THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Appellate Jurisdiction)

DATED : 9th MAY, 2017

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

MAC App. No.05 of 2016

<u>Appellants</u> :

1. Shri Shyam Sunder Pareek,
S/o Shri B. Narayan Pareek,
Aged about 55 years

2. Smt. Alka Pareek,
W/o Dr. Shyam Sunder Pareek,
Aged about 53 years

3. Shri Shaswat Pareek,
S/o Shri Shyam Sunder Pareek,
Aged about 19 years

All residents of Lecturer's Colony,
Near Krishna Art Center,
City Road, Madanganj – Kishangarh,
Dist. Ajmer, Rajasthan,
Pin – 305 802.

versus

<u>Respondents</u> :

1. The Branch Manager,
United India Insurance Company Limited,
Having its Office at Deorali Bazaar,
31A National Highway,
Near Khadi Bhawan,
P.O. Tadong,
P.S. Gangtok, East Sikkim.

2. Shri Bikash Gurung (Owner),
S/o Late R. B. Gurung,
Permanent resident of Subaney Dara,
Lingtam, Rongli,
P.O. & P.S. Rongli, East Sikkim.
At present residing at Upper Shyari,
Near Hotel New Bishal,
P.O. Tadong,
P.S. Gangtok, East Sikkim.

3. Shri Suleman Lepcha @ Sanu Bhai (Driver),
S/o Shri Prem Bahadur Lepcha,
Aged about 25 years,
R/o Basilakha, Namcheybong,
P.O. & P.S. Pakyong,
East Sikkim.

Appeal under Section 173 of
the Motor Vehicles Act, 1988

Appearance

Mr. Ajay Rathi, Ms. Phurba Diki Sherpa, Mr. Pramit Chhetri and Mr. Rahul Rathi, Advocates for the Appellants.

Mr. Dinesh Chawhan, Advocate for the Respondent No.1.

Mr. L. B. Gurung, Advocate for Respondent No.2.

Mr. Bhusan Nepal, Advocate for Respondent No.3.

J U D G M E N T

Meenakshi Madan Rai, J.

1. Questioning the compensation awarded by the Learned Motor Accidents Claims Tribunal, East District, at Gangtok (for short "Learned Claims Tribunal"), in MACT Case No.09 of 2015, dated 11-03-2016, the Appellants/Claimants (hereinafter "Appellants") are before this Court.

2. Learned Counsel for the Appellants submits that they only seek to raise two issues before this Court, viz; the Learned Claims Tribunal ought to have included the Provident Fund, being deducted from the salary of the deceased as her income while computing the compensation. Apart from which a sum of Rs.1,00,000/- (Rupees one lakh) only, ought to have been awarded as Loss of Estate as held by the Hon'ble Apex Court, in a catena of decisions, for which reliance was placed on ***Sandhya Rani Debbarma and Others*** vs. ***National Insurance Company Limited and Another***[1].

3. To the contrary, refuting the contentions of the Appellants, Learned Counsel for the Respondent No.1-Insurance

1. 2016 (4) TAC 165 (SC)

Company (hereinafter "Respondent No.1") submitted that there is no error in the computation arrived at by the Learned Claims Tribunal and, therefore, the decision ought not to be disturbed.

4. I have heard Learned Counsel and given due consideration to their submissions. I have also carefully perused and considered the entire documents, evidence on record and the impugned Judgment.

5. The facts, as they emerge are that, the deceased aged about 24 years, the daughter of the Appellants No.1 and 2 and sister of the Appellant No.3, had travelled on 11-03-2014 to Yumthang Valley, North Sikkim, in vehicle bearing registration No.SK 01 J 2636, insured with the Respondent No.1 and driven by the Respondent No.3, Suleman Lepcha, the authorised driver. On their return on 12-03-2014, due to inclement weather and heavy rainfall, on reaching Phensong under the Phodong Police Station, both in North Sikkim, the driver lost control of the vehicle, which careened off the road to approximately 300/400 feet below, in which the victim sustained and succumbed to grievous injuries at the spot.

6. Turning to address the questions raised before this Court, the Learned Claims Tribunal in the impugned Judgment while deciding Issue No.3, i.e., Whether the Claimants are entitled to the compensation claimed? If so, who is liable to compensate them? *inter alia*, reached the finding that Exhibit 48, the Pay Slip of the deceased, revealed her total monthly earnings in February, 2014, to be Rs.62,870.29 (Rupees sixty two thousand, eight hundred seventy and paisa twenty nine) only. However, to assess the Tax Deducted at Source (hereinafter "TDS"), the Learned Claims Tribunal reverted to Exhibit 47 and observed that the TDS Statement of the deceased for the months of July, 2012 to March, 2013, showed that she had paid Income Tax to the tune of Rs.28,333/- (Rupees twenty eight thousand, three hundred and thirty three) only, for nine months and, on this basis proceeded to calculate that on an average the deceased was paying Income Tax of Rs.3,148.11 (Rupees three thousand, one hundred forty eight and paisa eleven) per month. However, again relying on Exhibit 48, it was found that the deceased was paying monthly Professional Tax @ Rs.200/- (Rupees two hundred) only. The Learned Claims Tribunal, therefore, arrived at the finding that the actual monthly income of the deceased would be exclusive of the Income Tax and Professional Tax and by deducting the aforesaid taxes, calculated that the actual monthly income of the deceased came to Rs.59,522.18 (Rupees fifty nine thousand, five hundred twenty two and paisa eighteen) only.

7. Having thus carefully considered the above finding, I deem it essential to examine Exhibit 47 and Exhibit 48. Exhibit 47 in five pages, which includes Form 16, Certificate under Section 203 of the Income Tax Act, 1961, for TDS on salary reflecting Assessment year as "2013-14" and the period with the employer from 02-07-2012 to 31-03-2013. On the other hand, Exhibit 48 is the Pay Slip of the deceased for the month of February, 2014, reflecting therein all relevant entries of her salary including the Income Tax. Infact, Exhibit 48 is the relevant document to be considered being the Pay Slip for the month of February, 2014, as already pointed. This document, *inter alia*, reveals as follows;

"……………………………………………………………………………………

Earnings	Amount	YTD	Deductions	Amount	YTD
Basic	29,633.38	325,967.18	Employee Club	50.00	550.00
Conveyance	800.00	8,800.00	Provident Fund	3,556.00	39,116.00
House Rent Allowance	14,816.69	162,983.59	Professional Tax	200.00	2,200.00
Special Allowance	17,620.22	193,822.42	Labour Welfare Board	0.00	6.00
			Income Tax	11,033.00	42,927.00
LTA Taxable	0.00	26,622.26			
Total Earnings	62,870.29	718,195.45	**Total Deductions**	14,839.00	84,799.00"
Net pay Rs.48,031.29 ……………………………………………………………………………………"					

Based on the above revelation, the Income Tax deposited by her, I find would be approximately Rs.4,967/- (Rupees four thousand, nine hundred and sixty seven) only, per month, and not Rs.3,148.11 (Rupees three thousand, one hundred forty eight and paisa eleven) per month, as found by the Learned Claims Tribunal. As agitated by Learned Counsel for the Appellant, there is no denying that the Provident Fund deducted from her salary ought to be included in her income, as also Rs.1,00,000/- (Rupees one lakh) only, on account of loss of estate in terms of the decision in ***Sandhya Rani Debbarma***[1].

8. In conclusion, the net pay of the deceased would be calculated as follows;

Total earnings	:	Rs. 62,870.29
Add Provident Fund	:	Rs. 3,556.00
Less Income Tax	:	Rs. 4,497.00
Less Professional Tax	:	Rs. 200.00
Less Employee Club	:	Rs. 50.00
Net pay	**:**	**Rs. 61,679.29**

(rounded off Rs.61,679.00)

(Rupees sixty one thousand, six hundred and seventy nine) only.

9. In the light of the above discussions and findings, the compensation stands re-calculated and modified as follows;

Monthly income of the deceased		Rs.	61,679.00
Annual income of the deceased **(Rs.61,679/- x 12 months)**		Rs.	7,40,148.00
Add 50% of Rs.7,40,148/- as Future Prospects	**(+)**	Rs.	3,70,074.00
Yearly income		Rs.	11,10,222.00
Less 50% as deceased was a Spinster	**(−)**	Rs.	5,55,111.00
Net yearly income		Rs.	5,55,111.00
Multiplier to be adopted '18' (Rs.5,55,111/- x 18)		Rs.	99,91,998.00
Add Loss of estate	**(+)**	Rs.	1,00,000.00
Add Funeral expenses	**(+)**	Rs.	25,000.00
Add Cost of transportation	**(+)**	Rs.	76,416.20
Add Loss of love and affection	**(+)**	Rs.	1,00,000.00
Total	=	**Rs.**	**1,02,93,414.20**

(rounded off Rs.1,02,93,414.00)

(Rupees one crore, two lakhs, ninety three thousand, four hundred and fourteen) only.

Accordingly, the Respondent No.1 is liable to pay a sum of Rs.1,02,93,414.00 (Rupees one crore, two lakhs, ninety three thousand, four hundred and fourteen) only, as against an amount of Rs.98,54,009.36 (Rupees ninety eight lakhs, fifty four thousand, nine and paisa thirty six) only, as calculated by the Learned Claims Tribunal.

10. The Appellants shall be entitled to simple interest @ 9% per annum on the above amount as per the principle laid down in ***Municipal Corporation of Delhi, Delhi*** vs. ***Uphaar Tragedy Victims Association and Others***[2] with effect from the date of filing of the Claim Petition before the Learned Claims Tribunal, until its full realisation.

2. (2011) 14 SCC 481

11. The impugned Judgment of the Learned Claims Tribunal stands modified accordingly.

12. The Respondent No.1 is directed to pay the modified awarded amount to the Appellants within one month from today, failing which they shall pay simple interest @ 12% per annum from the date of filing of the Claim Petition till realisation, duly deducting the amounts, if any, already paid by the Respondent No.1 to the Appellants.

13. The modified awarded amount of compensation shall be divided amongst the Appellants, as follows;

(i) *40% of the total award to the Appellant No. 1.*

(ii) *40% of the total award to the Appellant No. 2.*

The above amounts are awarded to the Appellants No.1 and 2, considering the fact that they are parents of the deceased.

(iii) *20% of the total award to the Appellant No. 3, being the unmarried dependent brother of the deceased.*

14. The Appeal is allowed to the aforestated extent.

15. No order as to costs.

16. Copy of this Judgment be sent to the Learned Claims Tribunal for information and compliance.

17. Records of the Learned Claims Tribunal be remitted forthwith.

Sd/-
(Meenakshi Madan Rai)
Judge
09-05-2017

Approved for reporting : **Yes**

ds

Internet : **Yes**