IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 956 of 2012

Smt. Rupa Biswas

Vs.

National Insurance Company Ltd. & Ors.

For the Appellant/ claimant :Mr. Jayanta Kumar Mondal, Advocate

For the Respondents/ Insurance Co. :Mr. S.N. Ganguly, Advocate

Heard on : September 06, 2022

Judgment on : September 19, 2022

Bibhas Ranjan De, J.

1. Judgement and award passed by the Learned Motor Accident Claims Tribunal, Additional District Judge, Barasat, 2nd Court, North 24 Pargans, in connection with MAC No. 75 of 2010 has been assailed by this appeal on the ground of insufficient award ignoring settled parameters for calculation of the award. It is further alleged that Ld. Judge ignored the series of Income Tax Returns showing monthly income of Rs. 9,000/- and wrongly assessed the income of the victim as Rs. 15,000/- per annum. That apart, Ld. Judge failed to add mandatory interest along with the award.

2. The claim petition under Section 166 of the MV Act, 1988, was filed with a prayer for compensation to the tune of Rs. 9,90,000/- on account of accidental death of one Pramit Kumar Biswas, aged about 42 years on 05.09.2009 at about 7.45 a.m. by the involvement of one vehicle (Bus) bearing no. WB-25/2232. According to claim petition, on the alleged date and time, the said bus while moving with high speed and in negligent manner towards Kestopur side through VIP Road, dashed the Motor Cycle of the victim from behind. Victim sustained severe injuries and taken to R.G. Kar Medical College and Hospital where he was declared brought dead. After the accident a Police case was started being Lake Town Police Station Case No. 149 of 2009, dated 05.09.2009 under Section 279/304/427 of Indian Penal Code and charge sheet was submitted against the driver of the offending vehicle. In course of proceeding claimant being widow of the victim examined herself as PW-1. She narrated the incident of accident when her husband Pramit Kumar Biswas died. She further stated that her husband used to earn Rs. 9,000/- per month from private tuition and she submitted a good number of documents and those were admitted in evidence. In cross examination she has stated about monthly income of her husband.

3. PW-2, (Sushil Saha) claiming himself as eye-witness to the accident has testified before the Tribunal about rash and negligent driving of the vehicle (Bus) bearing no. WB-25/2232. In cross-examination he denied suggestions put to him.

4. PW-3, (Gautam Biswas) claimed himself as Senior Tax Assistant and posted at Ward 49 (4), CIT, 17, Maniktala Centre, Uttrapan Complex, Kolkata-54. He submitted letter of authorization (exhibit-11). He brought copies Income Tax Return in respect of victim Pramit Kumar Biswas for three (3) assessment years prior to his death. All those copy of the Income Tax Return were filed and marked as exhibit 13 series.

5. After considering all the aforesaid evidences though Ld. Tribunal relied on the evidence with regard to accident alleged in this case but did not accept the monthly income of victim

Pramit Kumar Biswas on the reason that claimant could not produce any document in support of payment of tax and also ignored the Income Tax Returns (exhibit 13 series) on the plea of 'Self styled and self creations'. Ld. Tribunal assuming the income of the victim as Rs. 15,000/- per annum, calculated the award to the tune of Rs. 1,59,500/-.

Argument Advanced:-

6. Ld. Advocate Mr. Jayanta Kumar Mondal appearing on behalf of the claimant/appellant has submitted that Ld. Tribunal did not rely on the Income Tax Return on an unreasonable ground that victim did not pay Income Tax. Mr. Mondal has further contended that Ld. Tribunal even did not care to add the future prospect, interest and general damages as per guideline of the Hon'ble Apex Court. In support of his contention, Mr. Mondal relied on the following cases:-

- ***Smt. Sangita Arya and others Vs. Oriental Insurance Company and others, 2020 SAR (Civ) 905***
- ***Malarvizhi and other Vs. United India Insurance company Limited and another, 2020 (1) T.A.C 328 (SC)***.

- ***Rasmita Biswal and others Vs. Divisional Manager, National Insurance Company Limited and another, 2022 SAR (Civ) 238.***
- ***Amrit Bhanu Shali and other Vs. National Insurance Company Limited and others, 2012 SAR (Civil) 708.***

7. Per Contra, Ld. Advocate Mr. S.N. Ganguly, appearing on behalf of the respondents/Insurance Company, referred to the evidence in support of non-payment of Professional Tax as well as statement of account submitted by the deceased himself. It is submitted that the gross income mentioned in the statement of account submitted by the deceased did not match with the amount of monthly income delineated in the claim petition as well as in the evidence of claimant herself.

<u>Decision:-</u>

8. Ld. Tribunal took up the income of Rs. 15,000/- per annum and ignored the entire evidence on record with regard to Income Tax Return. From the evidence it appears that the claimant produced Income Tax Return for successive years along with statement of account through an authorized person (PW-3) and all those documents were ratified by the authorized person (PW-3) of the concerned Income Tax Department.

9. What I comprehend from the record that the only dispute of this appeal is regarding monthly income of the deceased. So far as the accident and involvement of the vehicle is concerned there is sufficient evidence on record to show that the deceased met an accident on 05.09.2009 at about 7.45 a.m. by the involvement of vehicle (Bus) bearing no. WB-25/2232.

10. In ***Malarvizhi*** (supra), ***Sangita Arya*** (supra) as well as ***Amrit Vanu Shali*** (supra) Hon'ble Apex Court determined the amount of compensation relying on the income appearing in the Income Tax Returns. In ***Rasmita Biswal*** (supra) Hon'ble Apex Court considered the ratio of ***National Insurance Company Ltd. Vs. Pranay Sethy and others (2017) 16 SCC 680*** and enhanced general damages @ 10% after three(3) years.

11. In our case, PW-3, Senior Tax Assistant attached to Income Tax Department came forward to prove all the Income Tax Returns along with statement of account submitted therewith. The income of the deceased, for the assessment year 2008-2009 i.e. prior to death of Pramit Kumar Biswas was Rs. 7,000/- per month. In view of the evidence adduced on behalf of the claimant, I do not find any plausible reason to disbelieve the monthly income of deceased shown in the Income Tax Return.

From the Income Tax Returns, it appears that deceased had no taxable income, so, the question of payment of tax does not arise.

12. In the aforesaid view of the matter, it would be justified to determine the amount of compensation with the help of monthly income of Rs. 7,000/- as follows:-

Monthly Income	:7,000/-
Annual Income (7,000 x 12)	:84,000/-
Less 1/3rd personal expenses (Rs. 28,000/-)	:56,000/-
Add:- Future Prospects (25%)	:14,000/-
	70,000/-
Multiplier (x14) (Age 42 years)	:9,80,000/-
Loss of dependency	:9,80,000/-
Add:- Spousal consortium	: 44,000/-
Add:- Loss of estate	: 16,500/-
Add:- Funeral expenses	: 16,500/-
Total	:10,57,000/-

13. National Insurance Company is directed to deposit the entire amount of compensation before the Ld. Registrar General, after deducting the amount if already paid to the claimant, along with interest @ 6% per annum from the date of filing of the claim petition till the date of deposit of compensation amount, within six (6) weeks from date.

14. Claimant is entitled to the enhanced amount of compensation subject to payment of advelorem Court fees thereon.

15. Ld. Registrar General will disburse the amount in favour of the claimant on proper identification and also on verification of payment of Court fees on the enhanced compensation.

16. F.M.A 956 of 2012 stands disposed of without any order as to cost.

17. All pending applications, if any, stand disposed of accordingly.

18. Let the records of the Tribunal, if any, be sent back immediately.

19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]