

(2023) 01 GAU CK 0015

Gauhati High Court

Case No: MACApp. No. 236 Of 2017

Reliance General
Insurance Co. Ltd

APPELLANT

Vs

Kamala Begum And 8
Ors

RESPONDENT

Date of Decision: Jan. 2, 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: A. J. Saikia, K. Bhuyan

Judgement

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1. Heard Mr. A. J. Saikia, learned counsel for the appellant. Also heard Mr. K. Bhuyan, learned counsel for the claimants/respondents.",,

2. The present appeal is preferred against the Judgment dated 27.01.2017, passed in MAC Case No. 2697/01 (251/08) by the learned Member of",,

MACT, No. 1, Kamrup, Guwahati.",,

3. The ground of challenge as urged by Mr. A. J. Saikia, learned counsel for the appellant /Insurance Company is that the future prospect ought to",,

have been determined @ 40%, for the reason of the deceased being self employed and was aged below 40 years, however, the learned Tribunal",,

below has fixed it @ 50%. In support of his contention, Mr. Saikia, learned counsel relies on the decision of the Honâ€™ble Apex Court in the case of",,

National Insurance Company Limited â€"Vs- Pranay Sethi and Others reported in (2017) 16 SCC 680.,,

The second ground urged is that the claimant is not entitled for interest on the component of future prospect in view of decision of a Coordinate Bench,,

in Oriental Insurance Co. Ltd â€"vs- Smti Champabati Ray and 5 Ors. (MACApp./378/2017).,,

4. Mr. K. Bhuyan, learned counsel for the claimant/respondents in his usual fairness submits that as the Honâ€™ble Apex Court and this Court has",,

already settled both the issues, he will abide by the law declared by the aforesaid two judgments inasmuch as the claimants are also entitled for just",,

compensation in terms of the Pranay Sethi (Supra) and Magma General Insurance Company Limited â€"VS- Nanu Ram Alias Chuhru Ram and,,

Others reported in (2018) 18 SCC 130.,,

5. Considered the materials available on record. Perused the aforesaid two judgments.,,

6. In the case of Pranay Sethi & Others (Supra), the Constitution Bench of the Honâ€™ble Apex Court at paragraph 61 held as follows:-",,

â€œ61. In view of the aforesaid analysis, we proceed to record our conclusion:-",,

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different,,

view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength",,

cannot take a contrary view than what has been held by another coordinate Bench.,,

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is",,

not a binding precedent.,,

(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 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.,,,

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the Courts shall be guided by",,,

paragraphs 30 to 32 of Sarla Verma which we have reproduced hereinabove.,,,

(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.,,,

(vii) The age of the deceased should be the basis for applying the multiplier.,,,

(viii) Reasonable figures on conventional heads, loss of estate, loss of consortium and funeral expenses should be L 15,000/- L 40,000/- and",,,

L 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.",,,

7. In the case of Pranay Sethi (Supra), the Apex Court has identified specific conventional heads for payment of compensation 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. The aforesaid amounts should be enhanced at the rate of 10% in every three years from the date of the judgment of Pranay Sethi (supra),,,

8. The Apex Court in the case of Magma General Insurance Co. Ltd v. Nanu Ram Alias Chuhru Ram & Ors, Civil Appeal No. 9581 of 2018 has held",,,

that the Constitution Bench in Pranay Sethi (supra) has dealt with the various heads under which compensation can be awarded in a death case",,,

which includes loss of consortium. It was further held that the word "consortium" encompasses the following:- (1) Spousal consortium (2),,,

Parental consortium and (3) Filial consortium.,,,

(1) 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.",,,

(2) Parental consortium is granted to the child upon the premature death of parent, for loss of "œparental aid, protection, affection,",,

society, discipline, guidance and training.",,

(3) Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the,,

death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their,,

child during their lifetime. Children are valued for their love, affection companionship and their role in the family unit.",,

9. A coordinate Bench of this Court in The Future General India Insurance Co. Ltd "Vs- Bobby Bora and Ors. (MACApp./202/2012) in its,,

Judgment & Order 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 Hon"ble Apex Court and considering 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,,

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No.",Head,Amount

1.,A. Annual Income,"Rs.4,000/-X12 =Rs.48,000/-

,B. Future Prospect @ 40% of income., "Rs. 19,200/-

,C. Less 1/5th,"Rs. 53,760/-

,D. Add Multiplier,"15X53,760/-= Rs. 8,06,400/-

,"Total compensation Rs. 8,06,400/-",

2.,Loss of Estate,Rs. 16500/-

3,A.Â Â Spousal Consortium for wife,"Rs. 44,000/-

,B.Â Â Parental Consortium for childrens,"Rs. 44,000/-X5= Rs. 2,20,000/-

,C.Â Â Funeral expenses,Rs. 16500/-

,Total"= Rs.11,03,400/-