

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Bibhas Ranjan De

F.M.A 843 of 2010

With

CAN 1 of 2010 (CAN 298 of 2010)

With

CAN 5 of 2019 (CAN 3224 of 2019)

(Application not in the file)

With

CAN 6 of 2019 (CAN 3225 of 2019)

(Application not in the file)

The Oriental Insurance Company Limited

Vs.

Rupa Agarwal & Ors.

For the Appellant/
Insurance Company

:Mr. Sanjay Paul, Advocate

For the Respondents/
claimants

:Mr. Saidur Rahaman, Advocate

Heard on
Judgment on

: January 06, 2023
: January 10, 2023

Bibhas Ranjan De, J.

1. The appeal is directed against the Judgement and award passed by the Learned Motor Accident Claims Tribunal, Additional District Judge, Fast Track, 6th Court, Alipore, 24 Pargans (South), in connection with MAC No. 03 of 2009 whereby Learned Judge awarded compensation to the tune of Rs. 11,32,956/-.
2. The claim petition under Section 166 of the Motor Vehicles Act, on account of death of Vinay Kumar Agarwal in a motor accident on 16.04.2004 while he was travelling by a scooter as pillion rider was knocked down by the vehicle number OR-09D-2851d(Tipper) as a result, he died . At the time of death deceased was aged about 56 years having income of Rs. 2,63,700/- per annum from his commission agent business for supply materials to different companies. Accordingly, claimants i.e. widow of deceased and her daughter filed claim application with a prayer for compensation to the tune of Rs. 14,20,000/-.
3. Though owner of the offending vehicle did not contest the case but oriental Insurance company i.e insurer of the offending vehicles contested the case by filing written statement denying

all material averments of the claim petition contending, inter alia, that Insurance Company is not liable to pay compensation.

- 4.** To prove the case claimants examined 4 (four) witnesses namely Rupa Agarwal, widow of the deceased as PW-1, Hrishikesh Naskar, Income Tax inspector of the concerned ward as PW-2, Anup Kr. Gutgutia, a partner of Boon Metal and Alloy Corporation as PW-3 and Sarat Kr. Sahoo claiming himself to be an eye-witness to that accident as PW-4. In course of their evidences a good number of documents were admitted in evidence as exhibit 1 to 19.
- 5.** After considering the evidence on record Learned Tribunal assessed the compensation of Rs. 11,32,956/- taking the annual income of Rs. 2,63,584/- after statutory deduction in terms of Income Tax Return.
- 6.** I have gone through the entire evidences of four all witnesses examined on behalf of the claimants and I do not find anything contrary to the observation of the Learned Tribunal regarding death of Vinay Kumar Agarwal by the involvement of the offending Tipper which was solely responsible for the accident. In fact, the accidental death of Vinay Kumar Agarwal has been proved by the evidence of eye-witness (PW-4) together with F.I.R

and charge sheet. Therefore, to eschew the prolixity, I refrain myself from going into further discussion on the issue of accident and negligent driving of the offending vehicle.

7. In fact, the instant appeal has been preferred only on the ground of income of the deceased at the time of death.
8. Learned Advocate, Mr. Sanjay Paul, appearing on the behalf of the appellant/Insurance Company has submitted that Learned Tribunal ought to have considered the Income Tax Return submitted by the deceased himself prior to his accidental death, for the purpose of assessing the income of the deceased, at the time of death. In support of his contention, he relied on a case of ***Subbulakshmi and others Vs SuLakshmi and another (2008) 4 Supreme Court Cases 224***, wherein Hon'ble apex Court observed in para 21 and 22 as follows:-

“21. The accident took place on 7.5.1997. Income tax returns were filed on 23.6.1997.

22. The Income Tax Returns (Exp. P-14), therefore, have rightly not been relied upon.”

9. Mr. Paul has further relied on a case of ***Shashikaka and others Vs Gangalakshamma and another (2015 (2) T.A.C.***

867 (S.C.) ,where Hon'ble Apex Court held in para 5, 10 and 16 as follows:-

“5. Aggrieved by the said award of the tribunal, the appellants filed appeal before the High Court seeking enhancement of compensation. The High Court modified the award by recalculating the income of the deceased. Taking the income tax returns of the deceased for the assessment years 2005- 06 and 2006-07, the High Court calculated average of the same and taken the income at Rs. 1,55,812/- per annum. After making deductions towards income-tax, professional tax and income from house property, the High Court calculated the net income of deceased at Rs.1,17,831/- per annum. The High Court deducted 1/4th towards personal expenses and to the remaining amount of Rs.88,373/- applied multiplier of 14 and accordingly re- determined the loss of dependency at Rs.12,37,222/- as against Rs.6,50,000/- awarded by the tribunal.

Awarding conventional damages at Rs. 45,000/- and medical expenses at Rs.1,87,150/-, the High Court enhanced the compensation to Rs.14,69,372/-. Still aggrieved by the quantum of compensation, appellants have filed this appeal.

The deceased was aged 45 years and was doing transport business. Though the claimants have filed income tax returns for two assessment years 2005-06 and 2006-07, as per the income tax returns for the year 2006-07, the income of the assessee was Rs.2,02,911/-. Tribunal did not take the income of the deceased for the assessment year 2006-07 on the ground that only xerox copy was filed and the claimants have failed to examine income-tax authorities to prove the same. Instead of taking the income of the deceased as per the assessment year 2006-07, the High Court has chosen to calculate the average of the income for two assessment years 2005-06 and 2006-07.

Considering the age of the deceased and the nature of business he was doing, in my considered view, the High Court was not justified in so taking the average of income of the two assessment years. The deceased was aged 45 years and doing business. Admittedly, he was also owning agricultural lands. Even though agricultural income was not shown in the income tax return, it emerges from the evidence that the deceased was also doing agricultural work.

16. Without adverting to the issue whether additions are to be made towards future prospects or not, as it is obligatory on the part of the Court to award just compensation, considering the age of the deceased and the nature of business he was doing, in my view, the income of the deceased as stated in the income tax return for the year 2006-07 i.e. Rs. 2,02,911/- may be taken as the income of the deceased. Ten per cent of the said amount i.e.

Rs.20,290/- is to be deducted towards income tax and the remaining comes to Rs.1,82,620/-. The amount to be deducted for professional tax is Rs.2,400/- and after deducting the same, the balance comes out to Rs. 1,80,220/-. The income from the house property for the year 2006-07 is shown to be Rs.20,000/- and after deducting the same, the net amount comes to Rs.1,60,220/-. Deducting 1/4th (one/fourth) towards personal expenses which comes out to Rs.40,055/-, the loss of dependency/loss of contribution is arrived at Rs.1,20,165/- per annum.”

- 10.** In opposition to that, Learned Advocate, Mr. Saidur Rahaman, appearing on behalf of the respondent/claimants have contended that Learned Tribunal assessed all the evidences including the statement of commission and consider the income of the deceased in terms of Income Tax Return showing income of the deceased while he was alive. Therefore, according to Mr. Rahaman, there is no question of inflated income shown in the

Income Tax Return. It is further, submitted that more than Rs. 50,000/- was paid as Income Tax.

11. In ***Subbulakshmi*** (supra) Hon'ble Apex Court came across a case where High Court assessed income of deceased at Rs. 7,000/- per month in respect of income of the deceased from agricultural operation and commission business while appellant produced some documents to show that the income of the deceased was about 12,500/- per month. Nowhere from the judgment, I find that whether Income Tax Return was ever proved by the Income Tax Authority unlike our case. Moreover in our case, PW-3, being Director of team Ferro Alloy Pvt. Ltd. testified in support of commission business of Vinay Kumar Agarwal. That apart, PW-2, being Tax Inspector proved the Income Tax Return submitted by or on behalf of the deceased. After careful scrutiny of all Income Tax Return, it appears that income of deceased increased every year and lastly income of the deceased has been reflected in the Income Tax Return only submitted by the widow of the deceased. Therefore, the Income Tax Return submitted by the wife of the deceased shows the income of the deceased prior to his death.

12. Learned Tribunal after considering all the commission's statements together with the Income Tax Return accepted the return lastly submitted by the wife of the deceased for the assessment year 2004 & 2005 showing income of Rs. 2,63,584/- and payment of tax of Rs. 50,558/-. The aforesaid Income Tax Return clearly shows the income of the deceased prior to his death therefore ratio of **Subbulakshmi** (supra) cannot provide any assistance to the appellant/Insurance Company.

13. Facts dealt with by the Hon'ble Apex Court in **Shashikala** (supra), on the issue of Income Tax Return is not applicable in this case, where Income Tax Inspector proved the original Income Tax Return filed on behalf of the claimants.

14. With the aforesaid observation, I am unable to interfere with judgment and award passed by the Learned Tribunal in connection with Motor Accident Claim Case No. 3 of 2009.

15. Accordingly the appeal fails.

16. It is reported that appellant/ Insurance Company has already deposited the entire awarded amount before the office of the Ld. Register General.

- 17.** Claimants are at liberty to withdraw the aforesaid amount, along with accrued interest.
- 18.** Learned Registrar General is requested to disburse the amount o the claimants in the manner prescribed in the order passed by the Ld. Tribunal.
- 19.** F.M.A 843 of 2010 stands disposed of without any order as to cost.
- 20.** All pending applications, if any, stand disposed of accordingly.
- 21.** Let the records of the Tribunal, if any, be sent back immediately.
- 22.** 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.]