GAHC020006472024 2026:GAU-NL:405

# THE GAUHATI HIGH COURT
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**
**KOHIMA BENCH**

**Case No. : MACApp./6/2024**

SMTI. LAKHIMAI BORAH SAIKIA AND 5 ORS
R/O VILLAGE BHALAIMORA
POST OFFICE- KACHUA
DISTRICT- LAKHIMPUR, ASSAM

2: SHRI PARESH SAIKIA
S/O PHATIK SAIKIA
R/O VILLAGE BHALAIMORA
POST OFFICE- KACHUA
DISTRICT- LAKHIMPUR
ASSAM

3: SHRI RUPAK SAIKIA
S/O PHATIK SAIKIA
R/O VILLAGE BHALAIMORA
POST OFFICE- KACHUA
DISTRICT- LAKHIMPUR
ASSAM

4: SMTI. RANU SAIKIA
D/O PHATIK SAIKIA
R/O VILLAGE BHALAIMORA
POST OFFICE- KACHUA
DISTRICT- LAKHIMPUR
ASSAM

5: SMTI. MANDIRA SAIKIA
D/O PHATIK SAIKIA
R/O VILLAGE BHALAIMORA
POST OFFICE- KACHUA
DISTRICT- LAKHIMPUR
ASSAM

6: SMTI MANJULI SAIKIA
D/O PHATIK SAIKIA
R/O VILLAGE BHALAIMORA
POST OFFICE- KACHUA
DISTRICT- LAKHIMPUR
ASSAM

VERSUS

THE BRANCH MANAGER, ORIENTAL INSURANCE CO. LTD AND ANR
BELTOLA, GUWAHATI, ASSAM-781028

2:THE DIVISIONAL MANAGER
ORIENTAL INSURANCE CO. LTD
DIMAPUR NAGALAND-797112

**Advocate for the Petitioner** : B. N. SARMAH, IMTIWAPANG

**Advocate for the Respondent** : KIM PIENYU, KETI IMCHEN,REBECCA,LAKNYEI PHOM

BEFORE

**HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER**

Advocates for the Appellant(s) : Mr. B.N. Sarmah

Advocate for the Respondent(s) : Mr. Laknyei Phom

Date on which judgment is reserved : **20.07.2026**

Date of pronouncement of judgment : **24.07.2026**

Whether the pronouncement is of the operative part of the judgment : Full judgment.

Whether the full judgment has been pronounced : Yes.

**JUDGMENT & ORDER (CAV)**

The instant Appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the Appellants/Claimant assailing the judgment and award dated 14.06.2024 passed in MAC Case No. 01/2023 by the Learned Member, Motor Accident Claims Tribunal Phek, Nagaland.

**2.** Heard learned counsel for the Appellants, Mr. B.N. Sarmah and learned counsel, Mr. Imtiwapang. Also heard learned counsel, Mr. Laknyei Phom and Ms. Kim Pienyu, learned counsel for the Respondents/Insurer.

**3.** The facts leading to the instant Appeal is that on 16.11.2022 the deceased was returning home after the day's work in his M/S Aradhana Astrological Research & Service Centre riding his motorbike slowly when the offending vehicle No. NL/01-AG-0060 (Tata Truck) driving rashly and negligently dashed against the motorcycle and ran over the deceased. The deceased died on the spot. Therefore, the Appellants/Claimants herein being the wife and children of the deceased filed the MAC Case No.01/2023 before the Learned MACT, Phek, Nagaland. In the proceeding before the learned Tribunal, the Appellants/Claimants examined 3(three) witnesses but, the Respondents did not examine any witness. After hearing the parties, the learned Tribunal allowed the claim petition but awarded a very meager amount of Rs.17,27,500/- (Rupees Seventeen lakh Twenty Seven Thousand Five hundred) only. Being aggrieved, the Appellants/Claimants has come before this Court on the following grounds:-

**i)** Under Section 168 (3) of the Motor Vehicles Act, 1988, it is provided that when an award is made under this Section, the person who is required to pay any amount in terms of such award shall deposit the entire amount within 30(thirty) days of the date of the award. However, the learned Tribunal has illegally directed the Insurance Company to deposit the awarded amount within 3 (three) months.

**ii)** The learned Tribunal did not taken into consideration the un-rebutted evidence regarding the monthly income of the deceased as Rs.1,20,000/- (Rupees One Lakh Twenty Thousand), but arbitrarily held that the monthly income of the deceased was Rs.35,000/- (Rupees Thirty Five Thousand) without any basis.

Learned counsel, Mr. B.N. Sarmah submits that the Examination-in-Chief of the PW1 as well as PW2 and their cross-examination by the Insurance Company clearly proved that the deceased had invested substantial amounts in his Savings Bank account at Assam Gramin Vikash Bank, 4(four) Recurring deposit accounts at Dikrong sub-post office, 1(one) saving bank account at Dikrong Sub-post office and 4 (four) LIC policies. Such bank credits and deposits were not disputed by the insurer and could not be rebutted during the cross-examination. However, the learned Tribunal ignored the said evidence and held the monthly income of the deceased as Rs.35,000/-. Learned counsel submits that when there is proved income of the deceased, adopting a notional income for assessment of awarded amount is arbitrary.

**iii)** Learned counsel has also taken the ground that in the case of ***National***

***Insurance Co. Ltd. -Vs- Pranay Sethi & Ors*** reported in ***(2017) 16 SCC 680***, the Hon'ble Supreme Court had held that, "Reasonable figure 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 and the aforesaid should be enhanced at the rate of 10% every 3 (three) years. However, in the impugned judgment, the Tribunal has not awarded 10% enhanced amount in favour of the claimant in the conventional heads.

**iv)** Learned counsel for the Appellants further submits that the loss of consortium is to be granted to all the dependents i.e., the wife as well as the children. It is submitted that the learned Tribunal had committed an error by awarding a lump sum amount of Rs.40,000/- as loss of consortium to the legal heirs of the deceased. Whereas, the learned Tribunal ought to have awarded the loss of consortium of Rs.40,000/- to the widow of the deceased as spousal consortium and Rs.40,000/- each to the five children of the deceased as parental consortium.

**4.** Learned counsel for the Appellants has further relied on the case of ***United India Insurance Co. Ltd. -Vs- Satinder Kaur*** reported in ***(2021) 11 SCC 780***, wherein the Hon'ble Supreme Court relying on the case of Pranay Sethi (Supra), had awarded spousal consortium to the widow of the deceased and also parental consortium to each child of the deceased.

**5.** In view of the submissions hereinabove, the learned counsel for the Appellants/Claimants prays that the awarded amount of Rs.17,27,500/- (Rupees

Seventeen lakh Twenty Seven Thousand Five hundred), may be enhanced to Rs.59,40,000/- (Rupees Fifty Nine lakh Forty Thousand) with interest as claimed in the claim application before the Tribunal.

**6.** Learned counsel for the respondents/Insurer on the other hand submits that the learned Tribunal had rightly come to the conclusion that the deceased was a retired government servant and his monthly income as claimed by the claimants was not supported by any documents like appointment order, release order or pension book. The Tribunal had also observed that the deceased had not filed any Income Tax Returns and the same were not produced before the Tribunal and therefore, the Tribunal had rightly held that the income of the deceased as Rs.1,20,000/- cannot be accepted as gospel truth and accurate and had therefore taken Rs.35,000/- as monthly income of the deceased at the time of his death. Learned counsel therefore submits that in the absence of any documentary evidence, the amount of Rs.1,20,000/- as monthly income per month cannot be accepted. Learned counsel submits that the impugned judgment and award dated 14.06.2024 does not require the interference of this Court.

**7.** The Court has considered the submission of the learned counsel for the parties and perused the Trial Court records.

**8.** As far as the factum of accident and death of deceased in the accident is concerned, there is no dispute. There is also no dispute regarding the age of the deceased. The only issue to be decided in the instant case is whether the tribunal had committed an error by holding that the monthly income of the deceased was

Rs.35,000/-. It is also to be examined whether the loss of consortium has been rightly awarded by the tribunal.

**9.** In order to arrive at a correct analysis of the impugned judgment dated 14.06.2024, this court has to consider:

a) Was there any reliable evidence of actual earnings, i.e., salary certificate, employer testimony, bank statements, business records, Income Tax Returns (ITRs for the sake of brevity), return account books, qualification, nature of work etc.

b) If direct documentary proof was absent, did the tribunal rely on surrounding circumstances like occupation, skill, family dependence and oral evidence?

c) If evidence of actual income was weak, did the tribunal adopt notified minimum wages or a reasonable income.

d) Whether the figure is so arbitrary that it results in unjust compensation.

**10.** The Tribunal is called upon to assess the income on the basis of the best available material on the basis of preponderance of probabilities. When there is no reliable documentary evidence of actual income, and a substantial income is claimed but there are no ITRs, no bank records, no books of account and no corroborative witnesses, the Appellate Court may reduce the income assessed by the Tribunal, if it appears to be exaggerated. However, this Court is of the view that non production of ITRs does not automatically mean that the income must be taken as NIL or confined to a nominal amount. In the present case the claimants had produced the bank statements, recurring deposit statements and Insurance policies of the deceased.

Many Self-employed persons, Small traders, Agriculture workers and persons in the Informal Sector may not file ITRs. In the case of ***Ramachandrappa -Vs- Manager, Royal Sundaram Alliance Insurance Company Limited***, reported in ***(2011) 13 SCC 236***, the Supreme Court held that the Tribunal must adopt a realistic and pragmatic approach in assessing the income of a claimant particularly when the deceased is self-employed or engaged in unorganized sector and documentary proof of income is unavailable. Applying the principle in the case of *Ramachandrappa (Supra),* the Tribunal could not have rejected the claim of Rs.1,20,000/- per month merely because ITRs were absent. Equally, it could not select Rs.35,000/- per month without any evidentiary basis. The Tribunal was required to make a reasoned estimate based on the nature of the vocation of the deceased, his bank transactions, the savings pattern, the oral evidence of PW1 & 2 and the surrounding circumstances rather than fixing an arbitrary figure.

**11.** In the instant case, the Appellants/Claimants had produced the savings bank accounts of the deceased, the recurring deposit accounts, and the Life Insurance Policies of the deceased. Upon going through the various savings bank accounts and the recurring deposit accounts of the deceased and Insurance policies, it is observed that the deceased had been depositing about Rs.50,000/- to Rs.60,000/- in the different accounts every month over a substantial period of time. Other than the said investments per month, it can be reasonably held that the deceased must have kept aside at least Rs.40,000/- to Rs.50,000/- for himself and his household monthly expenses. The occupation of a fortune teller/Astrologer is one in which income is often received in cash and formal accounts or tax returns may not exist. Since the savings bank accounts and the recurring deposit accounts and Insurance policies together consistently showed monthly deposits of around Rs.40,000/- to Rs.50,000/- per month over a substantial period of time, this Court is of the view that the bank statements and the Life Insurance Policies have shown reliable evidence of monthly savings by the deceased and the oral evidence of the claimants (PW-1 & 2) has also corroborated such documentary evidence which could not be rebutted by the insurer during cross examination. This Court is therefore of the view that the amount of Rs.35,000/- per month arrived at by the Tribunal needs to be interfered with. This Court is of the considered opinion that the monthly income of the deceased can be reasonably taken as Rs.80,000/- (rupees eighty thousand) per month.

**12.** With regard to the award under loss of consortium, the Hon'ble Supreme Court in the case of *Pranay Sethi (Supra)* and *Satinder Kaur (Supra),* have already laid down the principle that parental and filial consortium has to be awarded by the Tribunal. Accordingly, the widow of the deceased had to be awarded amount of Rs.40,000/- as spousal consortium and the five children of the deceased are entitled to parental consortium.

**13.** In view of the observations made hereinabove, the impugned judgment and award dated 14.06.2024 passed in MAC Case No.01/2023 is re-assessed and modified as under:-

| Sl. | Heads | Amount (in Rs) |
|---|---|---|
| 1 | Loss of income: | |

| | | |
|---|---|---|
| | Rs.80,000/- x 12 x5= Rs.48,00,000/-<br><br>Less 1/4th = Rs.12,00,000/- | Rs.36,00,000/- |
| 2 | Loss of estate | Rs.15,000/- |
| 3 | Funeral expenses | Rs.15,000/- |
| 4 | Spousal consortium | Rs.40,000/- |
| 5 | Parental consortium | Rs.40,000/- x 5 = Rs. 2,00,000/- |
| 6 | 5% as loss of Future prospects i.e., 5% of Rs.36,00,000/- | Rs.1,80,000/- |
| 7 | **Total** | **Rs.40,50,000/-** |

**14.** The enhanced amount of **Rs.40,50,000/- (Rupees Forty Lakhs Fifty Thousand)** shall be paid to the Appellants/Claimants with interest of 9% per annum from the date of filing the claim petition before the Tribunal till realization, and the same shall be deposited before the Tribunal by the Respondents/Oriental Insurance Company Limited within a period of 60(sixty) days from the date of receipt of a copy of this judgment.

**15.** With the above modifications, the Appeal stands disposed. The Registry is directed to send back the Trial Court records expeditiously.

RAZOUV ONUO KHOUBV E Digitally signed by RAZOUVONUO KHOUBVE Date: 2026.07.24 13:50:51 +05'30'

**JUDGE**

**Comparing Assistant**