GAHC010199872019

2026:GAU-AS:14170

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

Case No. : MACApp./550/2019

SMTI. REBON KALITA AND 2 ORS
W/O LT. MOHAN KALITA, PERMANENT R/O VILL. RANGATI, P.O. PATHALIPAHAR, P.S. BIHPURIA, DIST. LAKHIMPUR, ASSAM, PIN-784163 AND PRESENTLY RESIDING AT C/O PRABIN DAS, R/O HOUSE NO. 12, SANTIPUR HILL SIDE (NEAR PRAGATI SANGHA), P.O. AND P.S. BHARALUMUKH, GUWAHATI-781009, DIST. KAMRUP (M), ASSAM

2: NIJARA KALITA
D/O LT. MOHAN KALITA
PERMANENT R/O VILL. RANGATI
P.O. PATHALIPAHAR
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-784163 AND PRESENTLY RESIDING AT C/O PRABIN DAS
R/O HOUSE NO. 12
SANTIPUR HILL SIDE (NEAR PRAGATI SANGHA)
P.O. AND P.S. BHARALUMUKH
GUWAHATI-781009
DIST. KAMRUP (M)
ASSAM

3: DIGEN KALITA
S/O LT. MOHAN KALITA
PERMANENT R/O VILL. RANGATI
P.O. PATHALIPAHAR
P.S. BIHPURIA
DIST. LAKHIMPUR
ASSAM
PIN-784163 AND PRESENTLY RESIDING AT C/O PRABIN DAS
R/O HOUSE NO. 12
SANTIPUR HILL SIDE (NEAR PRAGATI SANGHA)
P.O. AND P.S. BHARALUMUKH
GUWAHATI-781009

DIST. KAMRUP (M)
ASSA

VERSUS

SRI SANJIV KUMAR SONI AND ANR
S/O MR. BHULAN SONI, R/O VILL. MARBILL, P.S. LALUK, DIST. LAKHIMPUR, ASSAM(OWNER OF THE OFFENDING VEHICLE BEARING NO. AS-07-C-5046 TANKER)

2:THE NEW INDIA ASSURANCE CO. LTD.
REGIONAL OFFICE ABC
OPP. RAJIB BHAWAN
G.S. ROAD
GUWAHATI-5
DIST. KAMRUP (M)
ASSA

Advocate for the Petitioner : MR S CHAKRABORTY, MR. R SARKAR

Advocate for the Respondent : MR. K K BHATTA, MR. K K DEKA,MR. S DEKA

BEFORE:
HON'BLE MRS. JUSTICE YARENJUNGLA LONGKUMER

Advocates:
For the Appellants : Mr. S. Chakraborty
For the Respondents : Mr. K.K. Bhatta

Date of hearing and judgment : **23.09.2026**

:JUDGMENT & ORDER (ORAL):

1. The present appeal under Section 173 of the Motor Vehicles Act, 1988 has been preferred by the Appellants/Claimants praying for enhancement of the compensation in judgment and award dated 22.05.2019 passed by the Motor

Accident Claims Tribunal No. 2, Kamrup (Metro), Guwahati in MAC Case No. 2024/2015.

2. Heard learned counsel for the Appellants, Mr. S. Chakraborty; also heard learned counsel, Mr. K.K. Bhatta, for the Respondent/Insurance Company.

3. The facts of the case leading to the filing of the instant appeal are that on 04.01.2015 the deceased, who was the eldest son of the Claimant No. 1 and the brother of the Claimant Nos. 2 and 3, while travelling from his house towards Banderdewa, riding on his own motorcycle met with an accident when an oil tanker that was travelling in the same direction and was being driven in a rash and negligent manner hit the motorcycle being driven by the deceased from behind. The tanker knocked down the motorcycle of the deceased and thereafter, the offending vehicle ran over the deceased who had fallen on the road which resulted in the death of the deceased on the spot.

4. The case of the Appellant is that at the time of the accident, the oil tanker was duly insured with the New India Assurance Co. Ltd., and the insurance policy was valid up to 25.10.2015. The offending vehicle was driven by a driver who had a valid driving licence. The deceased, at the time of his death was 48 years old, unmarried and earned his livelihood by running a dairy farm with 4 [four] Jersey cows and a small tea garden spread over an area covering 5 Bighas. The deceased was also working as Head Clerk at the Banderdewa Junior College from which he used to receive financial assistance from the Government. It was contended by the Claimants that the deceased used to earn a monthly income of Rs. 20,000/-.

5. The Appellant/Claimants accordingly filed a claim petition which was

registered as MAC Case No. 2024/2015 before the learned Motor Accident Claims Tribunal No. 2, Kamrup (Metro), Assam.

6. The Respondent Nos. 1 and 2 contested the case by filing their written statements wherein they denied all the averments made in the claim petition. However, the Respondent Nos. 1 and 2 did not adduce any evidence before the Tribunal.

7. After hearing the parties, the Tribunal passed the impugned judgment and award dated 22.05.2019 deciding all the issues in favour of the Claimants/Appellants and awarded compensation of Rs. 6,63,750/-.

8. Being aggrieved, and dissatisfied with the judgment and award dated 22.05.2019 passed in MAC Case no. 2024/2015, the Appellant/Claimants have preferred the instant appeal on the following grounds:-

i. That the Tribunal failed to appreciate the oral and documentary evidence adduced by PWs-1, 2, 3 and 4 in their proper perspective. The PWs-1, 2, 3 and 4 had categorically deposed that the monthly income of the deceased was Rs. 20,000/-; however, the learned Tribunal has disregarded the said evidence without assigning any reason.

ii. The learned Tribunal had also committed an error by not awarding any filial consortium to the Appellant No. 1/mother of the deceased; whereas the law mandates that filial consortium is to be awarded to a claimant for the death of a child.

iii. The Tribunal clearly committed an error in deducting 50% for personal

expenses whereas the correct deduction should have been one-third in view of the law laid down in the case of *National Insurance Company Limited v. Pranay Sethi & Ors.* [(2017) 16 SCC 680].

iv. The Tribunal erroneously held that the evidence of the claimant was adduced by the Claimants only on 20.12.2018 and, as such, the Insurance Company was directed to pay the interest only from 20.11.2018 and not from the date of filing the claim petition. Moreover, the rate of interest was also not indicated by the learned Tribunal.

9. Learned counsel for the Appellants in support of his submissions has relied on the case of:

i. ***National Insurance Company Limited v. Pranay Sethi & Ors.*** **[(2017) 16 SCC 680]**;

ii. ***Sebati Nath & Ors. v. Shriram General Insurance Company Ltd.*** **[2025 SCC OnLine SC 3468]**; and

iii. ***Chandra Alias Chanda Alias Chandraram & Anr.*** **[(2022) 1 SCC 198]**.

10. The learned counsel for the Appellants, in view of the above submissions and in view of the principle laid down in the cases cited above, prays that the monthly income of the deceased should be taken as Rs. 20,000/- per month and the filial consortium has to be awarded to the Claimant no.1/Appellant No. 1, who is the mother of the deceased and further prays that this Court may award a suitable rate of interest on the awarded amount which should be paid from

the date of filing the claim petition as the delay was not attributable to the Appellants but due to the dates fixed by the Tribunal wherein the case was being listed only after 2 or 3 months and such a plea of delay by claimants was never raised by the Respondents at any point of time. He, therefore, prays that the impugned judgment may be modified suitably by this Court in order to award just and fair compensation to the Claimants/Appellants.

11. The learned counsel for the Respondent/Insurance Company, Mr. K.K. Bhatta, opposing the contentions of the Appellants, submits that the learned Tribunal has not committed any error in calculating the compensation awarded inasmuch as the Claimants have not been able to produce any documentary evidence with regard to the income of the deceased. Even though the Claimants contended that the deceased had a dairy farm and a tea garden, they had never produced any registration regarding the dairy farm, or any document regarding the ownership of a tea garden. In the absence of such documentary evidence, the Tribunal has rightly calculated the income of the deceased on the basis of minimum wages and the same does not require any interference by this Court.

12. To support his submissions, the learned counsel for the Respondent/Insurance Company relies on the following cases:

i. ***Ponnumany Alias Krishnan & Anr. v. V.A. Mohanan & Ors.*** **[2008 (4) SCC 717]**,

ii. ***New India Assurance Co. Ltd. v. Yogesh Devi & Ors. [2012 (2) SCC 613]***, and

iii. ***Kirti & Anr. etc. v. Oriental Insurance Company Ltd.*** **[2021**

(2) SCC 166].

13. By relying on the aforementioned cases, the learned counsel submits that even in the event of the demise of the deceased, there is no loss of income for the Claimants/Appellants inasmuch as the dairy farm and the tea garden are still in existence and the Claimants can easily engage some competent person to manage the assets. Therefore, the Tribunal could not have taken the entire amount of Rs. 20,000/- as projected by the Claimants as monthly income for calculation of loss of dependency. Learned counsel further submits that in the case of *Kirti & Anr. (Supra)* the Supreme Court held that when the Claimants are unable to produce any document to prove the income, the Tribunal can at the very least take the minimum wage, which is applicable to skilled workers during the relevant point of time. Therefore, the learned counsel submits that the Tribunal has rightly taken Rs. 6,500/- as the monthly income of the deceased.

14. This Court has duly considered the submissions of the learned counsel for the parties and perused the Trial Court Records as well as the judgments relied upon.

15. In a motor accident claim, the absence of documentary proof of income does not automatically mean that the testimony regarding income must be rejected. The Tribunal has to assess the oral evidence along with the nature of occupation, status of the deceased, surrounding circumstances and the credibility of the witnesses. The Supreme Court in the case of *Sebati Nath & Ors (Supra)* has accepted that income can be determined on the basis of the evidence on record and the Court held that in the absence of documentary evidence on record, some guesswork is required to be done. Even where there

is no salary certificate or other formal documentary proof, the Tribunal can assess the income on the basis of the evidence before it.

16. It is settled law that in compensation cases, the strict rules of evidence applicable in criminal trials do not apply and the standard of proof is based on preponderance of probability. In the aforementioned case of *Sebati Nath & Ors (Supra)* the deceased was the owner of a fish farm and the manager of the fish farm owned by the deceased had deposed that the deceased used to earn Rs. 15,000/- per month from the sale of fish. In such circumstances the Supreme Court held that the monthly income of the deceased can be assessed @ Rs. 15,000/- per month. Similarly, in the instant case, the PW-1 who is the younger brother of the deceased deposed that at the time of his death the deceased was running a dairy farm and a small tea garden spread over 5 Bighas, and in addition thereto, he was working as a Head Clerk of Banderdewa Junior College for at least 15 years and was receiving some financial assistance from the Government. He deposed that the deceased was getting a monthly income of Rs. 20,000/- per month. In his cross-examination PW-1 reiterated that the deceased was a bachelor and he owned a dairy farm and a small tea garden in the land of their father. In the said cross-examination by the Insurance Company nothing could be elicited to rebut the deposition that the deceased was earning Rs. 20,000/- per month.

17. PW-2 is the sister of the deceased. PW-2 also deposed that the deceased was running a dairy farm and a small tea garden and was also working as a Head Clerk at Banderdewa Junior College for 15 years and that his monthly income was Rs. 20,000/- per month. On being cross-examined by the Opposite Party No. 3/Insurance Company, the Insurance Company could not rebut the

deposition of the PW-2 that the income of the deceased was Rs. 20,000/- per month. In fact, there was no suggestion even from the Insurance Company regarding the income of the deceased.

18. PW-3 was a Veterinary Doctor, who deposed that the deceased owned a dairy farm comprising of 4 [four] Jersey cows in his own household complex which had started around 2004. He deposed that the monthly income of the deceased would have been around Rs. 20,000/- after deducting all the expenses. PW-3 also deposed that the deceased owned a small tea garden spread around 5 Bighas of land. The PW-3 further exhibited a certificate as Exhibit-9 wherein he categorically stated that the deceased was engaged in dairy farming entrepreneurship since 2004 with 4 jersey cows and sold his milk in the Banderdewa hotels and to some other milk consumers regularly, through which he was maintaining his family. It further certified that the deceased was very sincere and dedicated to his job and the PW-3 used to offer technical support to the deceased from time to time so that he could produce more milk as well as to encourage other educated youth of the village for dairy farming. In the cross-examination by the Insurance Company PW-3 denied the suggestion that the deceased did not own a home dairy farm or a small tea garden.

19. PW-4 is one of the members of the Kherajghat Anchalik Small Tea Growers Association. PW-4 also deposed that the deceased owned a small tea garden comprising of an area of 5 Bighas of land which started around 2008. He deposed that the gross income of the deceased from the tea garden was around Rs. 10,000/- per month; that the deceased was the only bread-earner of the family, and that he was a member of the Kherajghat Anchalik Small Tea Growers Association. In his cross-examination PW-4 also denied the suggestion that he

was deposing falsely and denied that the deceased did not own a dairy farm or a small tea garden.

20. In the case of *Chandra @Chanda (Supra)* the Supreme Court further held that merely because the Claimants are unable to produce documentary evidence to show the monthly income of the deceased, the same does not justify adoption of the lowest tier of minimum wage while computing the income. It was held that there is no reason to discard the oral evidence of the witnesses. From the analysis of the above evidence adduced by the Claimants/Appellants, which is not rebutted by the Respondent/Insurance Company and relying on the principle laid down by the Supreme Court in the above cited cases, this Court is of the view that the learned Tribunal could not have totally discarded the un-rebutted evidence of the PWs-1, 2, 3 and 4. It is accordingly held that the Tribunal should have considered the oral evidence in its right perspective and should have at least held the monthly income of the deceased as Rs. 15,000/- per month as it is proved by the oral evidence that the deceased had a dairy farm in his house with 4 cows and was selling the milk produced from the 4 cows and further he had some income from the tea garden also.

21. There is no dispute with regard to the age of the deceased and the multiplier adopted by the Tribunal. However, with regard to the deduction towards personal expenses, the appellant by relying on the case of *Pranay Sethi (Supra)*, has argued that for determination of the multiplier and the deduction for personal and living expenses, the Tribunal and the courts should be guided by paragraph 32 of ***Sarla Verma v. DTC*** **[(2009) 6 SCC 121]**, wherein the Supreme Court held as under:-

"32. Thus even if the deceased is survived by parents and siblings, only the mother would be considered to be a dependant, and 50% would be treated as the personal and living expenses of the bachelor and 50% as the contribution to the family. However, where the family of the bachelor is large and dependant on the income of the deceased, as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third."

22. The Supreme Court in the above mentioned paragraph of *Sarla Verma (Supra)* held that when the deceased is survived by parents and siblings only the mother would be considered to be a dependant and 50% would be treated as personal and living expenses when the deceased is a bachelor. However, when the family of the bachelor is large and dependant on the income of the deceased as in a case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family will be taken as two-third.

23. It is clear from the above principle of law laid down in the case of *Sarla Verma (Supra)* that in normal circumstances when the deceased is a bachelor, 50% has to be deducted as personal and living expenses. It is only when the family of the dependant is large and dependant on the income of the deceased, with a widowed mother and large number of younger non-earning sisters or brothers his personal and living expenses may be restricted to one-third. In the instant case, the records show that Claimant No. 1/Appellant No. 1 is the mother of the deceased and accordingly, can be considered as a dependant of the deceased. Appellant No. 2 is stated to be 55 years old; she is unmarried and was dependant on the deceased and therefore she can also be considered to be

a dependant. However, Appellant No. 3, who is the younger brother of the deceased is aged 45 years and would certainly be able to earn a livelihood by himself and would have his own income and cannot be considered to be a dependant of the deceased.

24. In the facts of the present case, it cannot be said that the family of the bachelor is large with a large number of younger non-earning sisters or brothers. It is only the mother and the sister of the deceased who are the dependants. Therefore, the observation in the case of *Sarla Verma (Supra)* at paragraph 32 is not applicable here. This Court does not interfere with the finding of the Tribunal in deducting 50% towards personal and living expenses of the deceased.

25. As far as the award of filial consortium is concerned, the mother of the deceased is certainly entitled to filial consortium of Rs. 40,000/- as held down in the case of *Magma General Insurance Co. Ltd. v. Nanu Ram* [(2018) 18 SCC 130] and also reiterated in the case of *United India Insurance Co. Ltd. v. Satinder Kaur Alias Satwinder Kaur* [(2021) 11 SCC 780]. An amount of Rs. 40,000/- is therefore added to the awarded amount as filial consortium in respect of the Claimant No. 1/Appellant No. 1. An addition of 25% towards future prospect is also added as the deceased was below the age of 50 years.

26. In view of the above findings and discussions, the impugned judgment and award dated 22.05.2019 passed by the learned Motor Accident Claims Tribunal No. 2, Kamrup (Metro), Guwahati in MAC Case no. 2024/2015 is set aside.

27. The just and reasonable compensation which the Claimants are entitled to

is re-assessed as under:

Sl. No.	***HEADS***	***CALCULATION***
1.	Income	Rs. 15,000/- per month
2.	25% of Rs. 15,000/- , i.e. Rs. 3,750/-, to be added as future prospect	Rs. 15,000/- + Rs. 3,750 = Rs. 18,750/-
3.	50% (50% of Rs. 18,750/- = Rs. 9,375/-) deducted as personal expenses of the deceased	Monthly contribution to family= Rs. 9,375/- Annual loss of dependency= Rs. 9,375 x 12= Rs.1,12,500/-
4.	Loss of dependency after multiplier of 13 is added	Rs.1,12,500/- x 13 = Rs.14,62,500/-
5.	Filial consortium for the Claimant/Appellant 1	Rs. 40,000/-
6.	Funeral expenses	Rs. 15,000/-
7.	Loss of estate	Rs. 15,000/-
8.	TOTAL COMPENSATION	**Rs. 15,32,500/-** (Rupees Fifteen lakhs Thirty-two thousand Five hundred only).

28. The respondent/New India Assurance Co. Ltd shall deposit the awarded amount of Rs. 15,32,500/- (Rupees Fifteen lakhs Thirty-two thousand Five

hundred only), before the Registry of this Court after deducting the amount of Rs. 6,63,750/-, which has already been deposited earlier before the Registry of this Court, within 6 [six] weeks from the date of this judgment. Further, the total compensation shall be deposited with an interest of 7 % from the date of filing the claim petition till realisation.

29. Thereafter, the Claimant Nos. 1 and 2/ Appellant Nos. 1 and 2 shall be allowed to withdraw the deposited amount upon proper identification and verification.

30. With the above directions and modifications, the appeal stands disposed of. The Registry shall return the Trial Court Records.

JUDGE

Comparing Assistant