07.02.2023
(Ali)
Ct no. 654
Sl. 5

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

FMA 470 of 2020

CAN 1 of 2019 (Old No. CAN 11812 of 2019)

Uma Mondal & Ors.
Vs.
The National Ins. Co. Ltd. & Anr.

Mr. Amit Ranjan Roy …for the appellant.

Mr. Sanjay Paul …for the respondent No. 1.

This appeal is preferred against the judgement and award dated 21 August 2019 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Tamluk, Purba Medinipur in M.A.C Case no. 97 of 2016/359 of 2016 granting compensation of Rs. 2,86,000/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 17 May 2016 at about 4 PM while the victim was standing on the left side morum portion of Haldia-Mecheda NH-41 Pitch Road near Dupjora village on NH-41 the offending vehicle bearing registration no. WB-30/7305 (Ambassador Car) driven in excessive high-speed and in rash and negligent manner dashed the victim with great force, as a result of which the victim sustained grievous injuries on his head and died on the spot. On account of sudden demise of the victim, the claimants being the widow and sons of the deceased filed application for compensation of Rs.14,00,000/-together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined three witnesses and produced documents which has been marked as **Exhibits 1 to 9** respectively.

Respondent no.1-insurance company did not produce any evidence.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned tribunal granted compensation of Rs. 2,86,000/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved by and dissatisfied with the impugned judgment and award the claimants have preferred the present appeal.

Mr Amit Ranjan Roy, learned advocate for appellants-claimants submits that the learned tribunal failed to take into account the income of the deceased disclosed in the income tax returns on the ground that no supportive documents relating to business of the deceased were produced before it. However, the income tax returns for assessment year 2014-2015 and 2015-2016 were proved by one official of Income Tax Department and therefore such income disclosed in the income tax return for assessment year 2015-16, filed prior to death of the deceased, ought to have been considered by the learned tribunal for determining the income of the deceased.

He further submits that in view of the decision of Hon'ble Supreme Court in ***National Insurance Company***

Limited versus Pranay Sethi and Others reported in ***2017 ACJ 2700*** the claimants are entitled to an additional amount of 10% of the annual income of the deceased towards future prospect which has not been considered by the learned tribunal.

In light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of appellants-claimants, Mr Sanjay Paul, learned advocate for respondent no.1-insurance company submits that the income disclosed in the income tax return has not been proved by producing cogent documents relating to the business namely the trade license etc and as such the learned tribunal rightly refused to accept the income disclosed in the income tax return. In view of the above, he submits that the appeal is liable to be dismissed.

By order dated 18 January 2023 the service of notice of appeal upon respondent no.2-owner of the offending vehicle has been dispensed with since he did not contest the claim application before the learned tribunal.

Having heard the learned advocates for the respective parties, it appears that the appellants-claimants have raised twofold issues in the present appeal, *firstly,* that the learned tribunal erred in determining the income of the deceased without taking into account the income disclosed in the income tax return and *secondly,* that the claimants are entitled to future prospect of 10% of the annual income of the deceased.

With regard to the determination of income of the deceased, it is found that the learned tribunal considered the notional income of Rs. 3000/-per month and did not consider the income disclosed in the income tax return since no documentary evidence with regard to business of the deceased was produced before it. The claimants adduced the evidence of income tax official namely Kajari Ghosh as PW3 who produced the original income tax returns of the deceased for assessment year 2014-15 and 2015-16 marked as **Exhibits 9-series**. Mr Paul, learned advocate for respondent no.1-insurance company strenuously argued that since no documents were placed in support of the business of the deceased, hence the income appearing in the income tax returns should not be accepted. It is undisputed that save and except income tax returns there are no other document in support of income of the deceased. Now it is to be seen whether income tax returns can form the basis for determination of the income of the deceased. At this stage it will be profitable to refer to the decision of Hon'ble Supreme Court passed in ***Kalpanaraj versus Tamil Nadu State Transport Corporation*** reported in ***(2015) 2 SCC 764*** where the only available documentary evidence on record of the monthly income of the deceased was the income tax return filed by with Income Tax Department and the Hon'ble Supreme Court in such circumstances held that the High Court was correct to determine the monthly income on the basis of income tax return. Further, the Hon'ble Supreme Court in ***Malarvizhi and others versus United India Insurance Company Limited and Another*** reported in ***(2020) 4 SCC 228*** endorsed the finding of the High Court that the determination must proceed on the basis of income tax return, where available. The income tax return is statutory document on which reliance may be placed to determine the annual income of the deceased. Bearing in mind the aforesaid observation of the Hon'ble court it goes without saying that the income tax return being the statutory document should be relied upon for determining the income of the deceased even though it is the only available documentary evidence. Income of the deceased disclosed in the income tax returns has not been discredited by any cogent evidence. The claimants in the present case have produced two income tax returns for assessment year 2014-15 and 2015-16 respectively, however, since the income tax return for assessment year 2015-16 is filed on 17 March 2016, just prior to the death of the deceased in the month of May 2016 which is proximate to death of the deceased I am inclined to consider the income disclosed in such income tax return. As per the income tax return for assessment year 2015-16 the annual income of the deceased is Rs.2,48,594/- and the tax paid Nil. Therefore, the annual income of the deceased comes to Rs.2,48,954/-.

So far as the entitlement to future prospect is concerned, it is found that the learned tribunal did not allow any amount towards future prospect. However, considering the decision of Hon'ble Supreme Court in ***Pranay Sethi's case (supra)***, since the deceased at the time of accident was 56 years of age and was self-employed, hence an additional amount equalling to 10% of the annual income of the deceased should be taken into account for assessment of compensation.

The other findings and factors of the learned tribunal has not been challenged in the present appeal. Keeping in mind the above factors the calculation of compensation is made hereunder.

Calculation of compensation

Annual Income...Rs. 2,48,594/-
Add:10% of total Income
towards future prospect......................Rs.24,859/-(approx.)
Annual loss of Income Rs.2,73,453/-
Less: Deduction 1/3rd of the Annual Income
towards personal and living expenses Rs.91,151/-
Rs.1,82,302/-
Adopting multiplier 9 (Rs.1,82,302/- X 9).. Rs.16,40,718/-

Add: General Damages.....................................Rs.70,000/-
Loss of estate....Rs.15,000/-
Loss of Consortium....Rs.40,000/-
Funeral Expenses.......Rs.15,000/-
Total Compensation Rs.17,10,718/-

Thus, the claimants are entitled to compensation of Rs. 17,10,718/-together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 10.8.2016) till deposit. It is informed that the claimants have already received an amount of Rs.2,86,000/- together with interest as per order of the learned tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs.14,24,718/- together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 10.8.2016) till deposit.

Respondent no.1-insurance company is directed to deposit the aforesaid balance amount of compensation of Rs.14,24,718/- together with interest at the rate of 6% per annum from the date of filing of the claim application (i.e 10.8.2016) till deposit, by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Appellants-claimants are directed to deposit *ad valorem* court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit of the aforesaid balance amount of compensation and interest as above, learned Registrar General, High Court, Calcutta shall release the amount in favour of the claimants, after making payment of Rs.40,000/- in favour of appellant no.1 (widow of the deceased) towards spousal consortium, and in following proportion namely ½ of the amount shall go in favour of appellant no.1-widow of the deceased and 1/4th each in favour of rest appellants namely the sons of the deceased.

With the aforesaid observation, the appeal stands disposed of. The impugned judgement and award of the learned tribunal is modified to the above extent. No order as to cost.

All connected applications, if any, stands disposed of.

Interim orders if any, stands vacated.

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

(Bivas Pattanayak, J.)