



THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 17th APRIL, 2023

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

MAC App. No.02 of 2022

Appellants : Aita Maya Gurung and Others

versus

Respondents : Ratna Kumar Pradhan and Others

Appeal under Section 173 of the Motor Vehicles Act, 1988

Appearance

Ms. Pritima Sunam, Ms. Tashi Doma Sherpa and Ms. Pema Dechen Bhutia, Advocates for the Appellants.

Mr. A. K. Upadhyaya, Senior Advocate with Ms. Rachhitta Rai, Advocate for Respondent No.1.

Mr. Sunil Baraily, Advocate (Legal Aid Counsel) for Respondent No.2.

None appears for Respondent No.3.

J U D G M E N T (ORAL)

Meenakshi Madan Rai, J.

1. The Motor Accidents Claims Tribunal, West Sikkim, at Gyalshing (for short, "Learned Claims Tribunal"), settled three issues for determination in MACT Case No.06 of 2019 (*Smt. Aita Maya Gurung and Others vs. Shri Ratna Kumar Pradhan and Others*), in a Claim Petition filed by the Appellants, seeking compensation of Rs.29,34,800/- (Rupees twenty nine lakhs, thirty four thousand and eighty) only, on account of the death of Ratna Man Gurung, husband of Appellants No.1 and 2 and father of Appellants No.3 and 4;

The issues settled for determination were;

(i) *Whether the deceased was earning a monthly salary of Rs.23,975/- at the time of the accident and whether the claimants are entitled to the compensation as claimed in the petition (Onus on claimants).*



- (ii) *Whether the documents of the vehicle as well as the driver were valid and effective at the time of accident (Onus on claimants and opposite parties).*
- (iii) *Whether the claimants are entitled to relief(s).*

2. While deciding issue no.1, the Learned Claims Tribunal concluded that the deceased was earning Rs.23,975/- (Rupees twenty three thousand, nine hundred and seventy five) only, at the time of accident. However, with regard to the second part of the issue, as to whether the Claimants are entitled to the compensation claimed, it was observed that the matter being similar to issue no.3, would be dealt along with that issue.

(i) Issue no.2 was decided in favour of the Claimants. While deciding issue no.3, the Learned Claims Tribunal opined that the claim petition was filed belatedly on 30-08-2019 under Section 166 of the Motor Vehicles Act, 1988 (hereinafter, "M. V. Act, 1988"), read with Rule 247 of the Sikkim Motor Vehicles Rules, 1991, when the accident had occurred on 17-09-2010, with no explanation furnished by the Claimants for the delay. It was further observed that the Motor Vehicles (Amendment) Act, 2019, came into force with effect from 09-08-2019, vide which sub-section (3) was inserted in Section 166 of the M. V. Act, 1988, which lays down that no application for compensation shall be entertained, unless it is made within six months of the occurrence of the accident. That, the claim petition was filed "6 years 9 months and 7 days" after the accident and the petition being thus barred by limitation, was consequently dismissed and the Claimants denied compensation.



3. Learned Counsel for the Appellants-Claimants assails only this finding of the Learned Claims Tribunal, on grounds that the accident took place on 17-09-2010, whereas the amendment was inserted on 09-08-2019 and vide the Notification dated 25-02-2022 of the Ministry of Road Transport and Highways, the 1st day of April, 2022, was the appointed date by the Central Government on which the amendment, viz., Section 166(3) of the M. V. Act, 1988, would come into force. That, as the amendment was not enforced on the date of accident or for that matter even on the date of Judgment, the findings of the Learned Claims Tribunal on the issue of limitation is erroneous and hence, be set aside.

4. Learned Counsel for the Respondents No.1 and 2 had no objection to the arguments advanced and conceded that the amendment to Section 166 of the M. V. Act, 1988, by insertion of sub-section (3) came into force only on 01-04-2022.

5. Respondent No.3 herein, who was the Opposite Party No.3 (Insurance Company), before the Learned Claims Tribunal was proceeded *ex parte* vide Order dated 25-03-2022 on their non-appearance before the Learned Claims Tribunal. The said Order thus obtained finality as it was not assailed at any point of time. The Respondent No.3 chose to remain absent before this Court also, despite due service of notice and was proceeded *ex parte*.

6. The submissions of Learned Counsel for the parties have been given due consideration. All documents on record, the evidence and the impugned judgment have been carefully perused.

7. The only question for consideration before this Court is; Whether the Learned Claims Tribunal was correct in concluding that the claim petition was barred by limitation in view of the



amendment to Section 166 of the M. V. Act, 1988, by insertion of sub-Section (3). This provision is extracted hereinbelow for easy reference;

“166. Application for compensation.—(1)

(2)

(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.

(4)

(5)”

8. The amendment was inserted by an Act 32 of 2019, Section 53(iii) [w.e.f. 1-9-2019, vide S.O. 3147(E), dated 30th August, 2019]. Earlier, sub-section (3) to Section 166 of the M. V. Act, 1988, was omitted by Act 53 of 1994, Section 53 (w.e.f. 14-11-1994).

9. Notification dated 25-02-2022 of the Ministry of Road Transport and Highways, provides as follows;

“

NOTIFICATION

New Delhi, the 25th February, 2022

S.O. 895(E).—In exercise of the powers conferred by sub-section (2) of section 1 of the Motor Vehicles (Amendment) Act, 2019 (32 of 2019), the Central Government hereby appoints the 1st day of April, 2022 as the date on which the following provisions of the said Act shall come into force, namely:—

Sl. No.	Sections
1.	Section 50;
2.	Section 51;
3.	Section 52;
4.	Section 53;
5.	Section 54;
6.	Section 55;
7.	Section 56;
8.	Section 57; and
9.	Section 93;

.....” [emphasis supplied]

Hence, the amendment in Section 166 by insertion of sub-section (3) was to come into effect only from 01-04-2022, which



was the appointed day, in terms of the Notification of the relevant Ministry (*supra*), dated 25-02-2022.

10. The Chhattisgarh High Court in **Mukesh Patle vs. Shailendra Verma and Others**¹ held on 20-01-2021 that although the legislature had proposed the amendment in Section 166 of the M. V. Act, 1988, however Section 53 was yet to be enforced.

11. It may relevantly be stated here that in **Assistant Excise Commissioner, Kottayam and Others vs. Esthappan Cherian and Another**² the Supreme Court was considering the amendment of Rule 13 of the Kerala Abkari Shops Departmental Management Rules, 1972. It was held therein that an amendment is prospective. The relevant Paragraph is extracted hereinbelow;

"16. There is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. In CIT v. Vatika Township (P) Ltd. [CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1] this Court, speaking through a Constitution Bench, observed as follows : (SCC pp. 21-22, paras 28-29)

"28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips v. Eyre* [*Phillips v. Eyre*, (1870) LR 6 QB 1], a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

¹ 2021 SCC OnLine Chh 466

² (2021) 10 SCC 210



29. The obvious basis of the principle against retrospectivity is the principle of “fairness”, which must be the basis of every legal rule as was observed in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.* [*L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd.*, (1994) 1 AC 486 : (1994) 2 WLR 39 (HL)] **Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation.** We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.” [emphasis supplied]

12. Considering the legal position as held in ***Assistant Excise Commissioner, Kottayam*** (*supra*) and the actual position in the instant Appeal viz; that the accident occurred on 17-09-2010 when the amendment by insertion of sub-section (3) to Section 166 of the M. V. Act, 1988, was yet to be effectual, I am of the considered opinion that the Learned Claims Tribunal made an erroneous interpretation of Section 166(3) of the M. V. Act, 1988, under an incorrect belief that the amendment had been enforced on 19-08-2019. Consequently, the finding in issue no.3 of the impugned Judgment deserves to be and is accordingly set aside.

13. Considering that the accident occurred on 17-09-2010 and that the findings of the Learned Claims Tribunal on the first part of issue no.1 and the finding in issue no.2 are unassailed, as considerable time has elapsed from the time of accident, for the ends of justice, “just compensation” as postulated in Section 168 of the M. V. Act, 1988, is being computed by this Court. Relevantly, it is noticed that there is no contest put forth by any party with



regard to the age of the deceased said to be '53', as per the claim petition and hence obtains finality.

(i) Appositely, it may be mentioned that while considering addition of amount to the actual income of the victim by way of future prospects, in ***Sarla Verma (Smt) and Others*** vs. ***Delhi Transport Corporation and Another***³ the Supreme Court held as follows;

"24. In *Susamma Thomas* [(1994) 2 SCC 176 : 1994 SCC (Cri) 335] this Court increased the income by nearly 100%, in *Sarla Dixit* [(1996) 3 SCC 179] the income was increased only by 50% and in *Abati Bezbaruah* [(2003) 3 SCC 148 : 2003 SCC (Cri) 746] the income was increased by a mere 7%. In view of the imponderables and uncertainties, we are in favour of adopting as a rule of thumb, an addition of 50% of actual salary to the actual salary income of the deceased towards future prospects, where the deceased had a permanent job and was below 40 years. (Where the annual income is in the taxable range, the words "actual salary" should be read as "actual salary less tax"). The addition should be only 30% if the age of the deceased was 40 to 50 years. There should be no addition, where the age of the deceased is more than 50 years. Though the evidence may indicate a different percentage of increase, it is necessary to standardise the addition to avoid different yardsticks being applied or different methods of calculation being adopted. Where the deceased was self-employed or was on a fixed salary (without provision for annual increments, etc.), the courts will usually take only the actual income at the time of death. A departure therefrom should be made only in rare and exceptional cases involving special circumstances."
[emphasis supplied]

The Supreme Court thus held that there would be no addition towards future prospects where the age of the deceased is more than 50 years of age. This was upheld in the ratio of ***Reshma Kumari and Others*** vs. ***Madan Mohan and Another***⁴.

(ii) However, subsequently, in ***National Insurance Company Limited*** vs. ***Pranay Sethi and Others***⁵ the Supreme Court held as extracted hereinbelow;

"58. The controversy does not end here. The question still remains whether there should be no

³ (2009) 6 SCC 121

⁴ (2013) 9 SCC 65

⁵ (2017) 16 SCC 680



addition where the age of the deceased is more than 50 years. *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] thinks it appropriate not to add any amount and the same has been approved in *Reshma Kumari* [*Reshma Kumari v. Madan Mohan*, (2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826]. Judicial notice can be taken of the fact that salary does not remain the same. **When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter.** Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.”
[emphasis supplied]

On the anvil of the decision, in *Pranay Sethi* (*supra*) considering the age of the victim (53), it is essential to add 15% towards Future Prospects in the award to be computed.

14. Further, the Supreme Court while allowing payment of compensation to major, married and earning sons of the deceased, in *National Insurance Company Limited vs. Birender and Others*⁶, held as follows;

“**14.** It is thus settled by now that the legal representatives of the deceased have right to apply for compensation. **Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the legal representative concerned was fully dependent on the deceased and not to limit the claim towards conventional heads only.** The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs 1,00,000 and Rs 1,50,000 per annum. In that sense, they were largely dependent on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”
[emphasis supplied]

⁶ (2020) 11 SCC 356



15. Consequently, I am of the considered opinion that the following compensation will serve as “just compensation” which stands calculated as follows;

Annual income of the deceased	(Rs.23,975/- x 12)	Rs. 2,87,700.00
Add 15% of Rs.2,87,700/- as Future Prospects	(+)	Rs. 43,155.00 Rs. 3,30,855.00
Less 1/4 th of Rs.3,30,855/- [Deducted from the said amount as expenses that the deceased would have incurred towards himself had he been alive]	(-)	Rs. 82,714.00 (rounded off)
Net yearly income		Rs. 2,48,141.00
Multiplier to be adopted ' 11 ' [The age of the deceased at the time of death was '53' and the relevant multiplier as per Judgment of of <i>Sarla Verma (supra)</i> is ' 11 ']	(Rs.2,48,141/- x 11)	Rs.27,29,551.00
Add Funeral Expenses [in terms of the Judgment of <i>Pranay Sethi (supra)</i>]	(+)	Rs. 15,000.00
Add Loss of Estate [in terms of the Judgment of <i>Pranay Sethi (supra)</i>]	(+)	Rs. 15,000.00
Add Loss of Spousal Consortium [@ two wives of the deceased, in terms of the Judgment of <i>Magma General Insurance Co. Ltd. vs. Nanu Ram and Others : (2018) 18 SCC 130</i>]	(+)	Rs. 80,000.00
Add Loss of Parental Consortium [@ two sons of the deceased, in terms of the Judgment of <i>Magma General Insurance (supra)</i>]	(+)	Rs. 80,000.00
Total		<u>Rs.29,19,551.00</u>

(Rupees twenty-nine lakhs, nineteen thousand, five hundred and fifty one) only.

16. The Insurance Company shall pay the compensation computed *supra* to the Appellants No.1, 2, 3 and 4 in the following manner;

- (i) 35%, each, of the awarded amount to be paid to the Appellants No.1 and 2 being widows of the deceased;
- (ii) 15%, each, of the awarded amount to be paid to the Appellants No.3 and 4 being the sons of the deceased.

17. The Claimants-Appellants 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 Claims Tribunal, i.e., 30-08-2019, until its full realisation.



18. The Insurance Company is directed to pay the awarded amount to the Claimants-Appellants within one month from today, failing which it shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition, till full realisation. Amounts, if any, already paid by the Insurance Company to the Claimants-Appellants, shall be duly deducted from the awarded amount.

19. Appeal disposed of accordingly.

20. No order as to costs.

21. Copy of this Judgment be sent to the Learned Claims Tribunal for information, along with its records.

(Meenakshi Madan Rai)
Judge

17-04-2023

Approved for reporting : **Yes**