

(2023) 01 GAU CK 0008
Gauhati High Court
Case No: MACApp. No. 729 Of 2018

Anima Chakraborty

APPELLANT

Vs

Dewan Amzad Ali And
2 Ors

RESPONDENT

Date of Decision: Jan. 4, 2023

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 41 Rule 33
- Motor Vehicles Act, 1988 - Section 168

Hon'ble Judges: Arun Dev Choudhury, J

Bench: Single Bench

Advocate: K Sarma, I Das

Final Decision: Disposed Of

Judgement

1. Heard Mr. K Sarma, learned counsel for the appellant and Ms. I Das, learned counsel for the respondents.

2. The present appeal is filed assailing the judgment and award dated 15.02.2018 passed in MAC case No. 169/2016 by the learned Motor Accident

Claims Tribunal, Barpeta.

3. The brief fact of the case is that on 27.11.2015 at about 8:00 p.m. a motor cycle bearing registration No. As-14/D-2127 driven in a rash and

negligent manner hit the deceased at Hotapara Chowk. The deceased was shifted to Rahman Hospital, Sixmile, Guwahati, immediately but on the

following day i.e. on 28.11.2015 he succumbed to his injuries at the said hospital.

4. The Insurance Company i.e. United India Company Limited filed its written statement and denied its liability for payment of compensation by taking

all usual pleas of defence. The claimant examined two witnesses and also exhibited certain documents including the post-mortem report and the

accident information report and charge-sheet. After conclusion of the trial, the learned Tribunal passed the following award.

â€œJust Compensation

Pecuniary damages (special damages):-

Computation of multiplicand:-

(i) Monthly income of the deceased= Rs. 10,000/-

(ii) 40% of the above income added as future prospect (Rs.10,000/-+Rs. 4,000/-)= Rs. 14,000/-

(iii) $\frac{1}{2}$ of (ii) deducted as personal expenses of deceased (Rs. 14,000/- - Rs. 7,000/-) = Rs. 7,000/-

(iv) Compensation after multiplier of 9 is applied to the above multiplicand (Rs. 7,000/- X 12 X 9) = Rs. 7,56,000/-

Non Pecuniary damages (general damages):-

(i) For love and affection (mother) (@Rs. 25,000/- X 1) =Rs. 25,000/-

(ii) For Estate =Rs. 10,000/-

(iii) For medical expenses before his death=Rs. 47,790/-

(iv) Funeral expenses including other incidental expenses =Rs. 15,000/-

Total =Rs. 8,53,790/-â€

5. The basic grievance of the appellant in the present case is that in terms of the ratio laid down by the Honâ€™ble Apex Court in the case of Sarla

Verma (Smt) and Others vs Delhi Transport Corporation and Another reported in (2009) 6 SCC 121 and the ratio laid in National Insurance Company

Limited vs Pranay Sethi and Ors. reported in (2017) 16 SCC 680 and in Royal Sundaram Alliance Insurance Company Ltd vs Mandala Yadagari

Goud and Ors reported in AIR 2019 SC 1825, the multiplier ought to have been determined on the basis of the age of the deceased, the deceased

being a bachelor and the claimant being his mother, however, the learned Tribunal has determined the multiplier to be 9 taking the age of the claimant/

mother.

6. By now it is well settled that the age of the deceased must be the basis for determining the multiplier even in case of a bachelor. The Honâ€™ble

Apex Court in the case of Sarala Verma (supra) determined and fixed the applicable multiplier corresponding to the age of the deceased. It was

further held that multiplier should correspond to the age of the deceased. Such view was reaffirmed by the Constitution Bench of Honâ€™ble

Supreme Court in the case of Pranay Sethi (supra) and affirmed that the age of the deceased required to be the basis for determining the multiplier.

Subsequent to this the Honâ€™ble Apex Court in the case of M/S Royal Sundaram Alliance Insurance Company Ltd. (supra) further held that even

in the case of a bachelor the principle enunciated in the case of Sarala Verma (supra) and affirmed in Pranay Sethi (supra) is applicable.

7. Therefore, in the aforesaid backdrop this court could not but held that learned tribunal below has committed serious error in applying the multiplier

as 9 on the basis of age of the claimant/ mother. Accordingly, in the considered opinion of this court, the present appeal deserved to be allowed by

fixing the multiplier to be 17 corresponding to the age of the deceased which is 28 years and accordingly same is done.

8. This court cannot be oblivious of the fact that the accident took place on 27.11.2015, award was passed on 15.02.2018 and thereafter the present

appeal is pending since 2018. The Constitution Bench of the Honâ€™ble Apex Court in the case of Pranay Sethi (supra) dealt with different facet and

issues involved in Motor Accident Claims Tribunal case and standardised the entire procedure. In Sarla Verma (supra) the Honâ€™ble Courts also

determined different facets including the principles to be applied for the assessment of compensation including the multiplier etc. Therefore now the

next question arises for determination of this Court is whether the formulations made by the Honâ€™ble Apex Court in the aforesaid dictum, which

was pronounced during the pendency of this appeal, shall be made applicable in the present case.

9. A coordinate Bench of this Court in MAC App./202/2012 in its Judgment dated. 04.02.2022, while dealing with an issue whether the claimants are

entitled to an enhanced compensation in absence of a cross appeal or a cross objection, after elaborately discussing different judgment of the

Honâ€™ble Apex Court and taking note of the provisions of Order 41 Rule 33 of the Code of Civil Procedure held that while Order 41 Rule 33 of the

Code of Civil Procedure empowers an appellate court to pass appropriate order to do justice but subject to certain limitation as judicially formulated

whereas Section 168 of MV Act imposes a statutory obligation upon the tribunal as well as the appellate court sans way any appeal or cross objection

filed to award a compensation which is just and reasonable. Accordingly, it was held that the appellate court is bound to maintain the balance while

exercising power under Order 41 Rule 33 of the Code of Civil Procedure within the limitation imposed and also keeping in mind the statutory duty

imposed upon it by Section 168 of MV Act, 1988. After holding such, the learned Bench held in that case that though there was no cross objection

however, the benefit of Pranay Sethi (Supra), Magma General Insurance Co. Ltd. (Supra) and Sarla Verma (Supra) can be made applicable keeping

in mind the statutory duty imposed upon the appellate court under Section 168 of the MV Act, 1988 to award the just and reasonable compensation.

10. This Court is in total agreement with the aforesaid view of the Coordinate Bench. Accordingly, it is held that the appellant shall be entitled for the

benefit given under the dicta of Pranay Sethi & Others (Supra), Magma General Insurance Co. Ltd. (Supra) and Sarla Verma & Others (Supra).

11. In the case of Pranay Sethi & Others (Supra), the Apex Court has awarded compensation only for specific conventional heads and held that the

amount to be paid for funeral expense and loss of estate will be Rs. 15,000/- each. It has also held that Rs. 40,000/- should be paid for loss of

consortium with an enhancement of 10% every three years from the date of judgment of Pranay Sehthi (supra).

12. Though the learned Tribunal has awarded an amount of Rs. 25,000/- against the love and affection for the mother, in terms of the discussion and

the settled proposition of law, same should have been Rs. 40,000/-. For loss of estate, an award of Rs. 10,000/- has been made, however, the same

should be Rs. 15,000/- in term of the ratio laid down in Pranay Sethi (supra).

13. Accordingly, this appeal is allowed with the following modification. Parties shall bear their own costs.

Just Compensation

Pecuniary damages (special damages):-

Computation of multiplicand:-

(i) Monthly income of the deceased= Rs. 10,000/-

(ii) 40% of the above income added as future prospect (Rs.10,000/-+Rs. 4,000/-)= Rs. 14,000/-

(iii) $\frac{1}{2}$ of (ii) deducted as personal expenses of deceased (Rs. 14,000/- - Rs. 7,000/-) = Rs. 7,000/-.

(iv) Compensation after multiplier of 17 is applied to the above multiplicand (Rs. 7,000/- X 12 X 17) = Rs. 14,28,000/-

Non Pecuniary damages (general damages):-

(i) For love and affection (mother) (@Rs. 44,000/- X 1) =Rs. 44,000/-

(ii) For loss of estate =Rs. 16,500/-

(iii) For medical expenses before his death=Rs. 47,790/-

(iv) Funeral expenses =Rs. 16,500/-

Total =Rs. 15,52,790/-

14. Consequently, the impugned Judgment dated 15.02.2018 passed in MAC case No. 169/2016 by the learned Motor Accident Claims Tribunal,

Barpeta is hereby modified to the extent indicated above. Appeal is accordingly disposed off.

15. Send back the LCR.