

vehicle accident on 1/11/2019. A claim petition being filed before the MACT, Mumbai, vide Claim Petition No.241 of 2010, the Tribunal held in favour of the claimants that the deceased has succumbed to the accident, which took place on the Western Express Highway, Borivali (E), Mumbai, and the accident was because of rash and negligent driving of the offending vehicle i.e. four clip Hydra crane bearing registration No.MH-04-B-5586, which is insured with the insurance company.

3. Answering that the accident was on account of rash and negligent driving of the offending vehicle, the Tribunal determined the compensation payable to the claimants and though a claim was staked by the claimants for Rs.1,50,00,000/-, the Tribunal held that the opposite party and the insurer shall jointly and severally pay compensation of Rs.19,72,200/- inclusive of no fault liability amount along with interest at 7.5% per annum from the date of filing of the petition till realization of entire amount awarded, within a period of four weeks. Learned Tribunal has also decided the apportionment of the claim of compensation.

4. The appeal filed by the claimants questions the impugned judgment and learned counsel fairly states that he is not desirous of posing any challenge rendered by the Tribunal, but he is aggrieved by the meagre compensation awarded in favour of the claimants, who are the dependents of the deceased and the

deceased was barely 42 years and the entire family including his mother, wife and one son, who are the claimants were totally dependent on him.

5. The enhancement of compensation is sought on three grounds that the income computed by the Tribunal has been wrongly arrived at: (a) by aggregating the income for 6 years based on the income tax returns brought on record, (b) future prospects to be granted to the tune of 30% whereas, he is entitled to the same at 50% on account of the fact that he is a budding businessman and he had a bright future and (c) the interest being awarded at 7.5% per annum and claim is to the effect that the interest ought to have been awarded at 12% per annum.

6. On hearing learned counsel for the appellant and learned counsel for the insurance company and on perusal of the impugned award, it can be discerned that the Tribunal has taken into account the future prospects to be granted at 30% in view of the age of the deceased being between 40 and 50 years and relying upon the decision of the Apex Court in **Rajesh & Ors. v. Rabir Singh** reported in **2013 ACJ 1403 (SC)** and further authoritative pronouncement in the case of **Sarla Verma v. Delhi Transport Corporation & Anr.** reported in **2009 ACJ 1298**, the Tribunal felt it appropriate to consider the future prospects and awarded an amount to the tune of 30% by calculating the income. I see no legal infirmity in the said calculation along

with further submission that the interest ought to have been awarded at 12% per annum.

7. The first ground on which the appeal is filed being the inappropriate consideration of income as the basis for awarding the compensation, has impressed me as learned counsel has invited my attention to the income tax returns of the deceased filed for the last six years. The accident took place on 1/11/2009 and the claimants have brought on record the income tax returns for the assessment year 2005-06 to the assessment year 2008-09 as well as the income tax return filed for a period of seven months in the assessment year 2009-10. Perusal of the income tax returns would reveal that the income of the deceased was from the business and from the year 2005-06 onwards, it was on rise gradually. As far as the income tax return for the assessment year 2009-10 is concerned, it indicates the total income of Rs.2,41,695/- from the business and profession and the total income has been depicted as Rs.1,89,260/-.

8. Learned counsel for respondent No.2 would submit that the said return has been filed on 09/03/2011 and since it is filed after the demise of the income tax payee, it has to be ignored. According to her, the Tribunal has not committed any error in calculating the average income by taking into account the income tax returns for the preceding six years and the Tribunal has rightly arrived at the figure of average monthly income at

Rs.12,000/-. She has placed reliance on the judgment of the Apex Court in **V. Subbulakshmi & Ors. v. S. Lakshmi & Anr.** in **Civil Appeal No.990 of 2008 decided on 05/02/2008.**

9. Per contra, learned counsel for the appellant has relied upon the judgment in **New India Assurance Company v. Alpa Rajesh Rajesh Shah & Ors. 2014(2) Mh.L.J. 17.**

10. On consideration of the pivotal issue which is involved in the appeal, the question that arises is whether the income ought to have been calculated by taking into account the earlier assessment year before the death of the deceased or whether the Tribunal was justified in aggregating the income tax returns for the last six assessment years and computing the income after deducing the income tax paid, on the basis of which the compensation has been awarded. It is not in dispute that the deceased was into business and from the income tax returns, it can be seen that he was doing better in the business day-by-day and it can always be assumed that when a person invests an amount in business, the return will increase in the years to follow, as compared to the year in which he started the business and this picture can clearly be seen through the income tax returns of the deceased. The income tax returns of the deceased for the year 2005 indicated an income of Rs.1,11,300/- whereas, in the year 2006, it was Rs.1,35,893/- and in the year 2007, it was Rs.1,42,370/- and for the assessment year 2008-09, it further

increased to Rs.1,58,794/- for the years 2009-10 though the returns are filed in March, 2011 and the income from business is shown as Rs.2,41,000/-. The gradual rise from the business cannot be doubted and the claimants have examined the tax consultant of the deceased, who has deposed that he opened his pan account number in 2005 and started filing his income tax returns from assessment year 2006-07. The income tax returns filed by him for the five years have been taken on record and marked Ex-25 (Colly.) by the Tribunal. In cross-examination, he has specifically admitted that the income of the deceased for the year 2009-10 was Rs.2,40,000/-. In the wake of the chartered accountant being examined by the claimants, there is no doubt in my mind that the income tax returns depicted the income of the deceased and it can be reflected from Ex-25 (Colly.)

11. The Division Bench of this court in the case of **New India Assurance Company (supra)** in paragraph 14 has computed the income of the deceased by taking into account his income in the last assessment year before his demise after deducting the income tax and I may gainfully refer to the relevant part of said judgment.

“14. Income tax returns for the period of three years immediately prior to the date of death of the deceased show that the net income of the deceased was ₹ 1,75,739/-, ₹ 2,30,435/- and ₹ 2,10,750/- respectively. The last figure

represents income for about 11 months. The income on the date of death will have to be taken into consideration for determination of multiplicand. It is true that for the purpose of calculating multiplicand, income tax payable on net income has to be deducted. The income tax paid by the deceased for the assessment year 1999-2000 was ₹ 29,554/- out of which a sum of 25,000/- was already paid on 15th December, 1998 during the life time of the deceased. After deducting the said amount of ₹ 29,554/- from the income of the deceased of ₹ 2,10,750/- for about 11 months, the net amount comes to ₹ 1,81,196/-. Thus, the net monthly income after deducting income tax was ₹ 16,472/-. Adding ₹ 16,472/- to ₹ 1,81,196/, the yearly net income at the time of death of deceased comes to ₹ 1,97,668.00 which can be rounded off to ₹ 2,00,000/-.”

12. As far as the reliance placed by the respondents in the case of **V. Subbulakshmi & Ors. (supra)**, a careful reading of the facts of the case would reveal that in a claim which was filed under Section 166 of the M.V. Act to the tune of Rs.25 lakhs, the income tax returns were filed only after the death of the deceased, which estimated his income at Rs.9,600/- per month. The High Court has estimated the income of the deceased to be around a sum of Rs.4,000/- per month from his agricultural avocation and Rs.3,000/- from his commission business, totalling a sum of Rs.7,000/- per month and after deducting one-third thereof from the amount towards his personal expenses, it was held that his income would be Rs.4,667/- per month.

However, the income tax return, which was filed on 23/06/1997, which is after the accident, which occurred on 07/05/1997 was not taken into consideration by the High Court and the Hon'ble Apex Court has held that since the income tax return was filed on 23/06/1997 and that was the sole return filed by the deceased, reliance was not placed on the said income tax return to compute the income of the deceased.

The aforesaid decision in V. Subbulakshmi (supra) does not support learned counsel for the respondents. On the other hand, the decision of this court, which has permitted the income to be calculated on the basis of the earnings of the last financial year to the demise of the deceased income tax payee has been rightly construed the position of law.

13. I am in agreement with the decision of the Division Bench of this court and, the decision of the Tribunal, which has failed to take into account the said position of law and has assessed the income on the basis of the average income preceding six years, warrants an interference. In any case, it is to be considered that the deceased was aged 42 years when he met with the untimely death and the claimants are awarded compensation based on his income, which in my considered opinion ought to have been taken into account the income tax returns for the last assessment year 2009-10, where his business income is revealed as Rs.2,41,695/- after deducting the income tax paid on the said earning, the amount arrived at would be Rs.2,36,851/-.

Necessarily, the income for each month would be Rs.19,738/-. The compensation awarded by calculating the monthly income at Rs.12,000/- would therefore, have to be substituted with income of Rs.19,738/-.

The other parameters in awarding compensation do not warrant any interference and the impugned judgment is partly modified. The computation based on calculation of average monthly income at Rs.19,738/- shall be worked out by the Tribunal, within six weeks from today. Upon such calculation, the liability shall be discharged by the opposite party and the insurer to make payment to the claimants accordingly.

The appeal is partly allowed. No order as to costs.

14. In view of the disposal of the appeal, the civil application does not survive and is disposed of as such.

[SMT. BHARATI DANGRE, J.]