07.06.2023
Ct. no.654
Item no.1
Sn/ab

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 233 of 2019
(CAN 1 of 2021)
(CAN 2 of 2021)

Smt. Suchitra Ghosh & Ors.
Vs.
The National Insurance Company Ltd.& Ors.

Mr. Amit Ranjan Roy
…for the appellants
Ms. Sucharita Paul
..for the respondent-insurance company

In Re: CAN 1 of 2021

This is an application for recording the attainment of majority of the appellant no.2, Ms. Anupoma Ghosh.

Mr. Amit Ranjan Roy, learned advocate for the appellants submits that during the pendency of this appeal, the appellant no.2 Ms. Anupoma Ghosh has attained her majority which has to be recorded in the Memorandum of Appeal.

From the contention of the application and the documents annexed thereto, the date of birth of appellant no.2 is 23rd January, 2002. Hence, the appellant no.2 has attained her majority.

Let the attainment of majority of the appellant no.2, Ms. Anupoma Ghosh be recorded in the Memorandum of Appeal.

Department concerned is directed to record the aforesaid in the Memorandum of Appeal.

The application being CAN 1 of 2021 stands disposed of.

In Re: FMA 233 of 2019

This appeal is preferred against the judgment and award dated 17^{th} February, 2018 passed by the learned Judge, Motor Accident Claims Tribunal, 5^{th} Court, Murshidabad in MAC case no.12 of 2016 granting compensation of Rs.10,12,500/- together with interest in favour of the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988.

With the consent of the parties, preparation of informal paper books is dispensed with.

The brief fact of the case is that on 30^{th} October, 2015 at about 10-30 a.m. while the victim was returning to his house from Beldanga by riding his motor cycle keeping left side of the road, at that time the offending vehicle bearing registration no. WB-41E/0069 (truck) in a high speed and in rash and negligent manner dashed the victim along with his motor cycle from behind, as a result of which the victim sustained severe injuries all over his bodies and died on the spot. On account of sudden demise of the victim, the claimants being the widow, minor daughter, son and the mother of the deceased filed application for compensation of Rs.7,50,000/- 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 have been marked as **Exhibits 1** to **7** respectively.

The respondent no.1-insurance Company did not adduce any evidence.

Since the respondent no.2, owner of the offending vehicle, though appeared before the learned Tribunal but subsequently contest the claim application, service of notice of appeal upon the said respondent is dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.10,12,500/- 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 of the learned Tribunal, the claimants have preferred the present appeal.

Mr. Amit Ranjan Roy, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the income of the deceased to the tune of Rs.6,000/- per month basing on the oral evidence of the wife of the victim (PW-1) without considering the income disclosed in the income tax return for the assessment year 2014-15. He further submits that when a statutory document in the form of income tax return is placed before the Court the income disclosed therein is to be taken into account. Therefore, the annual income of the deceased of Rs.1,71,284/- disclosed in income tax return for assessment year 2014-2015 ought to have been considered by the learned Tribunal. To buttress his contention, he relies on the decision of the Hon'ble Supreme Court passed in ***Smt. Anjali & Ors. versus Lokendra Rathod & Ors.*** reported in ***2023 SAR (Civ) 18.***

Moreover, he submits that since the number of dependants is 4 (four), hence, the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd in view of the decision of Hon'ble Supreme Court passed in ***Sarla Verma versus Delhi Transport Corporation Limited & Ors.*** reported in ***2009 ACJ 1298***.

He fairly submits that future prospect should be equivalent to 25% of the annual income instead of 40% as considered by the learned Tribunal and since at the time of accident the victim was 44 years old, hence, following proposition laid down by the Hon'ble Supreme Court in *Sarla Verma (supra)*, the multiplier should be 14 instead of 15 adopted by the learned Tribunal. Further the claimants are also entitled to general damages of Rs.70,000/- under the conventional heads.

In reply to the contentions raised on behalf of the appellants, Ms. Sucharita Paul, learned advocate for the respondent no.1-insurance company, at the very beginning, indicates that there are certain overwritings in the income tax return for the assessment year 2014-15 **(Exhibit-7)** produced on behalf of the claimants which raises a serious doubt as the authenticity and veracity of the said document. She further submits that the income tax return for the assessment year 2014-15 is much before the accident and not immediately preceding to the date of the accident and, therefore, the income disclosed therein cannot be the actual income of the deceased. Further, relying of the cross-examination of PW-3, she submits that if a person continues his business he can file income tax return every year. Therefore, since the income tax just preceding the date of accident has not been filed the income disclosed in the income tax return for the assessment year 2014-15 cannot be accepted. The claimants in their claim application as well as in evidence has disclosed the income of the victim to be Rs.6,000/- per month which should be accepted as has been rightly held by the learned Tribunal.

Having heard the learned advocates for the respective parties, the following issues have fallen for consideration. *Firstly,* whether the learned Tribunal ought to have determined the income on the basis of the income tax return for the assessment year 2014-15 of the deceased victim. *Secondly,* whether the deduction towards personal and living expenses of the deceased should be $1/4^{th}$ instead of $1/3^{rd}$. *Thirdly,* whether the learned Tribunal ought to have considered an amount equivalent to 25% of the annual income of the deceased towards future prospect instead of 40%. *Fourthly,* whether the multiplier should be 14 instead of 15 and *lastly,* whether the claimants are entitled to general damages of Rs.70,000/- under conventional heads.

With regard to the determination of income of the deceased victim, it is found that the learned Tribunal relying on the oral evidence of the victim's wife (P.W.1) came to this finding that the income of the deceased was Rs. 6,000/- per month at the time of accident. In order to establish the income of the deceased, the claimants have also produced the income tax return of the deceased victim for the assessment year 2014-15 marked as **Exhibit-7** and proved by P.W. 3, Sanjay Pal, Inspector attached to Berhampore Income Tax Office. The genuineness of the income tax return for assessment year 2014-15 has been challenged on behalf of the insurance company on the ground of some overwritings. Upon perusal of the document of income tax return **Exhibit-7**, it is found that there are some overwritings and corrections. Be that as it may, it is pertinent to note that the said document has been certified by the income tax officer of its genuineness, correctness and authenticity. On going through the cross-examination of P.W.3, there is no iota of evidence challenging the genuineness of the said income tax return. To be precise, no contrary evidence has come up challenging the authenticity, genuineness or correctness of the said income tax return filed on behalf of the claimants. Thus, such arguments advanced on behalf of the insurance company fall short of merit.

The other challenge thrown to the acceptance of income tax return is that it does not pertain to the period just preceding the date of accident. At this stage, it would be profitable to refer to the decision of the 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 the 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 the income tax return. Further, the Hon'ble Supreme Court in ***Malarvizhi & Ors. versus United India Insurance Co. Ltd. & Anr***., reported in ***(2020) 4 SCC 228*** endorse the findings of the High Court that determination must proceed on the basis of 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. I find substance in the submissions made by Mr. Roy, learned advocate for the claimants relying on the decision of the Hon'ble Supreme Court passed in *Smt. Anjali (supra)* in this regard. From the aforesaid observation of Hon'ble Supreme 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. Thus, such challenge thrown to the income tax return for the assessment year 2014-15 cannot be accepted. Upon perusal of the income tax return for the assessment year 2014-15 **(Exhibit-7)** it is found that the deceased had income from business to the tune of Rs. 1,71,284/- and the tax paid is nil. Thus, the actual income of the deceased comes to Rs.1,71,284/-.

With regard to the deduction towards personal and living expenses, it is found that the learned Tribunal has deducted 1/3rd of the annual income of the deceased towards his personal and living expenses. Since at the time of accident the number of dependants is four, hence the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd in view of the decision of Hon'ble Supreme Court in *Sarla Verma (supra)*.

Following the observations of the Hon'ble Supreme Court in *Pranay Sethi (supra)* since at the time of accident, the deceased was 44 years old and was self-employed, the claimants are entitled to an amount equivalent to 25% of the annual income of the deceased towards future prospect.

Admittedly, at the time of accident, the deceased was 44 years old. Therefore, following the observations of the Hon'ble Supreme Court in *Sarla Verma (supra)* multiplier should be 14 instead of 15.

So far as the general damages are concerned, it is found that the learned Tribunal has granted Rs.9,500/- on such head. However, following the proposition laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses to the tune of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

The other factors have not been challenged.

Bearing in mind the above factors, calculation is made hereunder.

<u>Calculation of Compensation</u>

Income	Rs.1,71,284/-
Add 25% future prospect	Rs.42,821/-
Total income	Rs.2,14,105/-
Less 1/4th towards personal and living expenses	Rs.53,526/-
	Rs.1,60,579/-
Multiplier 14 (Rs.1,60,579 x 14)	Rs.22,48,106/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs.70,000/-
Total amount	Rs.23,18,106/-

Thus, the total compensation comes to Rs.23,18,106/-. Mr. Roy, learned advocate for the appellants-claimants submits that though the claimants received the compensation amount of Rs.10,12,500/- and the interest granted by the learned Tribunal, however, the interest has been granted by the learned Tribunal from the date of the order (17.02.2018) and not from the date of filing of the claim application. Accordingly, the claimants are entitled to interest on the compensation amount granted by the learned Tribunal @ 6% per annum from the date of filing of the claim application (13.01.2016) till 16.02.2018.

Further, the claimants are entitled to balance amount of compensation of Rs. 13,05,606/- together with interest @ 6% per annum from the date of filing of the claim application (13.01.2016) till the date of payment.

The respondent No. 1- insurance company is directed to deposit the balance amount of compensation of Rs. 13,05,606/- together with interest as indicated hereinabove by way of a cheque before the Registrar General, High Court, Calcutta within a period of six weeks from date.

The 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 balance amount of compensation as aforesaid and the interest indicated above, the learned Registrar General, High Court, Calcutta shall release the amount in favour of the appellants-claimants in equal share after making payment of Rs. 35,000/- (since Rs.5,000/- has already been received) in favour of the appellant no. 1, widow of the deceased, towards loss of consortium, upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the appeal stands disposed of.

All the connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

Let a copy of this order along with the Lower Court Records be sent to the learned Tribunal in accordance with law.

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

(Bivas Pattanayak, J.)