

(2019) 05 GAU CK 0048

Gauhati High Court**Case No:** Motor Accident Appeal No. 166 Of 2010

Tapan Kr. Kalita

APPELLANT

Vs

Diganta Kalita And Anr

RESPONDENT

Date of Decision: May 14, 2019**Acts Referred:**

- Motor Vehicles Act, 1988 - Section 140, 163, 166

Hon'ble Judges: Nelson Sailo, J**Bench:** Single Bench**Advocate:** S Sureka, R D Mozumdar**Final Decision:** Dismissed

Judgement

1. Heard Mr. B.K. Jain, the learned counsel for the appellant and Ms. R.D. Mozumdar, the learned counsel for the respondent No. 2. None appears

for the respondent No. 1.

2. Being aggrieved with the Judgment & Award dated 30.09.2009 passed by the learned Member, Motor Accident Claims Tribunal (the Tribunal),

Kamrup at Guwahati in MAC Case No. 2399/2004, the appellant/claimant has filed the instant appeal.

3. Brief facts of the case is that the appellant, who is the son of the deceased Smt. Mina Rani Kalita filed a claim application under Section 166 of the

MV Act, 1988 (MV Act) claiming compensation on account of the death of his mother in a motor accident, which took place on 25.03.2004 in front of

K.K. Handique Library, Gauhati University, Jalukbari, Guwahati under Jalukbari P.S. According to the appellant, his mother was a pillion rider of

Motor Cycle bearing Registration No. AS-01/P-3702, which met with an accident due to the rash and negligent driving of the rider of the Motor Cycle. In the accident, his mother fell down from the Motor Cycle and sustained grievous injuries. Although she was immediately taken to Maligaon Central Hospital, she succumbed to her injuries.

4. The appellant thereafter filed a claim petition before the Tribunal claiming compensation under Section 163-A of the MV Act. The claim was registered and numbered as MAC Case No. 2399/2004. The owner cum driver of the Motor Cycle was impleaded as the Opposite Party No. 1 while the United India Insurance Company Limited, who was the insurer of the Motor Cycle was arrayed as Opposite Party No. 2. The deceased according to the appellant at the time of her death was aged about 53 years and was earning a sum of Rs. 12,197/- per month on being employed as Office Superintendent, Grade-I under the N.F. Railway, Maligaon, Guwahati.

5. Both the respondents filed their written statement against the claim application denying their liability to pay the compensation as claimed. The Tribunal vide Judgment & Award dated 30.09.2009 disposed the claim by holding that since the appellant as claimant admitted in his evidence that he was working as a Section Engineer, Grade-I in the N.F. Railway having a monthly salary of Rs. 16,000/-, he was not dependent of the deceased and therefore, not entitled to any compensation towards loss of dependency. As such, the Tribunal awarded a lump sum amount of Rs. 1 Lakh to the appellant towards no fault liability, funeral expenses and loss of love and affection etc. along with interest @ 6% per annum from the date of filing the claim till final realization.

6. Appearing for the appellant, Mr. B.K. Jain, the learned counsel submits that although the appellant has raised the issue that the Tribunal failed to award any compensation towards loss of dependency in the appeal, but as the appellant was not dependent upon the deceased and therefore, the main ground for challenging the impugned Judgment is that the Tribunal failed to award any compensation towards loss of estate, which should also include compensation towards the future prospects of the deceased.

7. In support of his submission that even in the case of a person, who is not dependent upon the deceased, he or she will be entitled to compensation

towards loss of estate, the learned counsel refers to Manjuri Bera Vs. Oriental Insurance Company Limited and Another reported in (2007) 10 SCC

643. He submits that the Apex Court in the said case held that even if there is no loss of dependency and the claimant is a legal representative, he or

she will be entitled to compensation and the quantum of which should not be less than the amount provided under Section 140 of the MV Act i.e. Rs.

50,000/- in case of death.

8. The learned counsel submits that since the Apex Court in Manjuri Bera (Supra) had only mentioned the minimum amount, the decision of this Court

in Ranjan Narzary Vs. United India Insurance Company Limited and Others reported in 2014 (3) GLT 601 and United India Insurance Company

Limited Vs. Girish Keot & Ors reported in 2018 (3) GLT 572 will have to be applied. He submits that in Girish Keot & Ors (Supra), this Court by

relying upon Manjuri Bera (Supra) and various decisions of other High Courts came to the conclusion that the amount of compensation which can be

awarded to a claimant under the head "loss of estate" can be calculated by taking $\frac{1}{4}$ of the monthly income of the deceased as personal saving

and multiplying the same with the relevant multiplier as fixed by the Apex Court in Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr.

reported in (2009) 6 SCC 121. This Court in deciding the case, also relied upon the earlier case i.e., Ranjan Narzary (Supra) as well.

9. The learned counsel submits that the case of Ranjan Narzary (Supra) was further relied upon in the case of National Insurance Company Limited

Vs. Sri. Uttam Deka & 2 Others reported in 2018 (6) GLR (NOC) 2. It was held in the said case that future prospects has no relation with the loss of

dependency and as such, for determining compensation towards loss of estate, future prospects will have to be taken into consideration. Consequently,

by taking the percentage applicable as laid down by the Apex Court in National Insurance Company Ltd. Vs. Pranay Sethi & Ors reported in (2017)

16 SCC 680, 40% of the income was added to the actual monthly income. Thereafter, by taking $\frac{1}{4}$ of the total monthly income and multiplying the

same with the relevant multiplier, the amount of compensation payable towards "loss of estate" was arrived at.

10. Mr. B.K. Jain, the learned counsel further refers to the case of Keith Rowe Vs. Prashant Sagar & Ors, which was registered as MAC.App. No.

601/2007 before the Delhi High Court. The same was decided on 15.01.2010 by concluding that 1/3 of the income of the deceased will be the amount

of savings where the spouse were having a common establishment. Therefore, in the instant case as well, since the appellant was not dependent upon

the deceased, the deceased would have had maximum savings and therefore, 1/3 of the monthly income of the deceased should be taken for

calculating the amount of compensation payable to the appellant under the head "loss of estate".

11. Mr. B.K. Jain, the learned counsel by referring to the case of Pranay Sethi & Ors (Supra) submits that the Apex Court fixed an amount of Rs.

15,000/- towards loss of estate in a case where there was dependency. However, the same will not apply in a case where the claimant is not

dependent upon the deceased, such as the present case. The learned counsel therefore submits that considering the monthly income of the deceased

as Rs. 12,197/-, 1/3 of the same multiplied by the relevant multiplier would be the amount of compensation entitled to the appellant as loss of estate.

Finally, the learned counsel submits that the rate of interest awarded by the Tribunal is on the lower side and therefore, the same should also be

enhanced. In support of his submission, he relies upon the case of Narendra Singh Vs. Nishant Sharma (2015) 14 SCC 353.

12. Appearing for the respondent No. 2 Insurance Company, Ms. R.D. Mozumdar, the learned counsel submits that the Judgments/authorities relied

upon by the learned counsel for the appellant are Judgments rendered prior to the Apex Court Judgment in Pranay Sethi & Ors (Supra) and therefore,

they are not the law holding the field as on date. Referring to the case of Pranay Sethi & Ors (Supra), the learned counsel submits that the Apex

Court took into consideration the amount of compensation, which can be awarded under the conventional heads including loss of estate. The Apex

Court held that the amount of compensation under the conventional heads cannot be determined on percentage basis and the same would not be the

acceptable criterion and it has to be quantified. In view thereof, the amount of compensation under the head "loss of estate" was quantified at Rs.

15,000/-.

13. She submits that there cannot be a different quantification over the compensation payable towards "loss of estate" where there is dependency

and in a case where there is no dependency and the Apex Court has not drawn any line of distinction. The appellant will thus be entitled to a sum of

Rs. 50,000/- towards "no fault liability" under Section 140 of the MV Act and additionally, a sum of Rs. 15,000/- towards "loss of estate" in

terms of the decision in *Pranay Sethi & Ors (Supra)*. Although, the Tribunal awarded a lumpsum amount of Rs. 1 Lakh in all, the same may not be

altered as the award was made at the time when the law was not settled. After *Pranay Sethi & Ors (Supra)*, the law has crystallized and under the

facts and circumstances, the interference of this Court is not called for and the appeal may be dismissed.

14. I have heard the submissions advanced by the learned counsels for the rival parties and I have perused the materials available on record including

the Lower Court Record.

15. From a perusal of the memorandum of appeal, what can be seen is that the only ground taken is that the Tribunal committed an error in not

awarding compensation towards "loss of dependency". There is no mention about the Tribunal not having awarded any compensation towards

"loss of estate". The appellant during his cross examination deposed that he is employed as Section Engineer, Grade-I in the N.F. Railway with a

monthly salary of about Rs. 16,000/- at the relevant time. He also deposed that he was not dependent upon the deceased. Therefore, the Tribunal

rightly did not award any compensation towards "loss of dependency". The Apex Court in the case of *Manjuri Bera (Supra)* held that in case of a

legal representative, who otherwise is not dependent upon the deceased, he or she will be entitled to compensation under "no fault liability" as

provided under Section 140 of the MV Act which is quantified at Rs. 50,000/- in case of death. Although the Tribunal in the impugned judgment did

not give the breakdown of the compensation while awarding lumpsum compensation of Rs. 1 Lakh to the appellant, the same however admittedly

includes Rs. 50,000/- i.e., "no fault liability" compensation in case of death.

16. Coming to the conventional head "loss of estate", it will be gainful to abstract paragraph 54 of the Apex Court Judgment in Pranay Sethi &

Ors which is as under:-

"54. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted Rs. 25,000/-

towards funeral expenses, Rs. 1,00,000/- loss of consortium and Rs. 1,00,000/- towards loss of care and guidance for minor children. The head relating

to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and

traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination

of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that

price index, fall in bank interest, escalation of rates in many a field have to be noticed. The Court cannot remain oblivious to the same. There has been

a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be

immense variation lacking any kind of consistency as a consequence of which, the orders passed by the Tribunals and Courts are likely to be

unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate,

loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The principle of revisiting the said heads is

an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have

quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years.

We are disposed to hold so because that will bring in consistency in respect of those heads".

17. From the above abstracted, it may be seen that the Apex Court held that the amount of compensation which can be awarded under the

conventional heads cannot be determined on percentage basis but will have to be quantified. Therefore, a sum of Rs. 15,000/- was fixed as the amount

payable towards "loss of estate". Further, a sum of Rs. 40,000/- and Rs. 15,000/- was also fixed as payable towards "loss of consortium" and "funeral expenses". Considering the same, it is also found that the amount awarded by the Tribunal vide the impugned Judgment only covers the amount payable under the head "loss of estate".

18. The case of Sri. Uttam Deka & Others (Supra) relied upon by the learned counsel for the appellant, in my considered opinion and with utmost respect cannot be accepted inasmuch as the case of Ranjan Narzary (Supra) was relied upon to assess the amount of compensation to be awarded under the conventional head "loss of estate". The amount under the said head as may be noticed has already been settled by the Apex Court in *Pranay Sethi & Ors (Supra)*.

19. In so far as the interest awarded by the Tribunal is concerned, having regard to the rate of interest prevalent at the relevant time and also the authority relied upon by the learned counsel for the appellant, I am of the considered opinion that ends of justice will be met if the rate of interest is fixed at 9% per annum from the date of filing of the claim application i.e., 26.10.2004. From the records of the case, it is noticed that the appellant withdrew a sum of Rs. 49,800/- on 23.05.2006 and also a sum of Rs. 64,397/- on 22.08.2012. The appellant therefore, shall be entitled to 9% interest on the awarded sum by the Tribunal w.e.f. 26.10.2004 upto 22.08.2012 less the interest amount already paid to him @ 6% per annum.

20. Apart from the payment of interest as directed herein above, I do not find any merit in the appeal and the same is accordingly dismissed. The respondent No. 2 shall deposit the interest amount as directed herein above before the Tribunal within a period of 6 (six) weeks from today.

21. Registry shall return the LCR back to the Tribunal concerned forthwith.