23.08.2023
Ct. no.654
Sl. No.16
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION

F.M.A. 900 of 2018
C.A.N. 1 of 2018 (old No. CAN 3263 of 2018)
CAN 2 of 2022

Smt. Mousumi Banerjee @ Mousumi Bandapadhyay & Ors.
Versus
Sri Jitendra Singh & Anr.

Mr. Debasish Ghosh
… for the appellants-claimants
Mr. Rajesh Singh
..for the respondent-insurance Co.

This appeal is preferred against the judgment and award dated 13th January, 2017 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunals, 1st Court, Purulia, in MAC case no.38 of 2013 granting compensation of Rs.8,11,000/- together with interest in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 21st February, 2013 in between 3.30 to 3.45 p.m. while the victim and his relative, Krishnadas Banerjee, were returning home at Purulia from Bokaro by a car driven by the deceased through Ranchi-Purulia pitch road (NH-32) and when they reached near Raibaghini Mandir, at that point of time the offending vehicle bearing registration no.NL-02K/1435 (Tanker) which was coming from Purulia side and proceeding towards Chas More side in a rash and negligent manner dashed the car driven by the victim. As a result of which, both victim and his relative sustained multiple grievous injuries over their head and body. Both injured persons were immediately taken to Deben Mahato Sadar Hospital, Purulia, where the attending Doctor declared the victim dead and the relative of the victim was referred to higher medical center. On account of sudden demise of the victim, the claimants being the widow, daughter, minor son and parents filed application for compensation of Rs.57,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined two witnesses and produced documents, which have been marked as **Exhibits 1** to **12/1** respectively.

The respondent no.2-insurance company also adduced evidence of one witness.

Since the respondent no.1, owner of the offending vehicle, did not contest the clam application, service of notice of appeal upon the said respondent, stands dispensed with.

Upon considering the materials on record and evidence adduced on behalf of the respective parties, the learned Tribunal granted compensation of Rs. 8,11,000/- 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 of the learned Tribunal, the claimants have preferred the present appeal.

Mr. Debasish Ghosh, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the income of the victim at Rs.3,000/- per month without taking into account the income tax return for the assessment year 2012-2013. The income tax return was not considered by the learned Tribunal on the ground that no supportive documents of business was filed, other income tax returns for the assessment years 2008-2012 was not furnished and lastly the income tax return for the assessment year 2012-2013 was filed after the death of the victim. However, such ground of non-acceptance of the income tax return does not hold good in view of the fact that the PW-1 has categorically stated that the victim was a businessman and used to carry transport business under the name and style "*Mrinmoyee Roadways*" which has not been refuted by any other contrary evidence. He further indicates that the person having transport business cannot have meager income of Rs.3,000/- per month, as determined by the learned Tribunal. Further in the alternative he submits for remanding the matter to the learned Tribunal for fresh adjudication on the point of determination of income since the income tax return for other assessment years are now available with the claimants. In light of his aforesaid submissions, he prays for setting aside and/or modification of the impugned award.

In reply to the contentions raised on behalf of the appellants-claimants, Mr. Rajesh Singh, learned advocate for respondent no.2-insurance company submits that it is now settled by the Hon'ble Supreme Court that income tax return filed after the death of the victim should not be considered. He also submits that not a single document in support of the business of the victim has been produced by the claimants to primarily show that prior to his death the victim used to carry on transport business. Thus, the determination of income made by the learned Tribunal does not call for interference.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly,* whether the learned Tribunal erred in determining the income of the victim and *secondly,* whether in the facts and circumstances the matter requires to be remanded.

With regard to the first issue relating to determination of income, it is found that the learned Tribunal has determined the income of the deceased at Rs. 3,000/- per month. The claimants have claimed income of the victim at Rs.41,836/- from transport business under the name and style "*Mrinmoyee Roadways*". However, the claimants have not produced any scrap of document in support of such transport business of the victim. The income tax return **(Exhibit-7)** for the assessment year 2012-2013 has been filed on 24th March, 2013. The accident has taken place on 21st February, 2013. Thus, the income tax return for the assessment year 2012-2013 has been filed after the death of the victim.

Mr. Ghosh, learned advocate for the appellants-claimants strenuously argued that the income tax return for the assessment year 2012-2013 though filed after the death of the victim should have been considered by the learned Tribunal. Now, the question requires consideration as to whether the income tax return filed after the death of the victim can be taken into consideration for determination of the income of the victim. In order to find an answer to the above issue, reference may be made to the observation of Hon'ble Supreme Court in this regard. The Hon'ble Supreme Court in ***V. Subbulakshmi and Ors. versus S. Lakshmi and Ors.*** reported in ***(2008) 4 SCC 224*** endorsed the view of the High Court in not relying on the income tax return filed after the death of the victim. Similarly, in ***Amrit Bhanu Shali and Ors. versus National Insurance Co. Ltd. and Ors.*** reported in ***(2012) 11 SCC***

738, the Hon'ble Supreme Court affirmed the view taken by the learned Tribunal in considering the income disclosed in the income tax return filed prior to the death of the deceased.

In view of the above proposition laid down by the Hon'ble Court, the finding of the learned Tribunal of not accepting the income tax return for assessments year 2012-2013 filed after the death of the victim does not call for interference.

With regard to the second issue relating to remand of the matter to the learned Tribunal for fresh adjudication on the point of determination of income, it is found from the lower court records that the examination of PW-1 was held on 13th August, 2015 and thereafter the claimants have prayed for several adjournments to adduce further evidence in support of income of the victim in respect of other assessment years. However, in spite of the same, the claimants did not produce further evidence in support of income. Thus, the claimants had ample opportunity to adduce evidence in such regard. Accordingly, the submissions advanced by Mr. Ghosh, learned advocate for the appellants-claimants for remanding the matter to the learned Tribunal for a fresh adjudication on the point of income does not stand to reason.

In view of the above, the appeal stands dismissed. The impugned judgment and award of the learned Tribunal is affirmed. No order as to costs.

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 Court below for information in accordance with the rules.

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

(Bivas Pattanayak, J.)