



HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

Dated : 12.08.2015

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

MAC App. No.14 of 2015

Appellants : The Branch Manager,
 Bajaj Allianz General Insurance
 Company Limited,
 Saharan House, 2nd Floor,
 Above ICICI Bank,
 2nd Mile, Sevoke Road,
 Siliguri.

Versus

Respondents : 1. Janga Bahadur Chettri,
 S/o Late Ratna Bahadur Chettri,
 R/o Niya Mangzing GPU,
 P.O. Lingmoo, P.S.
 Ravangla,
 South Sikkim.

2. Khina Maya Chettri,
 W/o Janga Bahadur Chettri,
 R/o Niya Mangzing GPU,
 P.O. Lingmoo, P.S.
 Ravangla,
 South Sikkim.

3. Bishal Chettri,
 S/o Janga Bahadur Chettri,
 R/o Niya Mangzing GPU,
 P.O. Lingmoo, P.S.
 Ravangla,
 South Sikkim.

**Appeal under Section 173 of the
 Motor Vehicles Act, 1988**



Appearance

Mr. Thupden G. Bhutia, Advocate for the Appellant-General Insurance Company.

Mr. Ajay Rathi, Advocate with Ms. Pema Wangmu Bhutia, Advocate for the Respondents-Claimants.

JUDGMENT (ORAL)

Wangdi, J.

1. The Appeal is preferred under Section 173 of the Motor Vehicles Act, 1988, to assail the judgment dated 31.03.2015 of the Motor Accidents Claims Tribunal, South Sikkim at Namchi (for short the "Claims Tribunal"), in MACT Case No.13 of 2014, whereby the Respondents-Claimants were awarded compensation of Rs.13,05,001/- (Rupees thirteen lakhs five thousand and one) only for the death of the deceased, the liability of which was placed upon the Appellant-Insurance Company.

2. The Respondents-Claimants No.1 and 2 are the parents and the Respondent-Claimant No.3, the younger brother of the deceased, Puja Chettri *alias* Pooja Chettri, aged about 17 (seventeen) years, who died in a motor vehicle accident involving a Maruti



WagonR (Private) vehicle bearing Registration No. SK 01 P 9027 owned by one Late Sanjeev Bhagat.

3. The accident took place on 21.06.2014 at around 1700 hrs at Dojek Bhir (cliff) near Rangpo Khola, Ravangla, South Sikkim, when the vehicle was being driven by the owner, Sanjeev Bhagat. The accident caused the death of the owner and the deceased who was travelling in the said vehicle.

4. Claim for Rs.15,31,000/- (Rupees fifteen lakhs and thirty one thousand) only as compensation was preferred before the Claims Tribunal by the Respondents-Claimants which ultimately culminated in the impugned judgment.

5. Although in the Appeal, the Appellant-Insurance Company challenges the award on various grounds, at the time of the arguments, however, Mr. Thupden G. Bhutia, Learned Counsel, appearing on behalf of the Appellant-Insurance Company, confined himself to 2 (two) grounds only, i.e., (i) deduction towards personal and living expenses of the deceased and (ii) of the future prospects granted by the Claims Tribunal.



6. Relying upon a Single Bench decision of the Punjab and Haryana High Court in *Simar Kaur vs. Pawan Kumar and Others : IV (2014) ACC 602 (P&H)*, it was submitted that the deceased in that case being a student of IXth standard whose income had been worked out on an assumption and was unmarried was not granted any award on future prospects. As per the Learned Counsel, the facts in the case before us being *pari materia*, the Respondents-Claimants, therefore, would not be entitled to compensation against future prospects of the deceased.

7. His alternative submission was that even if the Respondents-Claimants were entitled to compensation on account of future prospects, it ought not to have been by deduction of one-third of her income as granted by the Claims Tribunal but, 50% following the decision of the Hon'ble Supreme Court in *Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another : (2009) 6 SCC 121*. He would also refer to *Amrit Bhanu Shali and Others vs. National Insurance Co.Ltd. and Others : (2012) 11 SCC 738*.

8. Mr. Ajay Rathi, Learned Counsel, appearing on behalf of the Respondents-Claimants, on the other hand,



submits that there being no error in the impugned judgment, no interference was called for by this Court. He would emphasise that even if the first contention raised on behalf of the Appellant-Insurance Company was to be accepted the second contention would certainly not sustain.

9. I have given careful consideration to the rival contentions, examined the records and the impugned judgment.

10. The first contention on behalf of the Appellant is that the Respondents-Claimants ought not to have been granted compensation against future prospects at all as the deceased was a student and an unemployed person. It is submitted that since the deceased was unemployed and her income that was worked out by the Claims Tribunal was notional, she could not have had future prospects.

11. I am, however, not persuaded to be convinced by this submission. Taking up the second contention first, the notional income of the deceased appears to have been worked out by the Claims Tribunal at a rate lower than the minimum wages of Rs.220/- (Rupees two



hundred and twenty) prescribed under the Minimum Wages Act by the State Government on the finding that she was substantially contributing to the domestic chores.

12. In my view, the deceased who was of over 17 years of age at the time of death, would certainly have earned more than Rs.200/- (Rupees two hundred) per day granted by the Claims Tribunal on completion of her studies. When the notional monthly income is worked out on an assumption based upon a reasonable criteria as in the present case, it is but expected that the deceased would have future prospects which under a given circumstance will also have to be worked out on an assumption.

13. The parameters and the principle governing award compensation by Tribunals is no more *res integra*. It is trite that "Section 168 of the Motor Vehicles Act, 1988, enjoins the Tribunal to make an award determining the compensation which appears to be 'just'. The expression 'just' which has not been defined in the Statute vests a wide jurisdiction in the Tribunal in the matter of determination of compensation. However, such discretion has to be exercised reasonably by



applying the settled principles and not act arbitrarily. Although the Motor Vehicles Act, 1988 is a beneficial legislation, it can neither be allowed to be used as a source of profit nor as a windfall to the persons affected nor should it be punitive to the persons liable to pay compensation". The determining factor in deciding the compensation ought to be the nexus between the loss incurred by the dependents of the deceased and the compensation to be awarded to the dependents. We may usefully refer on this to ***Syed Basheer Ahamed and Ors. Vs. Mohd. Jameel and Anr. : 2009 ACJ 690 (SC)***.

14. Reference may also be made to the decision of this Court in ***New India Assurance Company Ltd. Vs. Nakul Gurung & Ors : 2011 (3) T.A.C. 707 (Sikkim)***.

15. Keeping the above principle in view, it would be a travesty of justice not to award future prospects in the facts and circumstances of the case. I, therefore, hold that the Respondents-Claimants are entitled to future prospects. The only question that now remain for determination is the extent of deduction towards the personal expenses of the deceased which is the first contention placed by the Learned Counsel for the Appellant-Insurance Company.



16. Considering the fact that the Claimants are the parents and younger brother of the deceased and that the deceased was unmarried, it would fair to deduct 50% following the principle laid down in ***Sarla Verma (supra)***.

17. In view of the above, the compensation would now stand modified as follows: -

Monthly earning	=	Rs. 6,000.00
Future prospect (50% of Rs.6000/-)	=	<u>Rs. 3,000.00</u>
Total	=	Rs. 9,000.00
<u>Annual Income</u>		
Rs.9000 x 12 months	=	Rs.1,08,000.00
Net earning per annum (Less 50% on account of personal and living expenses)	=	Rs. 54,000.00
<u>Net Loss</u>		
Rs.54000 x 15 (multiplier)	=	Rs. 8,10,000.00
Funeral expenses	=	Rs. 25,000.00
Loss of love and affection (as awarded by Learned Tribunal)	=	<u>Rs. 2,00,000.00</u>
	=	<u><u>Rs.10,35,000.00</u></u>

18. The component of interest in the award passed by the Claims Tribunal in the impugned judgment shall remain unaltered @ 9% on the above amount which shall be payable from the date of the Claim until full and final satisfaction of the amount.



19. The compensation shall be paid in three equal halves amount amongst to the Respondents-Claimants. Rs.3,00,000/- (Rupees three lakhs) each in the name of the Respondents-Claimants No. 1 and 2 and, the entire amount worked out as a share of the Respondent-Claimant No.3 shall be deposited in Fixed Deposit Accounts to be opened in their names in a Nationalised Bank for a period of not less than 5 (five) years. The balance amount of the shares of the Respondents-Claimants No. 1 and 2 and the amount against interest pertaining to the share of the Respondent-Claimant No. 3, shall be left free to be deposited in the Savings Bank Account opened in their respective names in the same Bank. The account of the minor Respondent-Claimant No.3 shall be operated by the Respondent No.1 as the father and natural guardian.

20. The entire payment in the manner directed above shall be made within a period of not less than 6 (six) weeks making it clear that the undisputed amount shall be worked out and released in the manner indicated in the foregoing paragraphs within a period of 2 (two) weeks and not later than that.



21. In the event of pressing legal necessity, the Respondents-Claimants are at liberty to approach this Court for relaxation of the conditions.

22. The Appeal is, therefore, allowed in part.

23. No order as to costs.

24. The Learned Counsel for the parties shall submit compliance report of the aforesaid directions.

25. Let a copy of this judgment along with original records of the case be transmitted to the Motor Accidents Claims Tribunal, South Sikkim at Namchi, forthwith.

(S. P. Wangdi)
Judge

12-08-2015

Approved for reporting : **Yes**

Internet : **Yes**