



**THE HIGH COURT OF SIKKIM : GANGTOK**  
(Civil Appellate Jurisdiction)

DATED: 26.04.2019

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**SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI**  
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**MAC App. No. 03 of 2017**

**Appellant** : The Branch Manager,  
Shriram General Insurance Co. Ltd.,  
Branch Office 142/14 Sevoke Road,  
1<sup>st</sup> Floor,  
Opposite PAN Card Office,  
Beside Raymond Showroom,  
Siliguri, District Darjeeling,  
West Bengal.

**versus**

**Respondents** : 1. Mrs. Krishna Kumari Limboo,  
Wife of Late Jeetendra Limboo.

2. Master Aamindra Limboo,  
S/o Late Jeetendra Limboo.

3. Miss Aaminma Limboo,  
D/o Late Jeetendra Limboo.

[Residents of Hee Gaon,  
P.O. Hee Gaon, P.S. Kaluk,  
West Sikkim].

4. Shri Moni Prasad Gurung,  
S/o Shri Laxmi Prasad Gurung,  
Resident of Begha Busty,  
P.O. Dentam, P.S. Kaluk,  
West Sikkim.  
(Owner of vehicle SK-02J/1030)

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

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**Appearance:**

Mr. Yadev Sharma and Mr. Dilip Tamang, Advocates for the  
Appellant.

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Mr.  
K.B. Chettri, Advocates for Respondents No. 1, 2 and 3.

Mr. Yogesh Gurung, Advocate for Respondent No. 4.

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# **J U D G M E N T**

## **Meenakshi Madan Rai, J**

**1.** Assailing the quantification of compensation placed at Rs.40,80,000/- (Rupees forty lakhs and eighty thousand) only, by the learned Motor Accidents Claims Tribunal, East Sikkim at Gangtok (hereinafter 'learned Tribunal'), in MACT Case No. 47 of 2015 (Mrs. Krishna Kumari Limboo and Others vs. Mr. Moni Prasad Gurung and Others), vide Judgment dated 21.09.2016, the Appellant is before this Court.

**2.** The Respondents No. 1, 2 and 3 herein were the Claimants No. 1, 2 and 3 and Respondent No. 4 was the Opposite Party No. 1 before the learned Tribunal. The Appellant herein was the Opposite Party No. 3 before the learned Tribunal. The parties shall be referred to in their order of appearance before this Court.

**3.** Placing his arguments for the Appellant, learned Counsel would submit that before the learned Tribunal the Respondent No. 1 has admitted in her cross-examination that she had not filed "qualification details" of her late husband along with the Claim Petition. That, nothing emanated in her evidence to establish the educational level of the deceased qualifying him to work as an Accountant under the Contractor, P.W.2 Keshab Kumar Rai. That, apart from the Salary Certificate, Exhibit 12, issued by the said Contractor showing the income of the deceased as Rs.20,000/- (Rupees twenty thousand) only, per month, there were no documents to prove that her deceased husband was



working as an Accountant or drawing salary of the said amount. That, Exhibit 12 was issued by P.W.2 after the accident had occurred and is in all probability a false document reflecting an enhanced income for the purposes of obtaining higher compensation. That, no transaction pertaining to the deceased were shown by the Respondent No. 1 in support of his income. In support of this contention, learned Counsel sought to draw strength from the ratio in ***Sutinder Pal Singh Arora and others vs. Ashok Kumar Jain and others***<sup>1</sup>. Hence, the impugned Judgment and Award deserves to be set aside.

**4.** Learned Counsel for the Respondents No. 1 to 3 would on the other hand contend that the victim was working as an Accountant under a Class I A, Government Contractor and earning an amount of Rs.20,000/- (Rupees twenty thousand) only, per month and hence when the Salary Certificate was issued by the employer, the question of doubting the document as a manufactured one is not tenable. That, the vehicle was insured with the Appellant Company and the Insurance Policy was valid from 19.04.2015 to the midnight of 18.04.2016. That no error obtains in calculation made in the impugned Judgment and Award of the learned Tribunal, hence the Appeal be dismissed.

**5.** I have heard *in extenso* and considered the rival submissions of learned Counsel for the parties. I have also carefully perused the impugned Judgment including the documents and evidence on record.

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<sup>1</sup> 2004 ACJ 782



**6.** Briefly the facts of the case are that the deceased, husband of the Respondent No. 1 and father of Respondents No. 2 and 3, aged about 33 years, was allegedly employed as an Accountant by one Keshab Kumar Rai, a Class IA Government Contractor, Dentam, West Sikkim and earning Rs.20,000/- (Rupees twenty thousand) only, per month. On 15.09.2015 he was travelling in the vehicle bearing registration No. SK-02J/1030 to Gangtok, East Sikkim from Dentam, West Sikkim, which met with an accident at "Kapuray Bhir," Ranipool, East Sikkim. He sustained head and chest injuries to which he succumbed on the same day at Central Referral Hospital, Tadong, East Sikkim, where he had been evacuated for treatment. Before the learned Tribunal, the Respondents No. 1 to 3 sought compensation of Rs.41,72,500/- (Rupees forty one lakhs, seventy two thousand and five hundred) only, on account of his death in a motor accident. This claim was denied and disputed by the Appellant *inter alia* on grounds as already reflected hereinabove.

**7.** The evidence of Respondent No. 1 to the effect that the deceased was working as an Accountant of Shri Keshab Kumar Rai (Government Contractor Class IA) and earning a monthly income of Rs.20,000/- (Rupees twenty thousand) only, was not demolished in cross-examination. Exhibit 12, the original Salary Certificate issued by the said Keshab Kumar Rai was furnished by her before the learned Tribunal. She has also established that the employer was a Class IA Government Contractor with sufficient work at hand by furnishing Exhibit 19,



the attested copy of his Contractor Enlistment Form, Exhibit 20 being a Work Order dated 04.03.2014 issued by the Tourism and Civil Aviation Department, Government of Sikkim amounting to Rs.22,23,01,419/- (Rupees twenty two crores, twenty three lakhs, one thousand, four hundred and nineteen) only, and Exhibit 21 another Work Order for Rs.1952.45 lakhs issued in the name of P.W.2.

**8.** Although it was stated by learned Counsel for the Appellant that under cross-examination, Respondent No. 1 has stated there are no "transaction details" to prove that her deceased husband was drawing a salary of Rs.20,000/- (Rupees twenty thousand) only, it is but apposite to state here that the cross-examination does not specify which "transaction" reference is being made to. The Counsel for the Appellant cannot expect the Court to draw insinuations that the transaction details pertained to Bank Accounts in the absence of specific cross-examination in this context.

**9.** Witness No. 2 for the Respondents No. 1 to 3, (Keshab Kumar Rai), the employer of the deceased has also substantiated the evidence of the victim's wife and his cross-examination does not demolish the fact of income of the deceased as Rs.20,000/- (Rupees twenty thousand) only, per month. There is no document on record to contradict the evidence of the income of the deceased. Consequently although the Appellant asserts that the income of the deceased has not been established, yet, the Appellant itself has failed to furnish any document to establish to



the contrary. Therefore in view of the evidence on record, the income of the deceased is accepted as Rs.20,000/- (Rupees twenty thousand) only, per month.

**10.** So far as the question of compensation is concerned, while computing the loss of income, the learned Tribunal rightly adopted the Multiplier of "16" in terms of the approved table laid down in ***Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another***<sup>2</sup> as the age of the deceased was 33, as per Exhibit 8, which document remained undecimated.

**11.** The learned Tribunal has granted 50% of monthly income while computing future prospects, on this point, in ***National Insurance Company Limited vs. Pranay Sethi & Ors.***<sup>3</sup>, it was held as follows;

**"61. ...**

**(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.

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<sup>2</sup>(2009) 6 SCC 121

<sup>3</sup>AIR 2017 SC 5157



**(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.”  
**(Emphasis supplied)**

**12.** Hence, in view of the ratio *supra* of the Hon’ble Supreme Court, it is evident that where the deceased was on a fixed salary and below the age of 40 years, an addition of 40% of the established income should be made towards future prospects. Thus, 40% shall be calculated as future prospects instead of 50% as calculated by the learned Tribunal.

**13.** So far as loss of estate, loss of consortium and funeral expenses are concerned, the Hon’ble Supreme Court in ***Pranay Sethi (supra)***, *inter alia* held as follows;

**“(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ₹15,000/-, ₹40,000/- and ₹15,000/- respectively.”** **(Emphasis supplied)**

Consequently Rs.15,000/- (Rupees fifteen thousand) only, is granted towards funeral expenses, Rs.40,000/- (Rupees forty thousand) only, granted towards loss of consortium and a sum of Rs.15,000/- (Rupees fifteen thousand) only, granted towards loss of estate, instead of Rs.25,000/- (Rupees twenty five thousand) only, Rs.1,00,000/- (Rupees one lakh) only, and Rs.10,000/- (Rupees ten thousand) only, respectively, granted by the learned Tribunal under the aforestated heads.



**14.** With regard to the amount of Rs.5,000/- (Rupees five thousand) only, having been granted towards “Transport from hospital” is concerned, no documentary evidence has been furnished by the Respondents No. 1 to 3, to support this claim. Therefore, the Respondents No. 1 to 3 are not entitled to compensation towards “Transport from hospital.”

**15.** The question of compensation on account of loss of love and affection granted by the learned Tribunal, in view of the ratio *supra* is superfluous and is deducted from the compensation amount.

**16.** In conclusion, in light of the above discussions and findings, the compensation stands re-calculated and modified and is found to be just, as follows;

|                                                                                                                                                                                    |                               |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| Monthly Income of the deceased                                                                                                                                                     | Rs.20,000.00                  |
| Annual Income of the deceased (Rs.20,000x12)                                                                                                                                       | Rs.2,40,000.00                |
| <b>Add</b> 40% of Rs.2,40,000.00 as future prospects                                                                                                                               | <u>Rs.96,000.00</u>           |
| Yearly income of the deceased                                                                                                                                                      | Rs.3,36,000.00                |
| <b>Less</b> 1/3 of Rs.3,36,000.00<br>[deducted from the said amount in consideration of the instances which the victim would have incurred towards maintenance had he been alive.] | <u>Rs.1,12,000.00</u>         |
| Net yearly income                                                                                                                                                                  | Rs.2,24,000.00                |
| <b>Multiplier</b> of ‘16’ adopted in terms of <b>Sarla Verma’s case (supra)</b> (Rs.2,24,000 x 16)                                                                                 | Rs.35,84,000.00               |
| <b>Add</b> Funeral expenses                                                                                                                                                        | Rs.15,000.00                  |
| <b>Add</b> Loss of consortium                                                                                                                                                      | Rs.40,000.00                  |
| <b>Add</b> Loss of estate                                                                                                                                                          | <u>Rs.15,000.00</u>           |
| <b>Total</b>                                                                                                                                                                       | <b><u>Rs.36,54,000.00</u></b> |

**(Rupees thirty six lakhs and fifty four thousand) only.**





**17.** The Respondents No. 1, 2 and 3 shall be entitled to simple interest @ 9% per annum on the above amount, with effect from the date of filing of the Claim Petition before the learned Tribunal, until its full realisation.

**18.** The Appellant is directed to pay the awarded amount to the Respondents No. 1, 2 and 3 within one month from today, failing which, the Appellant shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition till realisation, duly deducting the amounts, if any, already paid by the Appellant to the Respondents No. 1, 2 and 3.

**19.** Appeal allowed to the extent above.

**20.** No order as to costs.

**21.** Copy of this Judgment be sent to the learned Tribunal for information.

**22.** Records of the learned Tribunal be remitted forthwith.

**( Meenakshi Madan Rai )**

**Judge**

26.04.2019

Approved for reporting: **Yes**  
Internet: **Yes**

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