

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED: 14th December, 2017

Single Bench : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

M.A.C. App. No. 11 of 2016

Appellant : The Branch Manager,
National Insurance Company Limited,
Gangtok,
East Sikkim – 737101.

Versus

Respondents : 1. Smt. Tika Devi Limboo,
W/o Late Santa Kumar Limboo,
2. Miss Aunsena Limboo,
D/o Late Santa Kumar Limboo,
3. Master Akrit Limboo,
S/o Late Santa Kumar Limboo,
All residents of Hee-Goan,
P.O. Hee-Gaon & P.S. Kaluk,
West Sikkim.
4. Mrs. Dik Maya Chettri,
Wife of Kumar Chettri,
Resident of Timberbong, Soreng,
P.O. & P.S. Soreng,
West Sikkim.

Appeal under Section 173 of the Motor Vehicle Act, 1988.

Appearance:

Mrs. Vidya Lama, Advocate for the Appellant.

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Ms Malati Sharma, Advocates for the Respondents No.1 to 3.

Mr. Gulshan Lama, Advocate (Legal Aid Counsel) for the Respondent No.4.

C.O. No. 1 of 2017

Appellants : 1. Smt. Tika Devi Limboo,
W/o Late Santa Kumar Limboo,
2. Miss Aunsena Limboo,
D/o Late Santa Kumar Limboo,
3. Master Akrit Limboo,
S/o Late Santa Kumar Limboo,
All residents of Hee-Goan,
P.O. Hee-Gaon & P.S. Kaluk,
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Respondents : 1. The Branch Manager,
National Insurance Company Limited,
Gangtok,
East Sikkim – 737101.
2. Mrs. Dik Maya Chettri,
Wife of Kumar Chettri,
Resident of Timberbong, Soreng,
P.O. & P.S. Soreng,
West Sikkim.

Cross objection under Order XLI, Rule 22(1) and (2),
read with Section 151 of the Code of Civil Procedure, 1908.

Appearance:

Mr. N. Rai, Senior Advocate with Ms. Tamanna Chhetri and Ms Malati Sharma,
Advocates for the Appellants.

Mrs. Vidya Lama, Advocate for the Respondent No.1.

Mr. Gulshan Lama, Advocate (Legal Aid Counsel) for the Respondent No.2.

J U D G M E N T

Meenakshi Madan Rai, J.

1. The learned Motor Accident Claims Tribunal, East District at Gangtok, East Sikkim (hereinafter 'the Claims Tribunal') in MACT Case No. 10 of 2016, vide the impugned Judgment dated 17.08.2016, directed the Appellant to pay to the Respondents No. 1, 2 and 3, a sum of Rs.14,23,000/- (Rupees fourteen lakhs, twenty-three thousand) only, with interest @ 10% per annum

from the date of filing of the Petition before the learned Claims Tribunal, i.e., 1.3.2016, until its full realization, duly deducting a sum of Rs.50,000/- (Rupees fifty thousand) only, paid as interim compensation to the Respondents. The compensation was awarded on account of the death of the husband of the Respondent No.1 and father of the Respondents No.2 and 3, in a motor vehicle accident on 15.8.2014, at around 19:30 hours at 20th Mile, Dentam, West Sikkim. Aggrieved by the Award, the Appellant is assailing the same, *inter alia*, on grounds that the learned Claims Tribunal has erred in adding 50% as future prospects to the yearly income of the deceased, when it is not disputed that the deceased was a farmer with no regular income. That, the learned Claims Tribunal had also erroneously granted non-pecuniary damages of Rs.1,00,000/- (Rupees one lakh) only, on account of loss of consortium to the Respondent No.1 and Rs.1,00,000/- (Rupees one lakh) only, on account of loss of love and affection to the Respondents No.2 and 3.

2. The thrust of the verbal arguments of learned Counsel for the Appellant pivoted around the aforesaid grounds with the prayer that the impugned Judgment and Award passed by the learned Claims Tribunal be set aside.

3. A Cross-Objection was filed by the Respondents No. 1, 2 and 3, submitting, *inter alia*, that the learned Claims Tribunal had assessed the monthly notional income of the deceased as Rs.6,600/- (Rupees six thousand and six hundred) only,

consequently at Rs.79,200/- (Rupees seventy-nine thousand and two hundred) only, per annum. To the contrary, Exhibit-13, the Income Certificate of the deceased, revealed his monthly income to be Rs.14,070/- (Rupees fourteen thousand and seventy) only, from Agriculture; Rs.21,450/- (Rupees twenty-one thousand, four hundred and fifty) only, from Other Sources and Rs.600/- (Rupees six hundred) only, as Government Allowance for traditional healer/"Shaman" (Jhakri). Hence, the total income of the deceased was Rs.23,222/- (Rupees twenty-three thousand, two hundred and twenty-two) only, per month. Despite such evidence, the learned Claims Tribunal concluded that Exhibit-13 was confusing and rejected it. Had the income reflected in Exhibit-13 been considered, the compensation would have been higher. It was further urged that there was no error in the addition of 50% as future prospects to the annual income of the deceased as he was below 40 years of age. However, the Multiplier of '15' was wrongly adopted to calculate the loss of dependency instead of the Multiplier of '16', as per the Second Schedule of the Motor Vehicles Act, 1988, in consideration of the age of the deceased Victim. Learned Senior Counsel sought to support his submissions by placing reliance on ***Commissioner of Central Excise, Mumbai vs. Raymond Limited***¹, ***Wasting House Saxby Farmer vs. Workmen***², ***Raghendra Bose and Others vs. Sunil Krishna Ghose and Others***³ and

¹(2016) 16 SCC 659

²(1973) 2 SCC 150

³(2005) 12 SCC 309

Kunjan Nair Sivaraman Nair vs. Narayanan Nair and Others⁴. Hence, the prayer for reversing the impugned Award and enhancing the compensation granted.

4. The rival submissions of learned Counsel were heard at length and considered. The documents on record were carefully perused, including the impugned Judgment. I have also perused the citations made at the Bar.

5. Before the learned Claims Tribunal, the Respondents raised a claim for compensation amounting to Rs.46,93,629/- (Rupees forty-six lakhs, ninety-three thousand, six hundred and twenty-nine) only. The learned Claims Tribunal in consideration of the entire evidence and documents on record calculated the compensation as Rs.14,23,000/- (Rupees fourteen lakhs, twenty-three thousand) only. On a careful perusal of the impugned Judgment, the learned Claims Tribunal calculated the age of the deceased to be 36 years old as on 15.8.2014. The learned Claims Tribunal also concluded that Exhibit-13, the Income Certificate of the deceased, was confusing as it showed the *monthly* income of the deceased from other Sources as Rs.21,450/- (Rupees twenty-one thousand, four hundred and fifty) only, while the *per annum* income of Rs.14,070/- (Rupees fourteen thousand and seventy) only, was from Agriculture but the total income "*per annum*" was mentioned as Rs.35,520/- (Rupees thirty-five thousand, five

⁴ (2004) 3 SCC 277

hundred and twenty) only. The anomaly having remained unexplained, the learned Claims Tribunal rejected the document and placed the notional income of the deceased at Rs.6,600/- (Rupees six thousand and six hundred) only. The multiplier of '15' was adopted on the assumption that the age of the deceased was 36 years as on 15.8.2014, in terms of the Table in **Sarla Verma (Smt) and Others vs. Delhi Transport Corporation and Another**⁵. 50% was added as future prospects, while 1/3rd was deducted towards his personal expenses.

6. Firstly, to address the issue of the income of the deceased, Exhibit-13 is his Income Certificate, which reads as follows;

".....
No. 548/IC/GVK/DTM Date: 26.11.2015

INCOME CERTIFICATE

The **YEARLY/MONTHLY** individual income of Shri/Smt/Kumari Santa Kumar Limboo (Subba) S/o, WO,/D/O Lt. Chandra Dhoj Limboo (Subba) resident of Hee West District, Sikkim is as under:-

1. SALARY/PENSION RS:_____p.m.x12

2. Agriculture Rs.14,070/- P.A.

3. Other Sources Rs.21,450/- P.M.

TOTAL : RS: 35,520/- **P.A.**

(Rupees Thirty-five thousand five hundred twenty only)

The above income has been prepared on the basis of the report of the Revenue Supervisor/ARS/Panchayat (tick the relevant) and on the basis of solemn affirmation under OATH before the GVA, Dentam on 26/11/2015.

This certificate is valid for the period of one year from the date of issue.

"....."

⁵ (2009) 6 SCC 121

A careful examination of the document reveals an anomaly with regard to the income at Serial No. 2, 3 and the overall amount. The income at Serial No.2 is stated to be '*per annum*', that at Serial No.3 '*per month*' but the total amount is shown as '*per annum*'. It is this error that learned Counsel for the Respondents sought to draw the attention of this Court and contended that the Respondents ought to be allowed to prove this document afresh before the learned Tribunal, in view of the anomalies persisting therein.

7. The Respondent No. 1 in her evidence asserted that the monthly income of her husband was Rs.23,222/- (Rupees twenty-three thousand, two hundred and twenty-two) only. Under cross-examination, she has stated as follows;

".....
It is not true that my late husband was not having a monthly income of ₹ 23,222/- as per Exbt.13. It is true that the Income certificate Exbt. 13 was issued by the Gram Vikash Kendra, Dentam. It is true that Exbt.13 was prepared on the basis of the report of the Revenue Supervisor and on the basis of Affidavit filed before the gram Vikash Kendra. It is true that in Exbt.13 the total earning of the deceased has been mentioned as ₹35520/- per annum. (Witness volunteers to say that the issuing authority has erred by calculating jointly the monthly and annual income. The witness further states that the clarification in this regard has been mentioned in para-14 of her evidence on affidavit)
....."

The voluntary statement of the witness ought to have alerted the learned Tribunal that there was allegedly an error in the document. The learned Claims Tribunal without considering her evidence concluded that Exhibit-13 was confusing and decided to place the notional income of the deceased at Rs.6,600/- (Rupees

six thousand and six hundred) only, when the correct procedure to be adopted was to clear the air with regard to the anomalies appearing in Exhibit-13 by examining the issuing authority. The Hon'ble Supreme Court in ***Raj Rani and Ors. vs. Oriental Insurance Co. Ltd. and Ors.***⁶, held at Paragraph 13 as follows;

"13. It is not necessary in a proceeding under the Motor Vehicles Act to go by any rules of pleadings or evidence. Section 168 of the Act speaks about grant of just compensation. The Court's duty being to award just compensation, it will try to arrive at the said finding irrespective of the fact as to whether any plea in that behalf was raised by the claimant or not."

8. In ***Rajesh and Ors. Vs. Rajbir Singh and Ors.***⁷, the Hon'ble Supreme Court at Paragraph 13, held as follows;

"10.

"10. Thereafter, Section 168 empowers the Claims Tribunal to 'make an award determining the amount of compensation which appears to it to be just'. Therefore, only requirement for determining the compensation is that it must be 'just'. There is no other limitation or restriction on its power for awarding just compensation."

Thus, the statutory rules of evidence do not apply to matters in Motor Accidents Claims Tribunal, clothing the Tribunal with sufficient powers to adopt legal methods to reach the crux of the matter and thereby to award just compensation. A claimant in a Petition under the Motor Vehicles Act, 1988, which is a benevolent legislation to offer respite to the claimant for loss of the bread

⁶ (2009) 13 SCC 654

⁷ (2013) 9 SCC 54

winner, should not suffer on account of any negligence on the part of a third person, such as issuing authority of Exhibit-13, herein.

9. The arguments put forth by the Appellant was that the learned Claims Tribunal has erred in calculating 50% future prospects in addition to the income of the deceased when he had no fixed income. On this count, succour can be drawn from the decision of the Hon'ble Apex Court in ***Special Leave Petition (Civil) No. 25590 of 2014 in the matter of National Insurance Company Limited vs. Pranay Sethi and Ors.*** dated 31.10.2017. While concluding the matter, it was held at Paragraph 61(iv), (vi) and (vii) as follows;

"61.
.....

(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."
.....

(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.

....."

The ratiocination, therefore, clearly lays down the method of computation towards future prospects for self employed or those with a fixed salary.

10. Now coming to the choice of Multiplier which the Respondent points out is erroneous, in the first instance, it may be clarified that for claim petitions under Section 166 of the Motor Vehicles Act, 1988, the choice of Multiplier is to be adopted as per the Table laid out in the Judgment of **Sarla Verma** (supra) and not under the Second Schedule of the Motor Vehicles Act, 1988, as erroneously stated by the Respondent, as the said Table is for claim petitions filed under Section 163A of the Motor Vehicles Act, 1988.

That having been said, Exhibit-8, the Birth Certificate of Santa Kumar Limboo, reflects his Date of Birth as 26.8.1978. The accident having occurred on 15.8.2014, the deceased was a few days short of his 36th birthday. In **Achhaibar Maurya vs State of Uttar Pradesh & Others**⁸, the Hon'ble Supreme Court while considering a service matter and discussing the retirement age of the appellant held as follows;

"12. It was urged that the appellant was entitled to a hearing as the matter relating to retirement from service depended upon the statutory provisions. A person retires automatically on the day when he completes the age of superannuation. Principles of natural justice, therefore, cannot be said to have any application in a case of this nature. A person attains a specified age on the day preceding that anniversary. (See Shurey, Rs, Savory v. Shurey : LR (1918) 1 Ch 263) and R. v. Scoffin : LR (1930) 1 KB 741)

13. This Court in Prabhu Dayal Sesma v. State of Rajasthan [(1986) 4 SCC 59] held : (SCC pp. 63-64, para 9)

"9. ... In calculating a person's age, the day of his birth must be counted as a whole day and he attains the specified age on the day preceding, the anniversary of his birthday."

[Emphasis supplied]

⁸ (2008) 2 SCC 639

Thus, bearing in mind the contents of Exhibit-8 and the ratiocination supra, the deceased was technically not 36 years of age.

11. Consequently, the choice of Multiplier to be adopted for computing loss of dependency would be as laid down in the Judgment in **Sarla Verma** (supra). Paragraph 42 of the aforesaid Judgment, lays down as follows;

"42. We therefore hold that the multiplier to be used should be as mentioned in Column (4) of the table above (prepared by applying *Susamma Thomas* [(1994) 2 SCC 176], *Trilok Chandra* [(1996) 4 SCC 362] and *Charlie* [(2005) 10 SCC 720]), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

12. For non-pecuniary damages, the learned Claims Tribunal had granted Rs.1,00,000/- (Rupees one lakh) only, for loss of love and affection relying on **M. Mansoor vs. United Indian Insurance Co. Ltd. Anr.**⁹. In the said Judgment, it was held as follows;

"17. Besides this amount the claimants are entitled to get Rs.50,000/- each towards the loss of affection of the son i.e. Rs.1,00,000/-....."

⁹ 2013 (12) SCALE 324

In the said matter the deceased was the son of the appellants. In view of the reasoning given by the learned Tribunal, I find that there is no error in the Award of the non-pecuniary damages.

13. So far as the grant of Rs.1,00,000/- as consortium is concerned, the Hon'ble Supreme Court in **Rajesh & Ors. vs. Rajbir & Ors.** (supra), held as follows;

"20.In legal parlance, 'consortium' is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium."

[Emphasis supplied]

Consequently, no error visits grant of Rs.1,00,000/- (Rupees one lakh) only, for loss of consortium.

14. The Appeal is partly allowed, as also the Cross-Objection.

15. In conclusion, the matter is remanded back to the learned Claims Tribunal for the limited purpose of allowing the Appellant to clarify Exhibit-13 and thereafter, make necessary calculations with regard to future prospects depending on the income of the deceased Victim. The matter be readmitted to its original number in the Register of the learned Member, Motor Accidents Claims Tribunal, Gangtok, East Sikkim. The entire exercise shall be completed within three months from today including pronouncement of Judgment.

16. The impugned Judgment of the Learned Claims Tribunal is set aside to the afore stated extent.

17. Copy of this Judgment be sent to the Learned Motor Accidents Claims Tribunal, East District at Gangtok, East Sikkim, for compliance.

18. Records be remitted forthwith.

18. No order as to costs.

(Meenakshi Madan Rai)
Judge
14-12-2017

Approved for reporting : **Yes**
Internet : **Yes**