Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MACApp. No. 5 of 2018 with
CRAPPL. No. 1 of 2019

Date of Decision: 27.08.2021

Smti. Ronilla Ch. Marak & Anr. Vs. Mr. Aftar Ali & 2 Ors.
Reliance General Insurance Co. Ltd. Vs. Smti. Ronilla Ch. Marak & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Kar, Adv.
For the Respondent(s) : Mr. S. Jindal, Adv. for R 3.
None for R 1 & 2.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. Matter taken up today via video conferencing.

2. The learned Member, Motor Accident Claims Tribunal, West Garo Hills District, Tura after adjudication on an application claiming for compensation on account of a motor vehicle accident in MAC case No. 59 of 2010 has finally disposed of the same vide Judgment and Order dated 09.04.2018 by, inter alia awarding a sum of ₹ 18,22,128/- (Rupees eighteen lakh twenty two thousand one hundred and twenty eight) only to the Claimant therein.

3. Before proceeding further, it would be elucidative to advert to the events which culminated in the said award being given to the Claimant.

4. A motor vehicle accident occurred on 19.02.2010 at about 11.00 PM or so near Nehru Park, Tura, on the NEC road to Phulbari in which Lazarush Ch.

Marak was dashed by a vehicle being Mini Truck bearing registration number ML-09-5197 causing grievous hurt to him for which he was immediately taken to Tura Civil Hospital for treatment, however at the hospital, he succumbed to his injuries.

5. The parent of the deceased then preferred an accident claim application before the Motor Accident Claims Tribunal (Tribunal in short), Tura claiming compensation by arraying the owner and driver of the said vehicle No ML-09-5197 as well as the Insurer of the said vehicle, Reliance General Insurance Co. Ltd as opposite parties. The Owner and Driver failed to appear to contest the case resulting in the matter proceeding exparte against them. The Reliance General Insurance Co. Ltd filed the written statement and contested the claim.

6. The MACT framed as many as six issues and the matter proceeded for evidence and argument of the parties contesting. After hearing the parties, the learned Member, MACT passed the impugned award(supra).

7. Not satisfied with the said award, the appellants, Smti Ronilla Ch. Marak and Shri Berosing B. Marak (parents of the deceased) preferred an appeal before this Court registered as MAC Appeal No. 5 of 2018. The Opposite Party/Reliance General Insurance Co. Ltd, also being dissatisfied with the said award has filed a cross-appeal registered as Cross Appeal No. 1 of 2019.

8. Office note dated 19.07.2019 will show that the Respondent No. 3 Md. Aftar Ali, Driver of the Mini Truck No. ML-09-5197 (corresponding Respondent No. 1 in MACApp. No. 5 of 2018) has since expired and the notice issued upon Mr. Wahedul Enamul Wahab (corresponding Respondent No. 2 in MACApp. No. 5 of 2018) has returned with a note that the same has been refused to be accepted. Therefore, only the main contestants remain in the fray.

9. Since both matters relate to the same impugned judgment, this Court deems it convenient and expedient to take up both matters together and to pass a common judgment.

10. What is seen from the grounds laid down in the respective appeals, it is understood that the main issue raised by the parties is with regard to the determination of the quantum of award, the appellant in MACApp. No. 5 of 2018 contending that the award is less than what was actually entitled to by the appellant/claimant and the cross-appellant/Insurance Co. contending that the award was wrongly calculated and is on the higher side which is not due by the appellant/claimant at all.

11. Heard Mr. R. Kar, learned counsel for the appellant who has submitted that the learned Tribunal has gravely erred in passing the impugned Order dated 09.04.2018 particularly while assessing the income of the deceased at ₹ 10,000/- per month without taking into consideration the fact that the deceased during his lifetime was a Class II Contractor which fact have been proved in evidence by the Claimant and as such, the claim of the Claimant/appellant for an amount of ₹ 25,00,000/- (Rupees twenty five lakhs) together with interest of 9% is just compensation.

12. On the grounds taken up by the cross-appellant that the monthly income of the deceased should be calculated at ₹ 5000/- as the deceased was not having a fixed monthly income and that the learned Tribunal has erred in adding ₹ 4000/- towards future prospects, the learned counsel for the appellant has submitted that this argument is refuted as the evidence of the claimant in bringing on record the various work orders of the deceased and the succession certificate No. 41/2010 dated 01.07.2010 issued by the District Council Court in respect of the debts and securities of the deceased was taken into account by the learned Tribunal, taking the notional amount at ₹ 10,000/- per month which is also on the lesser side.

13. In support of his case, the learned counsel has cited the following cases:

i) ***Sarla Verma (Smt) & Ors v. Delhi Transport Corporation & Anr: (2009) 6 SCC 136, paragraphs 30, 31 & 32;***

ii) ***National Insurance Company Limited v. Pranay Sethi & Ors: (2017) 16 SCC 696, paragraph 17;***

iii) ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. & Ors: (1995) 1 SCC 551.***

iv) ***New India Assurance Co. Ltd. v. Urmila Shukla & Ors: Civil Appeal No. 4634 of 2021 (Supreme Court).***

14. Mr. S. Jindal, learned counsel for the cross-appellant has also assailed the impugned judgment and order(supra) but contrary to the stand taken by the appellants who has contended that the award was on the lower side, the cross-appellant/Insurance Company has contended that the said award was defective and does not stand the scrutiny of law and that the appeal filed by the Respondents No. 1 & 2/Claimants lack legal and factual merit and is therefore required to be dismissed.

15. Mr. Jindal went on to submit that as regard the income of the deceased, the learned Tribunal has come to a categorical finding that the claimants have not been able to prove the income of the deceased, but without any basis or reason has assumed that the income is ₹ 10,000/- per month, taking it as the notional income when the thumb rule that has to be adopted is that the notional income has to be calculated based on the minimum wages in force as on the date of the accident and as such, the learned Tribunal should have been guided by the rate of minimum wages as notified by the Government of Meghalaya which should have been ₹ 200/- per day and which should not exceed ₹ 5000/- per month. The case of ***Shanti Devi v. Bhagawan Das*** passed by the Hon'ble Delhi High Court on 06.04.2009 was cited in this regard, particularly paragraphs 8 & 9.

16. Another contention raised by Mr. Jindal is that the learned Tribunal while awarding 40% of the income of the deceased towards future prospects, has wrongly applied the ratio of the judgment rendered in the ***Pranay Sethi***

case when in the said judgment, the Apex Court has held that 40% of the established income of the deceased should be added towards future prospects, whereas in the case of the claimant/appellant, the established or proved income of the deceased has not been definitely ascertained, therefore the addition of ₹ 4000/- as future prospects is incorrect and wrong. Paragraphs 57 & 61(iv) of the ***Pranay Sethi case*** (supra) was relied upon by the learned counsel in this regard.

17. Stress was also laid on paragraph 9 in the case of ***Lakshmi Naik v. Mohandas*** in a judgment dated 14.11.2017 passed by the Hon'ble Karnataka High Court was also relied upon by Mr. Jindal, learned counsel to support his contention on this issue. The same reads as under:

> ***"9.*** *It is true, nothing can be awarded towards 'future prospects' in the absence of evidence to show, deceased was working against any permanent employment and having failed to establish his permanent income, as per the latest judgment of the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Pranay Sethi and others-SLP(Civil) No. 25590/2014."*

18. Mr. Jindal has further submitted that as far as the requirement for proving actual or established income is concerned, even before the ***Pranay Sethi*** case in the case of ***Sarla Verma*** (supra), the Hon'ble Supreme Court has laid down the law that 50% of the actual salary of the deceased at the time of death, if he had held a permanent job and was below 40 years, was to be added as future prospects. Paragraph 24 of the ***Sarla Verma*** case was cited in this instance.

19. As to the deduction of one-third of the income of the deceased towards personal and living expenses, Mr. Jindal has submitted that this is not correct and the deduction should be 50% as was held by the Hon'ble Supreme Court in the case of ***Syed Basheer Ahamed & Ors v. Mohammed Jameel & Anr: (2009) 2 SCC 225*** at paragraph 28 of the same, where it was stated that:

> ***"28****. ....In the absence of any evidence to the contrary, the practice is to deduct towards personal and living expenses of the*

deceased, one-third of the income in case he was married and one-half (50%) if he was a bachelor……..”

20. That the learned Tribunal has directed that the said compensation amount shall carry interest at the rate of 9% per annum from the date of application till date of realisation was also contested by the learned counsel for the cross-appellant who has submitted that in the case of ***Kaushnuma Begum (Smt) & Ors v. New India Assurance Co. Ltd. & Ors: (2001) 2 SCC 9***, at paragraph 24, the Hon’ble Supreme Court has devised a mechanism in respect of rate of interest that is to be awarded by the Tribunals, which rate is to be linked to the rate of interest offered by nationalised banks on fixed deposit for one year. The said paragraph reads as under:

> ***“24.*** *……Earlier, 12% was found to be the reasonable rate of simple interest. With a change in economy and the policy of Reserve Bank of India the interest rate has been lowered. The nationalised banks are now granting interest at the rate of 9% on fixed deposits for one year. We, therefore, direct that the compensation amount fixed hereinbefore shall bear interest at the rate of 9% per annum from the date of the claim made by the appellants……”*

21. In light of the present economic situation, Mr Jindal has referred to the case of ***Chandrakanta Tiwari v. New India Assurance Company Limited & Anr: (2020) 7 SCC 386***, wherein at paragraph 8, the Hon’ble Supreme Court has upheld the award of 6% interest. This according to Mr. Jindal is what the cross-appellant would concede in this case. However, Mr. Jindal has also submitted that to direct the cross-appellant to pay the said interest from the date of filing of the claim application till payment of the same amounts to penalising the cross-appellant for no fault of theirs as delay in disposal of the claim application is not within their control.

22. Having regard to the submissions and contention made by the learned counsels for the rival parties, this Court is of the considered opinion that the answer to the contention put forth by the learned counsel for the Reliance General Insurance Co. Ltd on the three issues raised would be fitting for determination of this lis.

23. The first issue is with regard to the income (actual or notional) of the deceased.

24. From the impugned judgment and order, it is seen that the Tribunal has come to a finding that there is no cogent or cohesive evidence as regard the actual income of the deceased (victim) nor the income is consistent, however taking into consideration the admitted fact that the deceased during his life time was a Class II Contractor, the Tribunal basing on guesswork and hypothetical consideration relying on the principle held in the case of ***R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. & Ors: (1995) 1 SC 551*** has come to the conclusion that the notional income of the deceased is ₹ 10,000/- per month.

25. The appellants differed with this finding and has submitted that the fact that the deceased was a second class Contractor and the evidence on record being adduced in this regard has gone un-rebutted was not taken into account by the Tribunal while assessing the monthly income of the deceased which according to the appellant should have been ₹25,000/- per month.

26. The cross-appellant while also differing with the findings of the Tribunal as regard the income of the deceased has submitted that the same was assessed without any basis, reason or logic in view of the fact that the Tribunal has come to a categorical finding that the claimants/appellants have not been able to prove the income of the deceased.

27. It is further submitted that the thumb rule that is usually adopted by Courts as regard notional income is that the same has to be calculated based on the minimum wages in force as on the date of accident. The case of ***Shanti Devi*** (supra) was relied upon by the cross-appellant in this regard.

28. Further submitting that the Tribunal should have been guided by the minimum wages notified by the Government of Meghalaya vide Notification dated 11.06.2014 which has stipulated that for a highly skilled worker, the

daily minimum wage would be ₹ 200/- and in the case of the deceased herein, on calculation, his monthly income should not exceed ₹ 5000/- per month.

29. On consideration of the rival contention, it is to be noted that there is no dispute to the fact that the deceased was working as Class II Contractor during his life time. Though there is no fixed monthly income which can be calculated, however from the documents produced by the claimants/appellants before the Tribunal as regard the source of income of the deceased, which documents include work orders etc., the Tribunal at least could have made an attempt to come to some rough calculation to determine the average monthly income of the deceased.

A look at Ext-19 produced by the claimants in their evidence would show that it is the statement of the work done by the deceased between the year 1997 to 2007, that is, for ten years, the total amount of the work done comes to ₹20,35,612/-. If this amount is taken, then the average value of the work done by the deceased annually would be about ₹ 2,03,561/-. The monthly average would be ₹16,963/-. However, it has to be borne in mind that this would be the gross amount and after deduction of cost for labour, materials etc., the estimated monthly net profit would be 35%, which on calculation would be (35% of ₹ 16,963/-) ₹ 5937/-.

The above calculation is arrived at by applying the principle as laid down in the case of ***R.D. Hattangadi*** (supra) wherein at paragraph 12, the Hon'ble Supreme Court has held that:

> ***"12.*** *In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."*

30. In view of the above, this Court is of the considered opinion that the monthly income of the deceased will be taken as ₹ 6000/- (rounded off) per month.

31. The argument put forth by the learned counsel for the cross-appellant in this regard would then pale in significance in the light of the finding of this Court above.

32. The next issue of contention is with regard to the award of future prospects of the deceased victim, wherein the Tribunal relying in the case of ***Pranay Sethi*** (supra) particularly paragraph 61 of the same has deemed it proper to award 40% of the monthly income as future prospects.

33. The learned counsel for the cross-appellant has contended that the Tribunal has failed to notice that in the said ***Pranay Sethi's*** judgment at paragraph 61 (iv) the Hon'ble Supreme Court had used the words *"established income",* which is very different from *assumed/notional* income and as such, without clearly establishing the actual income of the deceased victim, no award should have been given under the head of future prospects.

34. In answer to the contention of the cross-appellant on this point, it is seen that the Hon'ble Supreme Court in the case of ***Kirti & Anr. Etc v. Oriental Insurance Company Ltd: AIR 2021 SC 353*** at paragraphs 13 and 14 of the same, on addition of future prospects has held as follows:

> ***"13.*** *Third and most importantly, it is unfair on part of the respondent-insurer to contest grant of future prospects considering their submission before the High Court that such compensation ought not to be paid pending outcome of the Pranay Sethi (supra) reference. Nevertheless, the law on this point is no longer res integra, and stands crystalised, as is clear from the following extract of the afore-cited Constitutional Bench judgment: National Insurance Co Ltd v. Pranay Sethi, (2017) 16 SCC 680: (AIR 2017 SC 5157)*
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> > *"59.4. 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]

> ***14.*** *Given how both deceased were below 40 years and how they have not been established to be permanent employees, future prospects to the tune of 40% must be paid. The argument that no such future prospects ought to be allowed for those with notional income, is both incorrect in law, Sunita Tokas v. New India Insurance Co. Ltd., 2019 SCC OnLine SC 1045:(AIR 2019 SC 3921), and without merit considering the constant inflation-induced increase in wages. It would be sufficient to quote the observations of this Court in Hem Raj v. Oriental Insurance Co. Ltd, (2018) 15 SCC 654: (AIROnline 2017 SC 46), as it puts at rest any argument concerning non-payment of future prospects to the deceased in the present case:*
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> > *"7. We are of the view that there cannot be distinction where there is positive evidence of income and where minimum, income is determined on guesswork in the facts and circumstances of a case. Both the situations stand at the same footing. Accordingly, in the present case, addition of 40% to the income assessed by the Tribunal is required to be made.."*
>
> [Emphasis supplied]

35. In the opinion of this Court, the judgment in the case of ***Kirti & Anr*** (supra) on the issue of future prospects is the correct and latest proposition of law and as such, this Court is bound to follow the same. Applied in the context of this instant case, the award of the Tribunal on future prospects at 40% of the income of the deceased cannot be faulted.

36. Again, on the issue of deduction of personal expenses, the Tribunal has come to a finding that the deceased though being a bachelor at the time of his death, however his dependents included his mother and aged father and a large number of younger non-earning sisters and brothers, six of whom are minors, therefore taking recourse to what was held by the Hon'ble Supreme Court at paragraph 15 of the ***Sarla Verma judgment*** (supra) has thought it fit to restrict the personal and living expenses of the deceased to one-third and contribution to the family as two-thirds. This finding has found the support of the appellants who has reiterated the same in their argument.

37. However, the learned counsel for the cross-appellant relying on the judgment of the Hon'ble Supreme Court in the case of ***Syed Basheer Ahamed***

& Ors (supra) has maintained that the deceased being a bachelor, therefore deduction for personal expenses should be 50%.

38. In this regard, it is to be noted that the judgment in ***Syed Basheer Ahamed*** case was decided on 6th January 2009, whereas the ***Sarla Verma*** case decided by a co-ordinate bench was dated 15th April 2009 and as such, the ***Sarla Verma*** decision has come at a later point of time and the ratio as far as the deduction for personal expenses is concerned, would reflect a development of the legal proposition to include the notion that even for a deceased bachelor who has a number of dependents, the deduction towards personal expenses would be one-third. This Court is of the considered opinion that the ratio of the ***Sarla Verma*** case would hold the field at the relevant point of time. Therefore, the findings of the Tribunal on this issue cannot be disturbed.

39. The Tribunal after computing the compensation and on award of the same, the said compensation amount was also to carry an interest @ 9% per annum from the date of application till date of realisation. To this, the cross-appellant has contended that the award of 9% interest is very high taking into account the deteriorating economic situation of the country, coupled with the downward spiral of the rate of interest being offered by banks. It is also submitted that the Hon'ble Supreme Court is aware of this factor in the case of ***Kaushnuna Begum (Smt) & Ors*** (supra).

40. Following the trend as indicated in the ***Kaushnuna Begum*** case, the learned counsel for the cross-appellant has submitted that the Hon'ble Supreme Court in the case of ***Chandrakanta Tiwari*** (supra) at paragraph 8 has upheld the award of interest @ 6%. In this instance, the cross-appellant has conceded to an award of interest @ 6%.

41. The appellants have countered the argument advanced by the learned counsel for the cross-appellant as regard the rate of interest, by submitting that the prevalent rate of interest at the relevant of time was 9% and as such, the Tribunal was not wrong in awarding interest @ 9%.

42. This Court, on consideration of the submission made including the authorities cited above and keeping in mind the current economic situation in the country, is also inclined to agree with the cross-appellant and hereby held that the rate of interest shall be confined @ 6% per annum.

43. Apart from the above, having regard to the impugned judgment and order, it is seen that there is no controversy with regard to the multiplier which was fixed at 16, the amount of ₹ 15,000/- awarded under the head of 'loss of estate' and ₹ 15,000/- under the head of funeral expenses, which will remain untouched in this appeal. The other directions of the Tribunal will also remain the same to be complied with by the parties.

44. In view of the above, paragraph 27 of the impugned judgment is required to be altered and modified to the following extent:

"27. <u>CALCULATION:</u>

(i) Monthly income of the deceased = ₹ 6000 (Rupees six thousand) only.

(ii) Future prospects : 40% of ₹ 6000 = ₹ 2400.

Total = ₹ 8400 (Rupees eight thousand four hundred) only.

(iii) 1/3 deductions towards personal and living expenses:
(As per Sarla Verma judgment (supra)
1/3 x ₹ 8400 = ₹ 2800.
₹ 8400 - ₹ 2800 = ₹ 5600 (multiplicand).

(iv) Multiplier of 16 is applicable as per Sarla Verma judgment (supra)
₹ 5600 x 12 x 16 = ₹ 10,75,200 (Rupees ten lakhs seventy-five thousand two hundred) only.

(v) Loss of estate = ₹ 15,000.

(vi) Funeral expenses = ₹ 15,000.

Total = ₹ 11,05,200 (Rupees eleven lakhs five thousand two hundred) only."

45. This appeal and cross-appeal respectively having been decided as above, the Reliance General Insurance Co. Ltd is hereby directed to deposit the total award minus the interim relief of ₹ 50,000/- already drawn by the claimants/appellants before the Tribunal within a period of 45(forty five) days from the date of this judgment and order for due compliance. It may also be mentioned that the appellants are hereby allowed to withdraw the statutory amount of ₹ 25,000/- deposited by the cross-appellant to be adjusted against the final award.

46. With the above, MACApp. No. 5 of 2018 as well as CRAPPL No. 1 of 2019 are hereby disposed of. No cost.

47. Registry is directed to send back the case record.

Judge

Meghalaya
27.08.2021
"D. Nary, PS"