



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

DATED: 26.04.2019

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI

MAC App. No. 04 of 2017

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

versus

Respondents : 1. Mrs. Kavita Rai,
Wife of Late Suddha Kumar Rai.

2. Miss Angel Rai,
D/o Late Suddha Kumar Rai.

3. Miss Rashi Rai,
D/o Late Suddha Kumar Rai.

[Residents of Begha Busty,
P.O. Dentam, 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**

Appearance:

Mr. Yadev Sharma, Advocate for the Appellant.

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri, Ms.
Malati Sharma and Ms. Sudha Sewa, Advocates for
Respondents No. 1, 2 and 3.

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



J U D G M E N T

Meenakshi Madan Rai, J

1. Quantification of the compensation of Rs.79,20,000/- (Rupees seventy nine lakhs and twenty thousand) only, payable by the Appellant to the Respondents No. 1 to 3, is being assailed in this Appeal. The learned Motor Accidents Claims Tribunal, East Sikkim at Gangtok (hereinafter 'learned Tribunal') in MACT Case No. 09 of 2016 (Mrs. Kavita Rai and Others vs. Mr. Moni Prasad Gurung and Others), granted the aforestated amount on account of the death of the husband of Respondent No. 1 and father of Respondents No. 2 and 3, in a motor vehicle accident, on 15.09.2015. The claim petition was filed by the Respondents No. 1 to 3 under Section 166 of the Motor Vehicles Act, 1988 (hereinafter "M.V. Act").

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, while 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. The case of the Respondents No. 1 to 3 before the learned Tribunal was that on 15.09.2015, the victim was travelling to Gangtok, East Sikkim from Dentam, West Sikkim in the vehicle bearing Registration No. SK-02J/1030 (Tata Sumo Gold) when it met with an accident at "Kapuray Bhir,"



Ranipool, East Sikkim and the deceased succumbed to his injuries at Central Referral Hospital, Tadong, East Sikkim. That, the cause of death was due to the rash and negligent act of the driver. That, compensation claimed was Rs.65,75,500/- (Rupees sixty five lakhs, seventy five thousand and five hundred) only, with interest at the rate of 10% per annum from the date of filing of the claim petition.

4. The Appellant denied and disputed the claims of the Respondents No. 1 to 3 before the learned Tribunal *inter alia* on grounds that the income of the deceased was not proved. It was also agitated that Exhibit 12 the "Panchayat Recommendation", Exhibit 13 the letter addressed to the Block Development Officer by Gram Panchayat, 20 Dentam GPU, West Sikkim and Exhibit 14 the income certificate issued by the Block Development Officer, Dentam, showing the income of the deceased as Rs.40,000/- (Rupees forty thousand) only, were issued after the death of the deceased. That, the documents were thus unreliable.

5. The points pressed before this Court was that the aforestated documents were procured after the death of the deceased with the motive of acquiring enhanced compensation. That, the income of the deceased has remained unestablished, hence the quantum of compensation granted by the learned Tribunal is exorbitant and the impugned Judgment and Award deserves to be set aside. In support of his contention, learned



Counsel placed reliance on ***Sutinder Pal Singh Arora and others vs. Ashok Kumar Jain and others***¹.

6. Learned Senior Counsel for the Respondents No. 1 to 3 for his part contended that the Block Development Officer who is a Government Officer has certified the income of the deceased as Rs.40,000/- (Rupees forty thousand) only, per month. That, he is the concerned authority who is empowered to issue the Income Certificate, hence there is no reason to doubt the document Exhibit 14. On this count, the ratio of this Court in ***The Branch Manager, Oriental Insurance Company Ltd. vs. Smt. Meena Bania and Others***² was relied on. That, the vehicle was insured with the Appellant Company and the Insurance Policy valid from 19.04.2015 to midnight of 18.04.2016.

7. 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.

8. It is reiterated that the only grievance in this Appeal is the quantum of compensation of Rs.79,20,000/- (Rupees seventy nine lakhs and twenty thousand) only, computed by the learned Tribunal, which according to the Appellant is exorbitant. We may usefully refer to Exhibit 14 in this context, which is a Certificate issued by the Block

¹ 2004 ACJ 782

² (2012) 1 TAC 444



Development Officer, Office of the Block Administrative Center, Dentam, duly certifying that the deceased, a *resident of Begha, Dentam passed away on 15/10/2015 in the vehicle accident at 32 mile near Singtam (sic). Further the existing income of victim was around Rupees 40,000 per month as per his personal properties and other sources of income. He was a Class IIA Government Contractor and resourceful person.*

9. In ***Meena Bania's*** case *supra*, this Court while considering the Income Certificate issued by the Block Development Officer had held as follows;

"17.1 Income certificate issued by the BDO on agricultural income is a valid and accepted document in the State of Sikkim and the position is the same as regards validity while being presented to other authorities also. The BDO or the Block Development Officer in a State is a revenue authority and is competent under the State Government Rules to issue such certificates, a fact which this Court takes judicial notice of.

In view of the above, the objection raised on this account is clearly sustainable (*sic*) and, therefore, stands rejected accordingly."

The finding of this Court in ***Meena Bania's*** case *supra* was also cited with approval in ***Smt. Anita Sunam and others vs. Shri Hom Nath Timshina and Another***³.

10. The evidence of Respondent No. 1 before the learned Tribunal indicates that Exhibit 12 is the "Panchayat Recommendation" regarding the profession and income of the deceased and Exhibit 13 is the letter issued by the Gram

³ 2013 SCC OnLine Sikk 67



Panchayat, 20-Dentam GPU, West Sikkim to the Block Development Officer, Dentam, which indicates that the income of the deceased was Rs.40,000/- (Rupees forty thousand) only, per month. Exhibit 14 already extracted hereinabove was issued by the Block Development Officer. The cross-examination of the Respondent No. 1 indicates that the fact of the earnings of her husband could not be demolished. Although it was argued that these documents were obtained after the death of the deceased, it may be remarked that prior to that there was indeed no necessity for such documents. It was only on account of the tragic mishap that the requirement arose. It is not the case of the Appellant that the Block Development Officer is not empowered to issue the Income Certificate of the deceased. He is indeed the concerned authority at the Block Administrative Level to issue such a Certificate. The ratiocinations of this Court referred to *supra* lend credence to this stand. In the absence of any document to the contrary, Exhibit 14 is accepted as the correct information pertaining to the income of the deceased.

11. Witness No. 2 for the Respondents, Keshab Kumar Rai, the brother of the deceased has also stated in cross-examination that *It is true that my brother used to earn Rs:40,000/- per month.* This evidence remained undecimated in cross-examination. That, the deceased was working as a Contractor by profession and used to do contract works with



the witness and that his monthly income was Rs.40,000/- (Rupees forty thousand) only, from the contract works.

12. Exhibit 15 is the Contractor Enlistment Form of the deceased which records that he was a Grade II 'A' Contractor under the Sikkim Public Works Department, Government of Sikkim, Roads and Bridges Department, Gangtok, Sikkim. The Respondent No. 1 in her evidence has also stated that the deceased had a financial partnership with his brother Keshab Kumar Rai. P.W.2 Keshab Kumar Rai for his part has stated that the deceased also used to do contract works with him in partnership. Exhibit 24 is the Contractor Enlistment Form of P.W.2 Keshab Kumar Rai, indicating that the witness was a Grade I 'A' Contractor while Exhibit 25 reveals that he was issued certain contract works by the Divisional Engineer, Rural Management and Development Department, Government of Sikkim to the tune of Rs.1952.45 lakhs. Exhibit 26 is a contract for another work estimated at Rs.22,33,01,419/- (Rupees twenty two crores, thirty three lakhs, one thousand, four hundred and nineteen) only. Consequently, in the absence of any other document to contradict the documents on record, I am of the considered opinion that the Appellant has not been able to establish a case contrary to that of the Respondents No. 1 to 3.

13. 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***⁴ as the age of the deceased was 34, as per Exhibit 9, the Secondary School Examination Certificate of the deceased which document is not assailed herein.

14. 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.***⁵, 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.

(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

⁴(2009) 6 SCC 121

⁵AIR 2017 SC 5157



established income means the income minus the tax component.”

(Emphasis supplied)

15. No arguments were forthcoming from the Respondents No. 1 to 3 as to the expected rise in the income of the deceased in future. Consequently his income is deemed to be a fixed monthly income of Rs.40,000/- (Rupees forty thousand) only. Hence, in view of the ratio *supra* of the Hon’ble Supreme Court, it is evident that where the deceased was on a fixed income 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.

16. 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/-, Rs.1,00,000/- and Rs.10,000/- only, respectively, granted by the learned Tribunal under the aforestated heads.

17. With regard to the amount of Rs.5,000/- (Rupees five thousand) only, having been granted towards "Transport from hospital," apart from the statement made by Respondent No. 1 at Paragraph 9 of her Evidence-on-Affidavit Exhibit 10 to the effect that *after the post mortem examination of the dead body of the deceased the dead body was handed over to Shri madan rai brother of deceased Suddha Kumar Rai* and filing of Exhibit 7 i.e. the Dead Body Handing and Taking Memo, no evidence has been furnished by the Respondents No. 1 to 3 to support the claim towards payment of transportation. Therefore, the Respondents No. 1 to 3 are not entitled to compensation towards "Transport from hospital."

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

19. 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.40,000.00
Annual Income of the deceased (Rs.40,000x12)	Rs.4,80,000.00
Add 40% of Rs.4,80,000.00 as future prospects	<u>Rs.1,92,000.00</u>
Yearly income of the deceased	Rs.6,72,000.00
Less 1/3 of Rs.6,72,000.00 [deducted from the said amount in consideration of the instances which the victim would have incurred towards maintenance had he been alive.]	<u>Rs.2,24,000.00</u>
Net yearly income	Rs.4,48,000.00
Multiplier of '16' adopted in terms of Sarla Verma's case (supra) (Rs.4,48,000 x 16)	Rs.71,68,000.00
Add Funeral expenses	Rs.15,000.00
Add Loss of consortium	Rs.40,000.00
Add Loss of estate	<u>Rs.15,000.00</u>
Total	<u>Rs.72,38,000.00</u>

(Rupees seventy two lakhs and thirty eight thousand) only.

20. 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.

21. 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.

22. Appeal allowed to the extent above.

23. No order as to costs.



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

25. 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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