Form J2

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Bibhas Ranjan De

FMA 3447 of 2013

Sabina Khatun & Ors.
Vs.
National Insurance Co. Ltd. & Anr.

For the appellants/claimants :Mr. Jayanta Kumar Mondal

For the respondent/
Insurance Company :Mr. Rajesh Singh

Heard on: 07.09.2022, 16.09.2022 & 20.09.2022.

Judgment on: **20th September, 2022.**

Bibhas Ranjan De, J.

1. This appeal is directed against the judgment and order passed on 11th July, 2013 by the learned Judge, Motor Accident Claims Tribunal, 1st Court at Alipore, District – South 24-Parganas, in MAC Case No.19 of 2012 under Section 166 of the Motor Vehicles Act, 1988 whereby the learned Judge awarded compensation to the tune of Rs.3,69,500/-.

2. The claim petition was filed with a prayer for compensation of Rs.14 lacs along with interest on account of death of one Sk. Alfajuddin @ Alfajuddin Sekh in a motor accident which took place on 4th

November, 2011 at about 12.10 p.m. by the involvement of one Container bearing registration No. OR-05-AA-5102 on National Highway No.6 while the deceased was travelling by a TATA-407 bearing registration No.WB-25B/3941 and proceeding just behind the said Container. At the time of accident, the deceased was sitting in the driver's cabin of TATA-407. All on a sudden, while the Container proceeded from right side of the road towards left collided with the said TATA-407. After the accident, Sk. Alfajuddin @ Alfajuddin Sekh succumbed to his injuries on the spot. One police case, being Domjur Police Station Case No.609 dated 4th November, 2011 under Sections 279/304A/ 427 of the Indian Penal Code was started against the driver of the Container.

3. In Course of the proceedings before the learned Tribunal, the appellants/claimants examined three witnesses, namely, Sabina Khatun as PW-1, Sk. Amjad Hossain @ Amjed claiming himself as eye-witness as PW-2 and one Gopal Chandra Saha, Manager of Dena Bank of Budge Budge Branch as PW-3. In course of evidence, a good number of documents were marked as Exhibits 1 to 23.

4. Learned Judge of the Tribunal appreciated the evidences and documents available on record and calculated the compensation to the tune of Rs.3,69,500/- considering the monthly income of Rs.3,000/-.

5. At the time of hearing of the appeal, learned advocates on behalf of the parties never raised any dispute regarding accident of this case

alleged to have been taken place on 4th November, 2011 by the involvement of the Container bearing registration No. OR-05-AA-5102 and the Container was duly insured by the National Insurance Company Limited. Learned advocates on behalf of the parties to this appeal only argued on the point of monthly income of the deceased at the time of death.

6. Mr. Jayanta Kumar Mondal, learned advocate, appearing on behalf of the appellants/claimants, submitted that the claimants have succeeded to prove the income of the deceased by adducing sufficient evidence, viz., Income Tax Return and bank statement etc. In support of his contention, he relied upon the following judgments:-

- ***Vimal Kanwar & Ors. v. Kishore Dan & Ors., AIR 2013 SC (Civil) 1783;***
- ***Madhumita Sarkar & Ors. v. Oriental Insurance Co. Ltd. & Ors., (2010) 1 WBLR (Cal) 531;***
- ***Smt. Sangita Arya & Ors. v. Oriental Insurance Company Ltd. & Ors., 2020 SAR (Civ) 905;***
- ***Malarvizhi & Ors. v. United India Insurance Company Limited & Anr., 2020 (1) TAC 328 (SC);***
- ***Sharmila Singh & Ors. v. Sri Rabin Ghosh & Anr., (2008) 3 WBLR (Cal) 851; and***
- ***Kuntal Kundu v. National Insurance Company Limited & Anr., (2008) 3 WBLR (Cal) 717.***

7. In opposition to that, Mr. Rajesh Singh, learned advocate appearing on behalf of the respondent/Insurance Company submitted that the claimants could not produce any document showing income of the deceased at the relevant point of time, i.e., at the time of death. He has also submitted that even if we assume the income of the deceased in terms of the Income Tax Return submitted, in that case it cannot be said to be the income for computation of award for the reason that as after the death of the deceased the alleged business of the deceased was found still running. According to Mr. Singh, there is no loss of dependency except the contribution of the deceased to the business. In support of his contention, he relied upon the following judgments:-
   - ***Sarla Verma & Ors. v Delhi Transport Corporation & Ors., (2009) 6 SCC 121;***
   - ***New India Assurance Company Ltd. v. Yogesh Devi & Ors., (2012) 3 SCC 613;***
   - ***State of Haryana & Ors. v. Jasbir Kaur & Ors., AIR 2003 SC 6396; and***
   - ***Rani Gupta & Ors. v. United Insurance Co. Ltd. & Ors., 2010 (1) SCC (Cr) 1080.***
8. To prove monthly income of the deceased claimants examine wife of the deceased as PW-1 and in course of her evidence she has filed all those documents including copy of the Income Tax Return, bank statement, trade licence along with affidavit. In the claim

petition wife of the deceased depicted in column no. 6 that monthly income of the deceased was 12,480/-.

9. Ld. Advocate on behalf of the appellants/claimant relied on the Income Tax Return for the assessment year 2007-08 and tried to make this Court understand that at the relevant point of time yearly income of the deceased was 1,19,871/-. Mr. Mondal also relied on the bank statement in support of income of the deceased.

10. In ***Malarvizhi*** (supra) does not help the case of the appellants. In fact, the facts of the aforesaid case is not at all identical to that of ours.

11. In ***Sangita Arya*** (supra) Hon'ble Apex Court dealt with a case where income Tax Return was filed on 20.04.2007, which was prior to death of the deceased in motor accident on 18.06.2007. Therefore, fact of this case is also not identical to that of ours where Income Tax Return was filed on 27.06.2007, long before the death of the deceased occurred on 04.11.2011.

12. In ***Sharmila Singh*** (supra), ***Vimal Kanwar*** (supra) and ***Madhumita Sarkar*** (supra) it was observed that reduction of compensation is not justified owing to the fact that the widow of the victim inherited his business or compassionate appointment.

13. Mr. Mondal relied on ***Kuntal Kundu*** (supra) where it is observed that if a document is marked as exhibit on consent without reservation, the contents are not only evidence but are taken as

admitted the result being that the contents can not be challenged either by way of cross-examination or otherwise.

14. Even if we take the assistance of the ratio of ***Kuntal Kundu*** (supra) we can not come to any conclusion that Income Tax Return for the assessment year 2007-08 was the income of deceased prior to his death on 04.11.2011.

15. In ***Sarla Verma*** (supra) it was observed that in case of self-employed of fix salary the Court will take **only the actual income at the time of death. A departure therefrom should be made only in rare in an exceptional involving special circumstances.**

16. In ***Rani Gupta*** (supra), it was observed as follows:-

" ***In this case, however, the deceased was a businessman. What was the actual loss of dependency to the family was his contribution to run the business. The assets of the business remained. The amount of compensation, therefore, was required to be determined keeping in view that factor in mind." Yogesh Devi*** (supra) Hon'ble Supreme Court also followed the same principle.

17. In ***Jasbir Kaur*** (supra) Hon'ble Apex Court observed as follows:-

"........ Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just" a wide discretion is vested on

> ***the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just.........."***

18. Considering all the facts and circumstances of this case specially the evidence available on record I find not only discrepancy between the income per annum stated by the witness and the gross income shown in the Income Tax Return for the year 2007-08 but also no proof of income was shown before the tribunal prior to death of the deceased. Therefore, I do not find any reason to interfere with the determination of yearly income of deceased by the tribunal.

19. In aforesaid view of the matter I propose to determine the just compensation according to parameters laid down by the Hon'ble Apex Court, as follows:-

Annual Income	:36,000/-
Less 1/4th personal expenses (-Rs 9,000/-)	:27,000/-
Add:- Future Prospects (30%) (48 years)	:8,100/-
	35,100/-
Multiplier (x13) (Age 48 years)	:4,56,300/-
Loss of dependency	:4,56,300/-

Add:- Spousal consortium	:44,000/-
Add:- Loss of estate	:16,500/-
Add:- Funeral expenses	:16,500/-
Total	:5,33,300/-
Balance amount to be paid	:1,63,800/-

20. From the tribunal record it appears the compensation awarded by the tribunal have already been received by the claimants. National Insurance Company is directed to deposit the balance amount of Rs. 1,63,800/- along with interest @ 6% from the date of filing till actual payment before the Ld. Registrar General, within six (6) weeks from date.

21. Claimant is entitled to the enhanced balance amount of compensation subject to payment of *ad velorem* Court fees thereon.

22. 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.

22. F.M.A 3447 of 2013 stands disposed of without any order as to cost.

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

24. Let the records of the Tribunal be sent back immediately.

25. 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.]