaches her children 'ABC' but also teaches them those values which they will cherish and uphold throughout their life

8. The Apex Court in *Arun kr. Agarwal vs. National Insurance Company (AIR 2010 SC 3426)* held as follows :

“24. It is not possible to quantify any amount in lieu of the service rendered by the wife/mother to the family i.e. husband and children. However, for the purpose of award of compensation to the dependents, some pecuniary estimate has to be made of the services of housewife/mother. In that context, the term ‘services’ is required to be given a broad meaning and must be construed by taking into account the loss of personal care and attention given by the deceased to her children as a mother and to her husband as a wife. They are entitled to adequate compensation in lieu of the loss of gratuitous services rendered by the deceased. The amount payable to the dependants cannot be diminished on the ground that some close relation like a

grandmother may volunteer to render some of the services to the family which the deceased was giving earlier.

32. In our view, it is highly unfair, unjust and inappropriate to compute the compensation payable to the dependents of a deceased wife/mother, who does not have regular income, by comparing her services with that of a housekeeper or a servant or an employee, who works for a fixed period. The gratuitous services rendered by wife/mother to the husband and children cannot be equated with the services of an employee and no evidence or data can possibly be produced for estimating the value of such services. It is virtually impossible to measure in terms of money the loss of personal care and attention suffered by the husband and children on the demise of the housewife. In its wisdom, the legislature had, as early as in 1994, fixed the notional income of a non-earning person at Rs.15,000/- per annum and in case of a spouse, 1/3rd income of the earning / surviving spouse for the purpose of computing the compensation. Though, section 163A does not, in terms apply to the cases in which claim for compensation is filed under Section 166 of the Act, in the absence of any other definite criteria for determination of compensation payable to the dependents of a non-earning housewife/mother, it would be reasonable to rely upon the criteria specified in clause (6) of the Second Schedule and then apply appropriate multiplier keeping in view the judgments of this Court in General Manager, Kerala State Road Transport Corporation v. Susamma Thomas (Mrs.) and others, (AIR 1994 SC 1631 : 1994 AIR SCW 1356) (supra), U.P. S.R.T.C. v. Trilok Chandra (supra), Sarla Verma (Smt) and others v. Delhi Transport Corporation and another, (AIR 2009 SC 3104 : 2009 AIR SCW 4992) (supra) and also take guidance from the judgment in Lata Wadhwa's case, (AIR 2001 SC 3218 : 2001 AIR SCW 3086). The approach adopted by different Benches of Delhi High Court to compute the compensation by relying upon the minimum wages payable to a skilled worker does not commend our approval because it is most unrealistic to compare the gratuitous services of the housewife/mother with work of a skilled worker."

9. A woman especially in the Tribal area would not only do housework but would also earn something outside the house and, therefore, I assess the income of the deceased at least

Rs.100/- per day or Rs.3,000/- per month. Deducting one third for her personal expenses the loss of dependency works out at Rs.2,000/- per month or Rs.24,000/- per year. As per the judgment of the Apex Court in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. (AIR 2009 SC 3104)* the multiplier applicable is '18' and the compensation works out at Rs.4,32,000/-. On this amount the husband would also be entitled to Rs.10,000/- as loss of consortium. The claimant shall also be entitled to Rs.10,000/- as conventional damages and Rs.8,000/- is awarded on account of funeral expenses. Therefore, the total compensation works out at **Rs.4,60,000/-**.

10. The amount awarded by the Tribunal of Rs.1,35,000/- along with interest has already been deposited by the insurance company. It is, therefore, directed to pay the enhanced amount of **Rs.3,25,000/-** along with interest @ 6% per annum on the enhanced amount from the date of filing of the claim petition till deposit of the amount. The amount be deposited in the Registry of this Court on or before 31st March, 2014.

11. Since the father has got compensation in the case of the minor child he is only awarded Rs.1,60,000/- out of this award and the balance amount of Rs.3,00,000/- is awarded to the minor. I find that the persons belong to tribal areas and, therefore, the amount payable to the minor shall be kept in a fixed deposit for a

period till he attains the age of 21 years. The interest accrued on the amount deposited shall be paid to the father on quarterly basis by remitting it to his Bank account which amount the father shall use for the welfare and education of the minor.

The appeal is disposed of in the aforesaid terms.

CHIEF JUSTICE

Sukhendu