



HIGH COURT OF SIKKIM  
Record of Proceedings

**MAC App. No. 01 of 2019**

BRANCH MANAGER,  
UNITED INDIA INSURANCE CO. LTD.

APPELLANT

VERSUS

BISHNU MAYA MUKHIA & ORS.

RESPONDENTS

**Date: 28.02.2020**

CORAM:

**THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE**

For Appellant

Mr. Pema Ongchu Bhutia, Advocate.

For Respondents  
R-1 to R-4

Ms. Tashi Doma Bhutia, Advocate.  
Ms. Pritima Sunam, Advocate.

R-5

None.

R-6

None.

**J U D G M E N T (ORAL)**

**1.** The instant Appeal assails the Judgment of the learned Motor Accident Claims Tribunal, West Sikkim at Gyalshing in MACT Case No.06 of 2018 (*Smt. Bishnu Maya Mukhia and Others v. Shri Bikram Tamang and Others*), dated 30.10.2018, on two counts viz. the income of the deceased which has been calculated by the learned Tribunal as Rs.320/- (Rupees three hundred and twenty) only, per day, instead of Rs.242/- (Rupees two hundred and forty two) only, per day, as the amount that the deceased was allegedly earning at the time of the accident. Inclusion of Rs.2,00,000/- (Rupees two lakhs) only, in the compensation granted on account of "loss of love and affection" is also impugned.

**2.** The facts in the case are not in dispute and therefore are not being reiterated herein, suffice it to state that the vehicle in which the deceased, the husband of the Respondent No.1 and father of Respondents No.2 to 4, was travelling met with an accident on

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20.04.2016 at "Tafel Bhir," Rinchenpong, West Sikkim wherein he succumbed to his injuries at the place of accident. The learned Tribunal after considering the entire evidence on record granted compensation of Rs.15,23,800/- (Rupees fifteen lakhs, twenty three thousand and eight hundred) only, to the Respondents No.1 to 4.

**3.** Assailing the quantum calculated on the loss of income of the deceased learned Counsel for the Appellant submitted that the income of the deceased ought to have been computed by the learned Tribunal as Rs.242/- (Rupees two hundred and forty two) only, per day, instead of Rs.320/- (Rupees three hundred and twenty) only, per day. That, prior to the accident which took place on 20.04.2016, the Government rates for semi-skilled workers was Rs.242/- (Rupees two hundred and forty two) only, per day. Vide Notification bearing No.11/DL dated 15.09.2017 issued by the Labour Department, Government of Sikkim, Gangtok the daily wages for semi-skilled workers was raised to Rs.320/- (Rupees three hundred and twenty) only, per day. The accident having occurred on 20.04.2016, the daily wage of the deceased ought not to have been calculated on the revised rates reflected *supra*.

**4.** Learned Counsel for the Respondents No.1 to 4 did not seriously contest the contention of learned Counsel for the Appellant pertaining to loss of income of the deceased or inclusion of loss of love and affection in the quantum of the Award. However, it is submitted that no computation towards Future Prospects on grounds that the deceased was self-employed has been taken into consideration by the learned Tribunal as ruled in the decision of **National Insurance Company Limited vs. Pranay Sethi & Ors.**<sup>1</sup>. Learned Counsel also submits that loss of Parental consortium in terms of **Magma General Insurance Co. Ltd. vs. Nanu Ram and Ors.**<sup>2</sup> has not been calculated by the learned Tribunal.

**5.** In rebuttal, learned Counsel for the Appellant urged that the issue of Future Prospects and Parental consortium have not been raised

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<sup>1</sup> AIR 2017 SC 5157

<sup>2</sup> MANU/SC/1012/2018



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by a Cross Objection by the Respondents No.1 to 4 and cannot be agitated before this Court without written averments.

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

**7.** The income of the deceased ought to have been calculated as Rs.242/- (Rupees two hundred and forty two) only, per day, instead of Rs.320/- (Rupees three hundred and twenty) only, in terms of Notification bearing No.11/DL dated 15.09.2017 of the Department of Labour, Government of Sikkim considering that the accident took place on 20.04.2016 and the said Notification came to be issued subsequently and thus cannot be applied retrospectively.

**8.** While addressing the issue flagged by learned Counsel for the Respondents No.1 to 4 that Future Prospects and Parental consortium was not granted by the learned Tribunal, although it has vehemently been objected to by learned Counsel for the Appellant, in ***Raj Rani and Ors. vs. Oriental Insurance Co. Ltd. and Ors.***<sup>3</sup>, it was held as follows;

“**13.** ..... It is not necessary in a proceeding under the Motor Vehicles Act to go by any rules of pleadings or evidence. Section 168 of the Act speaks about grant of just compensation. The Court’s duty being to award just compensation, it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not.”

This observation soundly quells the aforementioned argument raised by learned Counsel for the Appellant.

**9.** So far as the question of Future Prospects is concerned in ***Pranay Sethi (supra)*** the Hon’ble Supreme Court held as under;

“**61.** ...

**(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

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<sup>3</sup> (2009) 13 SCC 654



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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 established income means the income minus the tax component."

(Emphasis supplied)

On the touchstone of the ratio *supra* it is evident that an addition of 40% of the established income of the deceased, aged about 35 years and self-employed should be added towards future prospects.

**10.** On the question of "consortium" the Hon'ble Supreme Court in *Magma General Insurance Co. Ltd. (supra)* while allowing consortium not only to the spouse but also to the children and parents of the deceased held as follows;

"8.7 A Constitution Bench of this Court in Pranay Sethi (*supra*) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

**In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.**

**The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.**

**Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation."**

**Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."**

.....  
**Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.**



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A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.

**The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in *Pranay Sethi* (supra).**

In the present case, we deem it appropriate to award the father and the sister of the deceased, an amount of Rs.40,000 each for loss of Filial Consortium."  
....."

(Emphasis supplied)

In ***Rajesh and Ors. v. Rajbir Singh and Ors.***<sup>4</sup> the Hon'ble Supreme Court held as follows;

"20. ... In legal parlance, "consortium" is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. ...."

Hence, on the anvil of the aforestated ratio in ***Magma General Insurance Co. Ltd.*** (supra) and ***Rajesh and Ors.*** (supra) the Respondent No.1 is entitled to Spousal consortium and Respondents No.2 to 4 are entitled

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<sup>4</sup> (2013) 9 SCC 54



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to Parental compensation to the sum as reflected in the ratio of **Magma General Insurance Co. Ltd.** (*supra*).

**11.** The deceased was approximately 35 years of age at the time of the accident therefore the Multiplier of “16” was rightly adopted by the learned trial Court in consonance with the decision in **Sarla Verma (Smt.) and Others vs. Delhi Transport Corporation and Another**<sup>5</sup>. In my considered opinion, there is no requirement for computing loss of love and affection in the Award. The Litigation Costs awarded by the learned Tribunal are not contested by the Appellant and is accordingly allowed.

**12.** Consequently, in light of the aforesaid facts and circumstances, the Judgment of the learned trial Court stands modified to the extent below;

Annual Income of the deceased	Rs.87,120.00
(Rs.242/-x30x12)	
<b>Add</b> 40% of Rs.87,120/- as future prospects	<u>Rs.34,848.00</u>
Yearly income of the deceased	Rs.1,21,968.00
<b>Less</b> 1/3 <sup>rd</sup> of Rs.1,21,968.00	<u>Rs.40,656.00</u>
[deducted from the said amount in consideration of the instances which the victim would have incurred towards maintenance had he been alive.]	
Net yearly income	Rs.81,312.00
<b>Multiplier</b> of ‘16’ adopted in terms of <b>Sarla Verma’s case</b> (Rs.81,312 x 16)	Rs.13,00,992.00
<b>Add</b> Loss of <b>Spousal consortium</b> [payable to Respondent No.1]	Rs.40,000.00
<b>Add</b> Loss of <b>Parental consortium</b> [Rs.40,000/- each, payable to Respondents No. 2 to 4, respectively]	Rs.1,20,000.00
<b>Add</b> Funeral expenses	Rs.15,000.00
<b>Add</b> Loss of estate	Rs.15,000.00
<b>Add</b> Litigation costs	Rs.25,000.00
<b>Total</b>	<b><u>Rs.15,15,992.00</u></b>
<b>(Rupees fifteen lakhs, fifteen thousand, nine hundred and ninety two) only.</b>	

<sup>5</sup>(2009) 6 SCC 121



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**13.** The Respondents No.1 to 4 shall be entitled to simple interest @ 9% per annum on the above amount instead of 10% granted by the learned Tribunal, with effect from the date of filing of the Claim Petition before the learned Tribunal till full realisation.

**14.** The awarded amount shall be paid to the Respondents No.1 to 4 within one month from today by the Appellant, failing which, the Appellant shall pay simple interest @ 12% from the date of filing of the Claim Petition till realisation, duly deducting the amounts, if any, already paid by it to the Respondents No.1 to 4.

**15.** The awarded amount of compensation shall be divided amongst the Claimant-Respondent No.1 being the spouse of the deceased and Claimants-Respondents No.2 to 4 being his minor children.

(i) From the amount awarded, Claimant-Respondent No.1, spouse of the deceased is entitled to 40%, along with interest as specified above.

(ii) 60% of the total amount awarded shall be divided equally amongst the Claimants-Respondents No.2 to 4, of which 50% of the share of each child shall be kept in individual Fixed Deposit in a Nationalised Bank, until the child attains the age of majority. The remaining 50% of each of the minor's share shall be expended on their education.

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

**17.** MAC App. No.01 of 2019 stands disposed of accordingly.

**18.** No order as to costs.

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

**Judge**  
28.02.2020