IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 985 of 2011

Gouri Kanta & Ors.

Vs.

The National Insurance Company Ltd. & Ors.

For the Appellant/claimants	:Mr. Krishanu Banik, Advocate
For the Respondent/	: Mr. M.P. Chakrabarty, Advocate
Insurance Co.	: Ms. Swarnali Biswas, Advocate
Heard on	: September 08, 2022
Judgment on	: September 00, 2022

Bibhas Ranjan De, J.

1. This appeal is directed against the judgement and award dated 30.07.2010 passed by Ld. Judge, Motor Accident Claims Tribunal, 2nd Court, Malda in connection with M.A.C Case no. 195 of 2009 under Section 166 of the Motor Vehicles Act, 1988, whereby Ld. Judge granted the award to the tune of Rs. 1,69,500/- out of total claim of Rs. 15,30,000/-.

2. According to claimants/ appellants, the incident took place on 12.03.2009 in the midnight while one Tata Sumo vehicle bearing Reg. No. WB 66C/1234 moving with high speed on the National Highway 34, dashed one stone loaded stationary truck bearing Reg. No. WB-15A/4524, near village Chhalakata. In the result, the victim travelling with that Tata Sumo Vehicle sustained injuries on her person and succumbed to her injuries.

3. After the accident, Malda Police Case No. 51 of 2009 dated 12.03.2009 under Section 279/304 of Indian Penal Code was started and charge sheet was submitted against the driver of the Tata Sumo vehicle. Ld. Tribunal recorded the evidence of husband of the victim as PW-1 and driver of the Tata Sumo vehicle as PW-2. In course of evidence of PW-1 a good number of documents including Police Reports, PM Report ,copy of Insurance Policy, copy of Income Tax Return with balance sheet were admitted in evidence as exhibit 1to 7.

4. After considering all the evidences on record and documents thereof Ld. Tribunal ignored the income of the deceased as well as liability of the Insurance Company on account of violation of the conditions of the Insurance Policy. Accordingly, Ld. Tribunal computed the award on the basis of income presumably as per second schedule of Section 163A and assessed that award at Rs.1,69,500/-, on 30.07.2010, directing owner of the Tata Sumo vehicle to pay the compensation/award to the claimants.

5. Dissatisfied with that order the instant appeal has been preferred on the ground that Ld. Judge of the Tribunal failed to appreciate the documents admitted in evidence and wrongly ignored the Income Tax Return as well as directing owner of the Tata Sumo vehicle to pay compensation. In the appeal, it has been further alleged that Ld. Judge did not consider the future prospect and interest from the date of filing on the claim application.

6. Ld. Advocate, Mr. Krishanu Banik appearing on behalf of the appellants has advanced his argument in the tune of contentions delineated in the memorandum of appeal. In support of his contention, Mr. Banik has relied on a case of ***Oriental Insurance Company Ltd. Vs. Nanjappan and others (2004) ACJ 72***. It is submitted that Ld. Tribunal ought to have directed the National Insurance Company to pay and recover it from the owner/ insured. It is further submitted that

Income Tax Return can not be ignored as it was accepted by the Income Tax Department.

7. Per contra, Ld. Advocate, Mr. M.P. Chakrabarty, appearing on behalf of the respondent/ Insurance Company has referred to some pages of the judgment of the Tribunal and has tried to convince this Court that the Insurance Company of Tata Sumo vehicle is not liable to pay the compensation to the claimants.

Decision:-

8. It appears from the evidence that the Tata Sumo Car moving with high speed dashed one stationary truck. Driver (PW-2) of the vehicle has corroborated the same incident in his evidence. On careful scrutiny of the evidence of PW-2, I cannot come to any conclusion that both the vehicles were responsible for the accident as the same was investigated by the Police in connection with Malda PS Case No.51/2009 dated 12.03.2009 and charge sheet was submitted only against the driver of the Tata Sumo vehicle under Section 279/304(A)/427 of the Indian Penal Code. Therefore, I am of the view, that the Tata Sumo vehicle bearing Reg. No. WB-66C/1234 was responsible for the accident.

9. It is evident from the record that Tata Sumo vehicle bearing Reg. No. WB 66C/1234 was a private vehicle and that vehicle was allowed to be hired in violation of the conditions of the Insurance Policy. From that point of view, deceased can not be considered as lawful passenger. She was gratuitous passenger.

10. ***Nanjappan*** (supra) observed as follows:-

> *" **8.** Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case (supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional*

> *Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs."*

11. Admittedly, owner of the Tata Sumo Car neither appeared nor contested that claim petition inspite of notice. In these circumstances, no option is left but to rely on the ratio of ***Nanjappan*** (supra) for issuing direction upon the National Insurance Company Ltd. to pay the compensation and to recover the same from the owner of the Tata Sumo vehicle through execution proceedings.

12. Now, I propose to come to the calculation of compensation. With regard to income, PW-1 (husband of the deceased) has deposed before the Court that his wife was engaged in hat faria business and her gross income was Rs. 1,62,650/- per annum according to Income Tax Return (exhibit-6) supported by statement (exhibit-7). It is an admitted fact that she had no trade licence in support of her business and no connected paper has been filed before the Tribunal. PW -1 further stated in his evidence that his wife used to deal in food grains and it was kind of stock business. At the same time, PW-1 stated in his evidence as follows:-

> *" Laxmi Roy was my wife. I have a business of grocery shop. The income of that shop was the only source of income of my family."*

13. In the aforesaid conspectus, I am of the opinion, only acceptance of Income Tax Return by the Income Tax Department can not be said to prove the income of the person submitted Income Tax return.

14. In this conjecture, I find it appropriate to calculate the award applying income of Rs. 3,000/- per month and multiplier 15 as follows:-

Annual Income (Rs. 3000 x 12)	: 36,000.00
Future Prospect be assessed 25% i.e Rs.	: 9,000.00
	: 45.000.00
After 1/3rd Deduction (Rs.15,000/-)	: 30,000.00
Multiplier x 15	: 4,50,000.00

Add:- General Damages	: 70,000.00
Total	: 5,20,000.00
Less award amount	: 1,69,500.00
Enhanced award	: 3,50,500.00

15. After hearing both sides as well as from the record it appears that appellants did not receive the awarded amount of Rs.1,69,500/-. Considering the aforesaid facts and circumstances, respondent/ National Insurance Company Ltd. is directed to deposit the aforesaid awarded sum before the Ld. Registrar General along with interest @ 6% per annum from the date of filing claim petition till deposit of amount, within 6 weeks from date. Claimants are entitled to balance amount of Rs. 3,50,500/- only after filing advelorem Court fees.

16. However, respondent/National Insurance Company Ltd. is at liberty to realize the awarded amount from the owner of the Tata Sumo vehicle bearing no. WB-66C/1234 through execution proceeding instead of filing separate suit.

17. Ld. Registrar General will disburse the amount in favour of the claimants on proper identification and also on verification of Court fees on the enhanced award of Rs. 3,50,500/- .

18. Let the records of the tribunal be sent back immediately.

19. F.M.A 985 of 2011 is being disposed of without any order as to cost.

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

21. 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.]