IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 975 of 2008

CAN 2 of 2009 (Old No.CAN 9161 of 2009)

Smt. Swapna Basak

Vs.

New India Assurance Company Ltd. & Anr.

For the Claimant/Appellant :Mr. Saidur Rahaman, Advocate

For the Insurance Company/ Respondent no. 1 :Mr. Saibalendu Bhowmik, Advocate

Heard on : January 18, 2023

Judgment on : January 25, 2023

Bibhas Ranjan De, J.

1. In the accident, which occurred on 11.10.2003 at about 17.00 hours, a 46 years old business man, stated to have earned Rs. 23,707.91 paise per month, died.

2. Kotwali Ps Case No. 347/2003 dated 11.10.2003 under Section 279/338/304A/ 427 of the Indian Penal Code was started against the driver of goods carrier truck bearing no. WB73/8230, which was insured with New India Assurance Company Limited.
3. Legal representatives of the said deceased business man filed the Motor Accident claim Case No. 27 of 2004 under Section 166 of the Motor Vehicles Act, which was disposed of by the Ld. Motor Accident claims Tribunal, 1st Track Court, Cooch Behar, claiming compensation of Rs. 20,00,000/- under various heads.
4. New India Assurance Company Limited, opposed the claim, denied the manner of accident negligence attributed against the driver of the vehicle bearing no. WB73/8230. On evaluation of evidence together with the documents, the Ld. Tribunal held that the driver of the said truck was negligent in causing accident.
5. Ld. Tribunal after analyzing the entire evidence regarding income from business and other circumstances computed the loss of contribution to the family as Rs. 10,07,000/-.

6. Not satisfied with the quantum of compensation, the legal representative of the deceased preferred this appeal and Ld. Advocate Mr. Rahaman appearing on behalf of the claimants submitted the compensation under some heads requires enhancement. Mr. Rahaman submitted that Ld. Tribunal considered the Income Tax Return for the assessment year 2003-2004 but did not consider the total income as commission agent received for that year ending on 31.03.2003, which was Rs. 2,84,495/-.

7. To prove the case, claimants adduced evidence of three(3) witnesses namely Kisori Mohan Sarkar, employee of Cooch Behar Post Officer who proved one attested copy of the document showing commission report by the deceased for the year 2002-2003 and he stated that deceased received Rs. 2,84,495/- and after deducting Income Tax of Rs. 18,440/- and surcharge Rs. 940/-. He has further testified that in between 01.04.2003 to 11.10.2003 deceased received Rs. 1,77,545/- after deducting tax of Rs. 8,873/- and surcharge Rs. 453/- documents were admitted in evidences as exhibit 1 & 2.

8. PW-2, wife of the deceased, has corroborated the claim application and in course of her evidence F.I.R, PM Report, charge sheet, Insurance Policy, Income Tax certificate and age proof certificate were admitted in evidence.

9. PW-3, Biplab Chakraborty, testified that on 11.10.2003 at about 5.00 hours the accident took place by the rash driving of the vehicle WB 72/8230 and Swapan Kumar Basak died on spot.

10. One Manik Ranjan De, Inspector of Income Tax, has been examined as DW-1. He testified and proved the Income Tax clearance certificate in favour of Swapan Basak.

11. No argument has been advanced on behalf of the parties to this appeal regarding accidental death of Swapan Basak by the involvement of truck bearing No. WB-73/8230. That apart, from the evidence of PW-3 together with the documents like FIR charge sheet etc., I find no reason to disbelieve the accidental death of Swapan Bask by the rash driving of vehicle no. Wb-73/8230.

12. Only issue of this appeal is income of the deceased. Mr. Rahaman on behalf of claimants, submitted that according to statement of profit and loss account for the year ending

31.03.2003 it is seen that the deceased earned Rs. 2,84,495/- and after deduction towards difference heads i.e. travelling expenses, entertainment expenses, stationery expenses, refreshment of staff, telephone bill, salary to staff and sub agent commission , net income of the deceased was shown as Rs. 69,530/- but, Ld. Tribunal did not consider the amount of expenditure towards the aforesaid heads and centered around the net income of the deceased.

13. Ld. Advocate, Mr. Saibalendu Bhowmik, appearing on behalf of the Insurance Company, opposing the submission of adversary, contended that the expenditure towards expenses on different heads will not come within the purview of the income for computation of the compensation.

14. Mr. Bhowmik has further submitted that Income Tax Return was submitted by the wife of deceased leaving a chance of manipulation in the profit and loss account statement and that statement can not be relied upon which was submitted after death of Swapan Basak.

15. 'Income' means the benefits, either in terms of money or otherwise which had taken into consideration for the purpose of payment of Income Tax or Professional Tax. In case of a salaried person allowances received on a different heads come within the purview of income because of its beneficial aspects to the family of the said salaried person. Hear in our case, Mr. Rahaman has tried to convince this Court that expenditure towards travelling expenses and entertainment expenses, may be due to bulk amount, should come within the purview of gross income of the deceased Swapn Basak. Income Tax & Professional Tax deducted from the salaried person goes to the corpus of the government without any return. Whereas, amount deducted towards GPF, LIC are always repayable to the employee.

16. It is now settled proposition of law that the Tribunal can make only statutory deductions such as Income Tax, Professional Tax, and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining monthly income for computing the dependency compensation. In our case, from the statement of profit and loss account, relied on by Mr. Rahaman, it comes to my view that deceased incurred expenditure of Rs. 2,08,965/-. From the certificate of income Tax Department together with computation of income tax for the assessment year 2003-2004, it appears that total of the income of the deceased was 69,530/-. Therefore, expenditure not being repayable can not be considered as beneficial to the members of the family of the deceased for the purpose of computing dependency compensation.

17. On careful scrutiny of the judgment, passed by the Ld. Tribunal, I find that Ld. Tribunal assessed the income of the deceased at Rs. 90,000/- per annum for the year 2003 2004 after deducting Income Tax which is more than the income of the deceased for that year in terms of aforesaid discussion. Presumably, Ld. Tribunal assessed the income in view of death of son of the claimant in the same accident. Ld. Tribunal also granted future prospect more than 25% of the income and finally assessed the compensation after applying multiplier 13 rightly leaving no scope for interference. Claimant also received the entire awarded amount of Rs. 10,00,000/- including Rs. 50,000/- under Section 140 of the Motor Vehicles Act.

18. With the aforesaid observation, I am inclined to dismiss this appeal. Thus, this appeal being FMA 975 of 2008 stands dismissed.

19. Let a copy of this judgment along with Tribunal record be transmitted back immediately.

20. Pending applications, if there be any, stand disposed of.

21. 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.]