

S/L No. 56
06.12.2022
Ct-297
(PA.RD)

FMA 3288 of 2013
The Oriental Insurance Co.Ltd.
Vs.
Ramdulal Pradhan
With
COT 8 of 2015

Ms. Gopa Das Mukherjee

... for the appellant/Insurance Company

Mr. Ashique Mondal

... for the respondent/Claimant.

This appeal has been preferred against the judgement and award passed by Motor Accident Claim Tribunal, Fast Court, Alipore, south 24 Paraganas, in connection with Motor Accident Claim Case No. 15 of 2002 under Section 166 of the Motor Vehicles Act, 1988, on 29th day of May, 2013.

Claim petition was filed on account of injury sustained by the claimant/ victim in his right leg causing permanent disablement.

On 06.06.2001 at about 9.30 hours driver of the vehicle being registration no. WB 32/2935 was driving in rash and negligent manner along Contai-Medinipur road towards Contai at a very high speed and near Kulberia knocked down the victim. After the accident Contai PS case no. 176/01 dated 21.08.01 was started against the driver of the vehicle WB 32/2935 under Section 279/338 of the Indian Penal

Code which was investigated and ended in charge sheet against the driver of the aforesaid vehicle.

Ramdulal Pradhan/claimant disclosed his age as 27 years and income of Rs. 5,000/- per month from his business under the name and style of M/s Ritwik Enterprise. Claimant filed claim petition with a prayer for compensation to the tune of Rs. 4,65,000/-.

Insurance Company contested the case by filing written statement denying all averments of the claim petition.

To prove the case claimant examined himself as PW-1 and corroborated the contents of the claim petition and in course of his evidence copy of FIR, charge sheet, outdoor ticket, treatment papers of different doctors, handicapped certificate, prescription, Insurance cover note, income tax return, original trade license etc. were admitted in evidence as exhibit 1 to 10. In course of his evidence he stated about prolonged treatment by several doctors for considerable period and he had to incur 1,25,000/- towards treatment.

Manas Kumar Mishra, PW-2, claiming himself as eye-witness to the accident testified that the accident by the rash and negligent driving of the vehicle (Motor Cycle) bearing no. WB-32/2935.

PW-3, LCC of Midnapur S.D Hospital proved the handicapped certificate (exhibit-8) which was

admitted in evidence without any further objection.

Manager, attached to Orthopedic Nursing Home, deposed that patient was admitted on 07.06.2001 and discharged on 18.06.2001.

After appreciation of evidence on record Ld. Tribunal assessed the income of the claimant as Rs. 4,000/- per month i.e. Rs. 48,000/- per annum and after applying multiplier 18 and percentage of disability, assessed award as Rs. 5,85,112/-.

Being aggrieved by he said award Insurance Company preferred the appeal being no. 3288/ 2013 on the ground that Ld. Tribunal should not have considered the disability certificated which was not proved by any member of the Medical Board and also on the ground that Ld. Tribunal ignored the principle of proving loss of earning capacity after the accident.

In opposition to that, claimant filed cross objection being no. Cot 8 of 2015 on the ground that Ld. Tribunal failed to consider the sanctity of the Income Tax Return and came to an erroneous finding by assessing monthly income of the claimant as Rs. 4,000/-.

Ld. Advocate, Ms. Gopa Das Mukherjee appearing on behalf of the Insurance Company has relied on the case of ***Raj Kumar Vs. Ajay Kumar & Anr.*** reported in ***(2011) 1 Supreme Court Cases 343*** wherein Hon'ble Apex Court summarise the principles with

regard to disability in terms of earning capacity as follows:

“ We may now summarise the principles discussed above : (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity. (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability). (iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety. (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors. 14. The assessment of loss of future earnings is explained below with reference to the following illustrations: Illustration `A': The injured, a workman, was aged 30

years and earning Rs.3000/- per month at the time of accident. As per Doctor's evidence, the permanent disability of the limb as a consequence *Raj Kumar vs Ajay Kumar & Anr* on 18 October, 2010 of the injury was 60% and the consequential permanent disability to the person was quantified at 30%. The loss of earning capacity is however assessed by the Tribunal as 15% on the basis of evidence, because the claimant is continued in employment, but in a lower grade. Calculation of compensation will be as follows: a) Annual income before the accident: Rs.36,000/-. b) Loss of future earning per annum (15% of the prior annual income) : Rs. 5400/-. c) Multiplier applicable with reference to age : 17 d) Loss of future earnings : (5400 x 17) : Rs. 91,800/-

Illustration 'B': The injured was a driver aged 30 years, earning Rs.3000/- per month. His hand is amputated and his permanent disability is assessed at 60%. He was terminated from his job as he could no longer drive. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. The Tribunal therefore assessed his loss of future earning capacity as 75%. Calculation of compensation will be as follows: a) Annual income prior to the accident : Rs.36,000/-. b) Loss of future earning per annum (75% of the prior annual income) : Rs.27000/-. c) Multiplier applicable with reference to age : 17 d)

Loss of future earnings : (27000 x 17) : Rs. 4,59,000/-

Illustration `C': The injured was 25 years and a final year Engineering student. As a result of the accident, he was in coma for two months, his right hand was amputated and vision was affected. The permanent disablement was assessed as 70%. As the injured was incapacitated to pursue his chosen career and as he required the assistance of a servant throughout his life, the loss of future earning capacity was also assessed as 70%. The calculation of compensation will be as follows: a) Minimum annual income he would have got if had been employed as an Engineer : Rs.60,000/- b) Loss of future earning per annum (70% : Rs.42000/- of the expected annual income) c) Multiplier applicable (25 years) : 18 d) Loss of future earnings : (42000 x 18) : Rs. 7,56,000/-"

Ms. Mukherjee has further contended that no evidence has been adduced on behalf of the claimant with regard to loss of future income and therefore the award is not sustainable in law.

Per contra, Mr. Ashique Mondal Ld. Advocate, appearing on behalf of the respondent/claimant has contended the disability certificate was admitted in evidence without any objection and that was proved by an employee of the hospital and subjected to cross-examination. Mr. Mondal has further argued that income of the claimant should be considered

according to Income Tax Return admitted in evidence. In support of his contentions Mr. Mondal has relied on the following decisions :-

- ***Anita Sahrama and others Vs. New India Assurance company and Anr. (2021) 1 SCC 171,***
- ***Malarvizhi and others Vs. united India Insurance company Ltd. And Anr. (2020) 4 SCC 228,***
- ***Swangita Arya and others Vs Oriental Insurance Company Limited and others (2020) 2 SCC 327,***
- ***Kalpanaraj and others Vs. Tamil Nadu State Transport Corporation (2015)2 SCC 764,***
- ***United India Insurance Company Ltd. Vs. Indiro Devi and others (2018) 7 SCC 715.***

In **Anita Sharma** (supra) Hon'ble Apex Court defined rule of appreciation of evidence in claim case as follows:

*“ 21. Equally, we are concerned over the failure of the High Court to be cognizant of the fact that strict principles of evidence and standards of proof like in a criminal trial are inapplicable in MACT claim cases. The standard of proof in such like matters is one of preponderance of probabilities, rather than beyond reasonable doubt. One needs to be mindful that the approach and role of Courts while **Anita Sharma vs***

The New India Assurance Co. Ltd. on 8 December, 2020 6 examining evidence in accident claim cases ought not to be to find fault with non-examination of some best eye-witnesses, as may happen in a criminal trial; but, instead should be only to analyze the material placed on record by the parties to ascertain whether the claimant's version is more likely than not true.”

In ***Malarvizhi*** (supra) Hon'ble Apex Court defines the rule of acceptability of the income tax return, as follows:

“10. The Tribunal proceeded to determine the agricultural income arising from 36.76 acres of land on the basis of two judgments of the High Court. The Tribunal arrived at two different figures by applying the decisions and proceeded to determine the agricultural income on an average of the two amounts. The Tribunal superimposed a possible value of income from agricultural land despite a clear indication in the income tax returns of the income from agricultural land. The method adopted by the Tribunal is not sustainable in law. On the other hand, the High Court has proceeded on the basis of the income reflected in the income tax returns for the assessment year 1997-1998. The relevant portion of the return reads: “Income from House property – Rs. 1,920 Business profit (other than 14.b) - Rs. 1,21,071 Net Agricultural income – Rs.

88,140” The tax return indicates an annual income of Rs 2,11,131 in the relevant assessment year. Mr Jayanth Muth Raj, learned Senior Counsel appearing on behalf of the appellant contended that other documents were marked which reflected the income of the deceased. We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased.”

Sangita Arya (supra) also focused on Income Tax Return and its admission in evidence, as follows:

“12. We have heard the learned counsel for the parties and perused the material on record. We find that the impugned order passed by the High Court bristles with serious factual inaccuracies :– first, the learned Single Judge wrongly assumed that the deceased Harish Singh Arya was a Government employee. This has nowhere been averred by the Claimants in any of their pleadings. The entire basis of the judgment is hence misconceived. On the basis of the aforesaid erroneous assumption, the High Court has erroneously observed

that the deceased was running a parallel business by plying two taxis, and held that the income derived from the same could not be taken into consideration for assessing the compensation. These findings being based on a completely erroneous assumption, are liable to be set aside. Second, the High Court determined the income of the deceased by taking the average of the ITRs filed for the years 2002-03 at Rs. 54,000 p.a., 2003-04 at Rs. 52,405 p.a., and 2004-05 at Rs. 51,500 p.a. The learned Single Judge disregarded the ITR for the year 2006-07, wherein the income of the deceased was shown as Rs. 98,500 p.a. on the ground that it was allegedly filed almost one year after the death of the deceased. This finding also is factually incorrect. A photocopy of the original ITR for the year 2006-07 was filed before this Court, bearing the rubber stamp of the Income Tax Department. It shows that the date of filing the ITR was 20.04.2007, which is prior to the death of the deceased which occurred on 18.06.2007. Hence, the High Court was not justified in disregarding the ITR for the year 2006-07 while assessing the income of the deceased. The Appellants have also placed on record a copy of the ITR for the year 2005-06, which bears the rubber stamp of the Income Tax Department, and reveals the income of the deceased at Rs. 98,100 p.a. during the previous assessment year. As a

consequence, the impugned judgment dated 22.07.2016 passed by the High Court is hereby set aside. 8. On a perusal of the documentary evidence on record i.e. the ITRs for the assessment years 2005– 06 and 2006–07, filed prior to the death of the deceased, which reflect the income of approximately Sangita Arya vs Oriental Insurance Company ... on 16 June, 2020 Rs. 1,00,000 p.a. (as assessed by the MACT in its Award dated 22.12.2009), we make this the basis for computing the compensation payable to the Claimants. We find that the Courts below have not awarded any amount towards future prospects, as mandated by the judgment of the Constitution Bench in National Insurance Company Limited v. Pranay Sethi & Ors.¹ Accordingly, we award future prospects @40% of the income of the deceased.”

Kalpana Raj (supra) observed as follows:-

“6. The High Court opined that the Tribunal erred in relying upon the statement of evidence of the wife of the deceased to determine the monthly income of the deceased at [pic]15,000/- instead of relying upon the income shown in the Income Tax return. Further, the High Court opined that the Tribunal erred in not deducting 1/3rd for personal expenses of the deceased. Further, according to the High Court, the Tribunal erred in determining the multiplier of 18 instead of 13 considering the age of the deceased

which was 46 at the time of the accident.”

7. It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return. However, the High Court erred in ascertaining the net income of the deceased as the amount to be taken into consideration for calculating compensation, in the light of the principle laid down by this Court in the case of National Insurance Company Ltd. v. Indira Srivastava and Ors.[1] The relevant paragraphs of the case read as under: Kalpanaraj & Ors vs Tamil Nadu State Transport ... on 22 April, 2014 “14. The question came for consideration before a learned Single Judge of the Madras High Court in National Insurance Co. Ltd. v. Padmavathy and Ors. wherein it was held: ‘7.....Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C., Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred

payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lump sum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation.’ 15. Similar view was expressed by a learned Single Judge of Andhra Pradesh High Court in S. Narayanamma and Ors. v. Secretary to Government

of India, Ministry of Telecommunications and Ors. holding: 13....In this background, now we will examine the present deductions made by the tribunal from the salary of the deceased in fixing the monthly contribution of the deceased to his family. The tribunal has not even taken proper care while deducting the amounts from the salary of the deceased, at least the very nature of deductions from the salary of the deceased. My view is that the deductions made by the tribunal from the salary such as recovery of housing loan, vehicle loan, festival advance and other deductions, if any, to the benefit of the estate of the deceased cannot be deducted while computing the net monthly earnings of the deceased. These advances or loans are part of his salary. So far as House Rent Allowance is concerned, it is beneficial to the entire family of the deceased during his tenure, but for his untimely death the claimants are deprived of such benefit which they would have enjoyed if the deceased is alive. On the other hand, allowances, like Travelling Allowance, allowance for newspapers/periodicals, telephone, servant, club-fee, car maintenance etc., by virtue of his vocation need not be included in the salary while computing the net Kalpanaraj & Ors vs Tamil Nadu State Transport ... on 22 April, 2014 earnings of the deceased. The finding of the tribunal that the deceased was getting Rs.1,401/- as net

income every month is unsustainable as the deductions made towards vehicle loan and other deductions were also taken into consideration while fixing the monthly income of the deceased. The above finding of the tribunal is contrary to the principle of 'just compensation' enunciated by the Supreme Court in the judgment in Helen's case (1 supra). The Supreme Court in Concord of India Insurance Co. v. Nirmaladevi and Ors. 1980 ACJ 55 (SC) held that determination of quantum must be liberal and not niggardly since law values life and limb in a free country 'in generous scales'."

Indiro Devi (supra) dealt with the issue of Income Tax Return and observed as follows:-

"8. We have given our anxious consideration to this contention. There is no doubt that if the salary certificate is taken into account the salary of the deceased should be taken as Rs. 1,06,176/- since the gross salary was Rs.8848 per month. That, however, in our view does not mean that the income of the deceased as stated in the Income Tax return should be totally ignored. It is not possible to agree with the observation of the Tribunal that it was necessary for the claimants to "explain the said contradiction" between two figures of income. The claimants had led reliable evidence that the deceased had returned an income of Rs. 2,42,606/- for the assessment year

2004-05. This piece of evidence has not been discredited. Indeed, it was possible that the deceased had income from other sources also. There is nothing in the law which requires the Tribunal to assess the income of the deceased only on the basis of a salary certificate for arriving at a just and fair compensation to be paid to the claimants for the loss of life.”

Keeping an eye to the observation of the Hon’ble Apex Court in several decisions discussed herein above, I find that disability certificate which was proved by the employee of the hospital (PW-3) can not be discredited in terms of cross-examination. Disability certificate shows the disability was assessed by the doctor of the Board of Contai S.D. Hospital and their expertise and experience can not be doubted in absence of any rebuttable evidence on record. That apart, prolong treatment of the claimant by several doctors in several hospitals further buttressed the acceptability of the disability to the extent of 60%. Therefore, I find no ground to interfere with the observation of the Ld. Tribunal on the issue of disability.

Ms. Mukherjee on behalf of the Insurance Company has tried to establish that claimant could not produce evidence in support of loss of future income. But, I am unable to accept the argument of Ms. Mukherjee on the ground that a person dealing in

business can not be expected to run his business with courage and efficiently after the disablement to the extent of 60%. I am also not lost sight of the fact that a person dealing in business has to move here and there for the purpose of his business. From that point of view claimant of this case can not be expected to earn like before the accident.

Pursuant to the observation of the Hon'ble Apex Court in several cases, I do not find any hurdle to accept the gross income of Rs. 55,958/- mentioned in the income tax return which has been admitted in evidence in this case.

With regard to medical expenses claimant testified as to prolonged treatment by several doctors in several hospitals and for which he had to incur expenditure of Rs. 1,25,000/- towards treatment. In support of that evidence claimant filed several prescriptions and treatment papers before the Ld. Tribunal.

In aforesaid view of the matter, I determine the compensation

Monthly Income	: 55,958/-
Less: Tax	: -596/-
	55,362/-
Add: Future Prospects @ 40% of 55,362/-	+ 22,145/-
	77,507/-

Multiplier 18	: X17
	13,17,619/-
Disability 60%	: 7,90,571/-
Medical Expenses	:1,25,000/-
Pain and sufferings	:75,000/-
Total	9,90,571 /-
Enhanced Amount	: Rs. 4,05,459/-

It is reported that Insurance company had already deposited the awarded amount of Rs. 5,85,112/- with the office of the Ld. Registrar General of this Court.

Claimant is directed to withdraw the aforesaid amount along with accrued interest thereon and informed the Ld. Advocate appearing on behalf of the Insurance Company immediately thereafter.

Appellant/ Insurance Company is directed to pay the balance amount along with interest @ 6% per annum from the date of filing of the claim petition till the deposit thereof with the office of the Ld. Registrar General, within 6 (six) weeks from the date of information received from the claimant. Respondent Insurance Company is also directed to pay the interest @ 6% per annum on the amount of Rs. 5,85,112/- from the date of filing of the claim petition till the date of deposit thereof along with balance amount and interest.

Claimant is at liberty to withdraw the balance

amount with interest subject to payment of *Ad velorem* court fees on the amount of Rs. 5,25,571/- .

Ld. Registrar General is requested to disburse the amount to the appellant/claimant on proper identification and proof.

Let the record of the tribunal along with a copy of this order, be send back, at once.

With the above observation, the appeal, being FMA 1294 of 2013 with Cot No. 8 of 2015, stand disposed of by this common judgement.

All pending application, if there be any, stand disposed of.

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

(Bibhas Ranjan De)