

GAHC010023132016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : MACApp./229/2016

SBI GENERAL INSURANCE CO. LTD.
HAVING IS HEAD OFFICE AT NATARAJ 101,201 and 301 JUNCTION OF
WESTERN EXPRESS HIGHWAY and ANDHERI KURLA ROAD, ANDHERI
EAST, MUMBAI 400069 AND REGIONAL OFFICE AT 4TH FLOOR, B BLOCK,
APEEJAY HOUSE 15 PARK STREET, KOLKATA 7000016

VERSUS

SMTI RAJLAKHI SINHA and 6 ORS,
W/O LATE CHANDRA KANTA SINHA

2:MASTER BISHAL SINHA
S/O LATE CHANDRA KANTA SINHA

3:MISS NANDINI SINHA
D/O LATE CHANDRA KANTA SINHA

4:MISS CHANDANA SINHA
D/O LATE CHANDRA KANTA SINHA

5:SMTI SAROJINI SINHA
W/O LATE GOLOK KISHORE SINHA
ALL ARE R/O VILL. BURUNGA

PART-II

P.O. BURUNGA
P.S. KATIGORAH
DIST. CACHAR
ASSAM

RESPONDENT NOS. 2

3 and 4 BEING MINORS ARE REPRESENTED BY THEIR GUARDIAN
MOTHER I.E. RESPONDENT NO.

Advocate for the Petitioner : MS.M SAIKIA

Advocate for the Respondent : MS.M BHATTACHARJEE R- 1-5

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

JUDGMENT

Date : 02-02-2022

Heard Mr. R. Goswami, learned counsel appearing for the applicant. Also heard Ms. M. Bhattacharjee, learned counsel for the respondent.

2. This appeal has been filed under Section 173 of the Motor Vehicles Act, challenging the judgment and award dated 30.03.2016 passed by the MACT, Silchar, Cachar, in MAC case No. 763/2013.

3. On 03.06.2013, at about 12 noon when the deceased was waiting at Padritila near St. Viann School, a truck bearing registration No. As-01-DD-1651 hit him and he died instantly.

4. Upon the aforesaid facts, the claim case was filed before the learned tribunal.

5. The driver of the vehicle and the insurance company contested the claim case by filing separate written statements.

6. The driver of the vehicle has claimed that the vehicle had valid insurance policy and therefore, the insurance company shall be liable to pay compensation.

7. The contesting insurance company/the present appellant has claimed that the deceased also contributed to the accident.

8. On the basis of the pleadings of the parties, the learned tribunal framed the following issues:-

1. Whether the deceased/victim died due to motor accident occurred on 03.06.2013?

2. Whether the accident was occurred due to rash and negligent driving of the driver of the vehicle?

3. Whether the claimants are entitled any compensation? If so, what amount is just and reasonable?

4. To what other relief/reliefs the claimants are entitled and from whom?

9. The claimant/respondent examined herself only and the insurance company did not examine any witnesses. On the basis of the evidence on record, the learned tribunal awarded a compensation of Rs.28,55,792/- with interest thereon @ 9% per annum with effect from the date of filing of the claim application till realization of the award.

10. The appellant/insurance company submitted that the deceased was a retired Indian Army personnel and after his retirement he was working as a security guard in a private company. The insurance company pleaded that the monthly pension of the deceased should have been taken as the monthly income of the deceased. The insurance company has also challenged the award of future prospect @ of 30% on the ground that after the death of the deceased, his family would continue to get family pension.

11. I have gone through the evidence available on the record and the judgment passed by the learned tribunal. It was proved that the deceased was getting a pension of Rs. 11,840/-. The learned tribunal notionally held that the income of the deceased as a security guard at Rs.3000/- per month. Therefore, Rs. 11,840/- plus Rs.3000/- becomes

Rs. 14,840/-.

12. In order to buttress his argument, Mr. Goswami has relied upon the decision of the Supreme Court that was rendered in ***Sebastiani Lakra & Ors. –vs- National Insurance Company Ltd. & Anr.*** reported in ***AIR 2018 SC 5034***.

13. The said judgment pertains to a motor accident claim where the learned tribunal did not consider the prayer for compensation on account of loss of future prospect. In that case, under a certain scheme, the claimants were getting a large amount of money every month. The Supreme Court agreed with the view taken by the learned tribunal.

14. In this case, the deceased was getting Rs.11840/- every month as pension. That fact has been proved before the learned tribunal. But the income of the deceased as a security guard in a private company was not proved before the tribunal though his income was notionally held to be Rs.3000/- per month. There is no dispute that the claimant, being the legal heir of the deceased, would get family pension till her death. So, this Court is of the opinion that the claimant is no entitled 30% on the account of loss of future prospect.

15. Pursuant to the law led down in ***National Insurance Company Ltd. –vs- Pranay Shetty*** reported in ***2017 16 SCC 680***, the claimant is entitled to Rs.15,000/- for loss of estate, Rs.40,000/- for loss of consortium and Rs.15,000/- for funeral expenses i.e. a total amount of Rs. 70,000/-. On account of loss of dependency, the claimant shall be entitled to Rs. 14,91,840/-. Therefore, the claimant is entitled to receive a total of Rs.15,61,840/-. The claimant shall be entitled to an interest @9% per annum to be calculated from the date of filing of the application till full realization. Obviously, the insurance company shall be entitled to deduct/adjust the amount, if already paid.

16. The appeal is allowed in the aforesaid terms.

17. Send back the LCR.

JUDGE

Comparing Assistant