

GAHC010010182017



THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Case No: **MACApp. 31/2017**

Sri Mrinal Kanti Debnath and 6 Ors,.....Appellants/Petitioners

-Versus-

M/S United India Insurance Co. Ltd and 2 Ors.....Respondents

:: BEFORE ::

HON'BLE MRS. JUSTICE MALASRI NANDI

For the Appellants/Petitioners : Mr. C. Chauhan

For the Respondents : MS.M CHOUDHURY

Date of Hearing : **09.12.2021**

Date of delivery of
Judgment and Order : 19.01.2022

JUDGMENT & ORDER (CAV)

1. Heard Mr. S. Chauhan, learned counsel appearing for the appellants/petitioners as well as Ms. M. Choudhury, learned counsel appearing for the respondents.
2. This appeal has been preferred by the appellants/claimants challenging the award amounting to Rs. 4,25,000/- passed by the learned Member, MACT No. 2, Kamrup(M) in MAC Case No. 1413/2014, on the ground that the claimants are minor daughters, widowed mother of the deceased and they are dependants of the deceased as such loss of dependency should be considered and the award be modified by enhancing the amount.
3. I have gone through the Judgment of the learned Tribunal. The Tribunal has assessed the amount of compensation as follows:-
 - a) Funeral expenses - 25,000/-
 - b) Loss of estate -1,00,000/-
 - c) Loss of consortium - 1,00,000/-
 - d) Loss of Love & Affection – 2,00,000/-Total Rs- 4,25,000/- (Rupees Four Lakhs Twenty Five Thousand Only).
4. Admittedly, there is no dispute regarding the death of Swapna Rani Debnath, in an accident which took place on 30.12.2013 at about 3.45 P.M. at Rajiv Nagar, Lanka, under Lanka P.S. in the district of Hojai, Assam by involving the vehicle AS-01DD/0020 (Mahindra Pick Up Van).
5. The only submission of learned counsel for the appellant is that learned Tribunal failed to hold that the claimant nos. 2,3,4,5 and 6 are unmarried daughters of the deceased who are also dependents because deceased was their mother having income of her own as such

loss of dependency should be taken into consideration while assessing award of compensation. In support of his submission, learned counsel for the appellant has placed reliance on the following case laws:-

(i) *Gujarat State Road Transport Corporation, Ahmedabad* reported in (1987) 3 SCC 234,

(ii) *Manjuri Bera (Smt) Vs. Oriental Insurance Company Ltd. and Another* reported in (2007) 10 SCC 643,

(iii) *Rajendra Singh and Others Vs. National Insurance Company Limited and Others* reported in (2020) 7 SCC 256,

(iv) *National Insurance Company Limited Vs. Birender and Others* reported in (2020) 11 SCC 356,

(v) *New India Assurance Co. LTD. ORS. Vs. V. Slami & Ors* reported in (2021) (1) GLT 20,

(vi) *Kirti and Another Vs. Oriental Insurance Company Limited* reported in (2021) 2 SCC 166.

6. On the other hand, learned counsel for the Insurance Company has argued that claimant no. 1 as P.W. -1, husband of the deceased, nowhere stated that he was dependent on the income of his deceased wife. He has a fair price shop. Learned Tribunal has delivered well reasoned judgment. There is no scope to interfere with the judgment of the learned Trial Court and the appeal should be dismissed.

Learned counsel for the Insurance Company has cited one case law in support of her submission, *Kaushnuma Begum (Smt) and Ors Vs. New India Assurance Co. Ltd. and Ors.* reported in (2001) 2 SCC 9.

7. I have heard rival submissions of the learned counsel of both sides.

8. It appears from the evidence of PW-1 i.e. husband of the deceased that the deceased was working as Anganwadi helper and her monthly salary was Rs. 1,500/-. He had not submitted any document to prove that her salary would have been increased in future. He

had not produced any document to prove that the deceased was also doing private tuition.

9. In the case of ***Jitendra Khimshankar Trivedi & Ors Vs. Kasam Daud Kumbhar & Ors.*** reported in ***(2015) Vol.4 SCC 237***, the Hon'ble Supreme Court held that the matter of compensation wherein the deceased was a housewife, even assuming was not self-employed doing embroidery and tailoring work, the fact remains that she was a housewife and a home maker. It is hard to monetize the domestic work done by a housewife/mother. The service of the mother/wife is available 24 hours and her duties are never fixed. Courts have recognized the contribution made by the wife to the house is invaluable and that it cannot be computed in terms of money. A house-wife/home-maker does not only work by the clock and she is in constant attendance of the family throughout and such services rendered by the home maker has to be necessarily kept in view while calculating the loss of dependency. Thus even otherwise taking the deceased as homemaker it is reasonable to fix her income at Rs. 3,000/- per month. The situation in the instant case is no different as the deceased here is also mother/wife of the appellant/claimants.

10. In the matter of assessment of income of a home maker, the law to be followed is stated in *Lata Wadhwa and Others Vs. State of Bihar and others, (2001) 8 SCC 197* and the law is equally well settled in the aforesaid case that there can be no deduction from the assessed income of a house wife dying in a motor accident.

11. Learned counsel for the Insurance Company argued on the income of the deceased that if loss of dependency be considered the income of the deceased be fixed at Rs. 1,500/- as it appears from the record that the deceased was a Anganwadi worker and her monthly salary was Rs. 1,500/-.

12. This argument is flawed. In the case of *Lata Wadhwa* (Supra) where the accident had taken place in the year 1981, the Hon'ble Supreme Court evaluated the contribution of a house wife at Rs. 3,000/- per month. In the present case, the accident took place on 13.12.2013 i.e. after 32 years. In my considered opinion to tag a house wife as a 'skilled worker' alone does not do complete justice to her multifarious role as a home manager. Keeping in view the lapse of 32 years between the accident in the case of *Lata Wadhwa* (supra) and the present accident, my conclusion that a house wife was more than a mere skilled worker and it would not be unreasonable to estimate the contribution of the deceased in the present case at a higher figure amounting to Rs. 5,000/- without deduction.

13. As per the claim petition, the deceased was 40 years of age when the accident took place. The post-mortem report, shows that the age of the deceased was 40 years at the time of accident. Apart from that the claimant has also submitted school certificate of the deceased Swapna Rani Debnath, which shows that her date of birth was 24.11.1973. The accident occurred on 30.12.2013. It transpires that the age of the deceased was 40 years when the accident occurred. The multiplier would be 15 as per the case of ***Sarla Verma. Vs. DTC*** reported in ***(2009) 6 SCC 121***.

14. As per *SLP (Civil) No. 25590 of 2014 (National Insurance Co. Ltd. Vs. Pranay Shethi & Ors.)*, the Hon'ble Supreme Court has fixed compensation in case of death 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.

15. So, in view of the aforesaid discussion, in the instant case, the computation of compensation is awarded as follows:-

A) Annual income of the deceased	Rs.5,000/-X12=	60,000/-
B) After multiplied with multiplier, amount comes to	Rs.60,000/-X15	= 9,00,000/-
C) Funeral expenses		= 15,000/-
D) Loss of consortium		= 40,000/-
E) <u>Loss of estate</u>		<u>= 15,000/-</u>
Total		=9,70,000/- (Rupees Nine Lakhs Seventy Thousand) only.

16. It appears from the record of MAC Case No. 1413/2014, that two daughters of the deceased i.e. Jumpi Debnath and Sukla Debnath were minors at the time of the death of their mother Swapna Rani Debnath. Hence, 80% of the compensation will be divided between the two minor daughters and balance 20% of the compensation would go to the claimant no. 1/husband, Mrinal kanti Debnath, if he is not re-married. In case the husband is re-married then daughters will get 100% of the computed compensation. The United India Insurance Company Limited is directed to make necessary payment as per order.

17. Accordingly, appeal is allowed.

There is no order as to cost.

Send down the LCR.

JUDGE

Comparing Assistant