

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 355 of 2006
with
IA No. CAN 2 of 2015 (CAN 9069 of 2015)

Smt. Shobha Garg & Ors.
Vs.
United India Insurance Company Limited & Anr.

Mr. Krishanu Banik
... For the appellants/claimants

Mr. S.N. Ganguly
... For the respondent/Insurance Company

This appeal is directed against the judgment passed on 16th December, 2005 by the learned Additional District Judge, Fast Track Court, 2nd Court, Asansol (Motor Accident Claims Tribunal) in MAC Case No.195 of 2003 renumbered as 30 of 2004 whereby the learned Judge awarded the compensation of Rs.1,89,500/- to be paid by the respondent/Insurance Company to the claimant in disposing of an application under Section 166 of the Motor Vehicles Act. This appeal was filed with the prayer for enhancement of the awarded amount on the ground that the learned Tribunal did not consider the income of the victim in terms of Income Tax Return submitted before the Court and the learned Tribunal did not grant any amount towards future prospect, that apart the learned Judge did not grant any interest on the awarded amount.

The brief facts of this case are that the victim was aged about 26 years and he met with an accident on 4th May, 2003 at about 9.00 p.m. on G.T. Road in front of grocery shop of Ram Kumar Goel at Meamatpur, by the involvement of a truck bearing no. AP-16-X/266 and the victim sustained injury and succumbed ultimately. It was further case of the claimants that at the relevant point of time, the victim used to earn Rs.6,500/- per month and he died leaving behind his wife and parents. Accordingly, the claim petition was filed with a claim of Rs.9 lacs.

So far as the income is concerned, the learned Judge did not rely on the evidence adduced on behalf of the claimants in terms of Income Tax Return submitted on behalf of the claimants. According to the learned Judge, though the claimants filed Income Tax Return of the deceased but that has not been substantiated by any other documents like trade licence, register of accounts etc. From the evidence, it appears that the Income Tax Return was submitted before the learned Tribunal during evidence but that was admitted with objection on behalf of the respondent/Insurance Company.

Learned lawyer appearing on behalf of the appellants/claimants has relied on a judgment reported in 2021 ACJ 2683 (Rukmani Jethani & Ors. v. Gopal Singh & Ors.) wherein the Hon'ble Apex Court has relied on the Income Tax Return and assessed the compensation

accordingly. In paragraph 9 of Rukmani Jethani (supra), the Hon'ble Apex Court observed as follows:-

“9. After careful consideration of the submissions made on behalf of the parties, we are of the opinion that the MACT committed an error in not taking into account the ITR filed on behalf of the deceased for the financial year 2004-2005. Taking into account the ITR filed on behalf of the deceased for the financial year 2004-2005, we hold that the appellants are entitled for an amount of Rs.8,40,735 towards compensation on the basis of yearly income of the deceased applying the multiplier of 15. Insofar as loss of future prospects is concerned, we are in agreement with the learned counsel for respondent No.3 that the calculation should be based on 25 per cent of the established income and not 30 per cent. The appellants are entitled to Rs.2,52,213 towards 'loss of future prospects'. In respect of compensation to the family members for 'loss of love and affection, deprivation of protection, social security, etc.', we are of the opinion that the appellants are entitled to Rs.90,000 (Rs.15,000 each to six members of the family). The widow of the deceased is entitled to Rs.40,000 towards compensation for 'loss of love and affection, pain and suffering, loss of consortium, deprivation of protection, social security, etc.'. Further, the appellants are also entitled to Rs.25,000 for funeral and ritual expenses. In all, the appellants are entitled for payment of compensation amounting to Rs.12,47,948.”

Learned advocate appearing on behalf of the appellants/claimants further relied on a judgment reported in 2022 ACJ 710 (O.S. Kannan v. A. Alima &

Anr.) wherein the Hon'ble Apex Court has further relied on the Income Tax Return and assessed the compensation accordingly. In paragraph 9 of O.S. Kannan (supra), the Hon'ble Apex Court observed as follows:-

“9. We have gone through the statement of income and the income tax return. Considering the totality of circumstances and the fact that the appellant now suffers from 80 per cent disability, which will adversely affect his earning capacity as surgeon, in our view the appropriate compensation payable to the appellant inclusive of all elements and interest ought to be Rs.40,00,000 instead of what was awarded by the Tribunal and affirmed by the High Court.”

Learned advocate appearing on behalf of the respondent/Insurance Company has contended that the Income Tax Return cannot be relied upon because of insufficiency of evidence and corroboration by the Income Tax Department regarding acceptance of the same.

The learned Judge did not rely on the Income Tax Return as none of the Income Tax Department has examined in this case to corroborate the filing of the return. The learned Judge also did not rely on the certificate (Ext.-7) issued by PW-4 on the request of the father of the deceased.

From the Ext.-6 series, it is found that the Income Tax Return was admitted in evidence as Ext.-6 with objection. That apart from the evidence of PW-1 though I do not find any document to establish the cloth business

of the deceased but I cannot disbelieve the Income Tax Return (Ext.-6 and Ext.-6A) for the assessment year 2003-2004 in view of the ratio laid down in Rukmani Jethani (supra) as well as O.S. Kannan (supra) wherein the Hon'ble Apex Court relied upon Income Tax Return submitted prior to death.

In the instant case the victim submitted Income Tax Return on 2nd May, 2003 that is prior to the death of the victim for the assessment year 2003-2004.

I should consider the fact that an adult male member of a family dealing in a cloth business submitted Income Tax Return showing his income before the Income Tax Department. However, Income Tax Return placed on record shows that it was submitted by the deceased himself before his death. However, trustability of that Income Tax Return, in the background of this case involving death of an adult male family member, cannot be doubted unless contrary is proved. In this case, though objection was raised by the respondent/Insurance Company creating a doubt but, no effect was ever made on behalf of the respondent/Insurance Company to adduce any contrary evidence in this case.

That apart, it is an admitted fact that the learned Tribunal did not grant any amount towards future prospect and the interest on the awarded sum.

In the aforesaid view of the matter, I find it necessary to calculate the award afresh as follows in terms

of the income of the victim at the relevant point of time in terms of the Income Tax Return:-

Monthly Income be assessed	Rs. 6,500/-
Annual Income be assessed at (Rs.6,500/- x 12)	Rs. 78,000/-
Future prospect be assessed 40%	Rs. 31,200/-
	<u>Rs. 1,09,200/-</u>
1/3 rd deduction (Rs.1,09,200 – Rs.36,400)	Rs. 72,800/-
	<u>Rs. 33,600/-</u>
Multiplier as per age of 17 (Rs.72,800/-x 17)	Rs.12,37,600/-
Add General Damages	<u>Rs. 70,000/-</u>
Total	Rs.13,07,600/-
Less – Awarded by ld. Tribunal	<u>Rs. 1,89,500/-</u>
ENHANCEMENT	Rs.11,18,100/-

It is admitted position of fact that claimants have already received the awarded amount of Rs.1,89,500/-. According to the calculation of the award, claimants are further entitled to a sum of Rs.11,18,100/- along with interest at the rate of 6% per annum till the actual payment.

The respondent/Insurance Company is directed to deposit the amount before the learned Registrar General of this Court within six weeks from the date of this order.

The claimants will be entitled to withdraw the amount subject to payment of *ad valorem* court fees on the amount.

The learned Registrar General will release the amount on proper identification and subject to verification of the payment of *ad valorem* court fees.

With the above observation, the instant appeal, being FMA 355 of 2006, stands disposed of.

In view of the disposal of the appeal, the connected application, being CAN 2 of 2015 (CAN 9069 of 2015), is also disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)