27.03.2023
Ct. no.654
Sl. Nos.82
ss

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 331 of 2022
CAN 1 of 2022

The New India Assurance Co. Ltd.
Versus
Sonia Khan & ors.

Mr. Rajdeep Bhattacharyya
... for the appellant-Insurance Co.

Mr. Snehasish Sutradhar
Ms. Swarnali Biswas
Mr. Souren Pal
......for the respondents - claimants

This appeal is directed against the judgement and award dated 13th December, 2021 passed by learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track, 3rd Court at Alipore, 24-Parganas (South) in M.A.C. Case No.998 of 2018 granting compensation of Rs.43,89,900/- 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 1st February, 2018 at about 10.30 p.m. while the victim was travelling on a motor-cycle bearing registration No.WB-20AS/8241 as a pillion rider in a rash and negligent manner along the Diamond Harbour Road and when it reached Ektara More the said motor-cycle hit a road-side tree, as a result of which the victim sustained severe injuries on his person and was immediately taken to Diamond Harbour Hospital and thereafter to Apollo Gleneagles Hospital. However, the victim succumbed to his injury on 6th February, 2018. On account of sudden demise of the deceased, the widow and the mother of the victim filed application under Section 166 of the Motor Vehicles Act for compensation of Rs.50,00,000/- together with interest.

The claimants in order to establish their case examined four witnesses and produced documents, which have been marked as **Exhibits 1 to 19(b)** respectively.

The appellant-Insurance Company also adduced evidence of its investigator as D.W.1 and produced documents which have been marked as **Exhibits 'A'** and **'B'** respectively.

Upon considering the materials on record and the evidence adduced on behalf of the parties, the learned Tribunal granted compensation in favour of the respondents-claimants to the tune of Rs.43,89,900/- together with interest.

Being aggrieved by and dissatisfied with the impugned judgement and award, the Insurance Company has preferred the present appeal.

Mr Rajdeep Bhattacharyya, learned Advocate for the appellant-Insurance Company submits that the Insurance Company in the present appeal has precisely challenged the determination of income of the deceased-victim by the learned Tribunal. He submits that though the claimants relied on the income tax returns of the deceased for the Assessment Years 2016-2017 and 2017-2018 yet the claimants have miserably failed to prove the basis of such income disclosed in the income tax returns. He further submits that as per the claim case and the evidence of P.W.1 the deceased victim at the time of accident used to run business. However, throughout the proceedings no document relating to the business of the deceased-victim or any trade licence of such business was produced to primarily satisfy the existence and the basis of income of the deceased-victim. Further he submits that the income tax returns submitted by the claimants is shrouded with suspicion since the victim has submitted return of two assessment years on consecutive dates, i.e., 23rd October, 2017 and 24th October, 2017 without any cogent reasons. In the event where the income of the deceased victim is not established the recourse open to the Court for assessment of compensation is to consider the notional income or the Court can also take into consideration the minimum wages applicable in a case of skilled labour. In support of his contention, he relies on the decision of Hon'ble Supreme Court passed in ***Manusha Sreekumar & Ors. versus The United India Insurance Co. Ltd. (Civil Appeal No.7593 of 2022).*** Referring to the Notification of the office of the Labour Commissioner, Statistics Section, Government of West Bengal being No.35/703/Stat/2RW/29/2016/LCS/JLC dated 30th January, 2019, he submits that for skilled labour of Zone 'B' the monthly minimum rate of wages is Rs.8765/- which should be applied in the facts and circumstances of the present case to quantify the amount of compensation. In light of his aforesaid submissions, he prays for setting aside the impugned judgement and award and to modify the same taking into consideration the income as indicated above.

In reply to the contentions raised on behalf of the appellant-Insurance Company, Mr. Snehasish Sutradhar, learned Advocate for respondent nos.1 and 2 (claimants) submits that so far as the nature of business is concerned as per the Schedule to the Codes of Income Tax, the business of the deceased falls under 1001-1001, i.e, *"Other Sectors"* which has been deposed by P.W.2, income tax officer and therefore even if documents of business is not produced by the claimants that becomes inconsequential. He further submits that though learned advocate for insurance co. tried to impress upon the court that the income tax returns of the deceased is doubtful since the same has been filed on two consecutive days yet the evidence of P.W.2, the Income Tax Officer, would show that there is no cross-examination with regard to any anomaly/discrepancy that might arise in relation to filing of return on the consecutive dates nor any evidence has been produced on behalf of the Insurance Company to discredit such filing of the returns by the victim on the consecutive dates and thus, the income tax returns filed by the victim is very much acceptable in the eye of law. Referring to the decision of Hon'ble Supreme Court in ***Kalpanaraj & ors. Vs. Tamil Nadu State Transport Corporation*** reported in ***(2015) 2 SCC 764*** he submits that where the income tax return of the victim are available it should be taken into consideration for determining the income of the deceased-victim. He further submits that the standard of proof in case of motor accident claims case must be based on preponderance of probability and not on strict standard of proof beyond reasonable doubt which is followed in criminal cases. To buttress his submissions, he relies on the decision of the Hon'ble Supreme Court passed in ***Rajwati @ Rajjo & ors. versus United India Insurance Company Limited & Ors.,*** reported in ***2022 SCC online SC 1699***. He further draws the attention of the Court that at the time of proceedings before the learned Tribunal the claimants have produced the photocopy of trade licence relating to business of the deceased victim, which has been issued by Debipur Gram Panchayat for the year 2017-2018 in the name of the victim. With regard to decision referred to on behalf of the appellant-

Insurance Company in *Manusha Sreekumar (supra)* he submits that the fact involved in the said case is dissimilar to the case on hand and therefore, such ratio is not applicable in the facts and circumstances of this case. In view of his above submissions, he prays that the impugned judgement and award passed by the learned Tribunal be affirmed for the interest of justice.

In reply, Mr. Bhattacharya, learned advocate for the appellant-insurance company submits that P.W.2, Income Tax Officer has admitted in his cross-examination that he has not produced any certificate regarding correctness of the statement of income tax returns and therefore the income tax returns are far from being acceptable.

Since the respondent no.3, owner of the offending vehicle, did not contest the claim application and the case was disposed of *ex parte* against him, the service of notice of appeal upon the said respondent is dispensed with.

Having heard the learned Advocates for the respective parties, it is found that the Insurance Company in the present appeal has precisely raised a single issue challenging the determination of income by the learned Tribunal.

It is found from the impugned judgement and award that the learned Tribunal determined the income of the deceased-victim on the basis of the income tax returns of the deceased-victim for the Assessment Years 2016-2017 and 2017-2018 to the tune of Rs.23,000/- per month. As per the Assessment Year 2016-2017 the gross income of the deceased is Rs.2,65,180/- and in the Assessment Year 2017-2018 the gross income is Rs.2,99,857/-.

Mr. Rajdeep Bhattacharyya, learned Advocate for the appellant-Insurance Company has strenuously argued that such income of the victim cannot be taken into consideration since the income has not been supported by cogent and relevant evidence of business. Admittedly, the claimants have not produced documents of business. The photocopy of trade licence was produced before the learned Tribunal but none was examined to prove the same.

From the materials on record save and except the income tax returns and the balance-sheet and profit & tax account annexed to the returns there are no other documents produced by the claimants in relation to the business of the deceased. Now it is to be seen whether the income tax returns can form the basis of determination of income of the deceased. At this stage, it will be profitable to refer to the decision of the Hon'ble Supreme Court passed in *Kalpanaraj (supra)* where the only available documentary evidence on record of the monthly income of the deceased was the income tax return filed with the Income Tax Department and the Hon'ble Supreme Court in such circumstance held that the High Court was correct to determine the monthly income on the basis of the income tax return. Further in ***Malarvizhi & ors. Vs. United India Insurance Company Limited,*** reported in ***(2020) 4 SCC 228,*** the Hon'ble Supreme Court endorsed the findings of the High Court that the 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. Bearing in mind the aforesaid observation of the Hon'ble Supreme Court, it goes without saying that the income tax return being the statutory document should be relied upon even though it is the only available documentary evidence. Both the income tax returns have been filed prior to the death of the deceased. In ***Sangita Acharya versus Oriental Insurance Company Limited*** reported in ***(2020) 5 SCC 327*** the Hon'ble Supreme Court considered the income tax returns for assessment years filed prior to death of the deceased for determining the income of the deceased-victim. In the case of *Manusha Sreekumar (supra)* of the Hon'ble Supreme Court relied upon by the Insurance Company the victim was a fish vendor-cum-driver and it is relevant to note that in the said case the income tax return was not placed for consideration. Thus, the decision cited on behalf of the appellant-Insurance Company is distinguished from the case at hand.

Although Mr. Bhattacharya, learned advocate for the appellant-insurance company argued that the income tax returns cannot be accepted since no certificate of its correctness has been produced as admitted by P.W.2, income tax officer, yet such argument is not tenable as no cogent evidence is produced to discredit the income disclosed in the income tax returns. Similarly, even if the income tax returns are filed on consecutive dates but that cannot be discredited in the absence of cogent evidence. I find substance in the argument of Mr. Sutradhar, learned advocate for respondents-claimants relying on *Rajwati @ Rajjo (supra)* that in motor accident claim cases the standard of proof should be based on preponderance of probabilities.

Therefore, in light of the aforesaid discussion it is found that there is no impropriety in the award of the learned Tribunal determining the income of the deceased victim on the basis of income tax returns submitted on behalf of the claimants.

In the result, appeal fails.

It is found that the Insurance Company has already deposited statutory amount of Rs.25,000/- with the Registry of this Court vide OD Challan No.2115 dated 18th February, 2022 and a sum of Rs.52,34,531 in terms of order of this Hon'ble Court dated 10th March, 2022 vide OD Challan No.2432 dated 16th March, 2022 before the Registry of this Court.

The respondent nos.1 and 2-claimants are directed to deposit *ad valorem* court fees on the compensation assessed, if not already paid.

The learned Registrar General, High Court, Calcutta shall release the amount deposited as aforesaid together with accrued interest in favour of the claimants in the same proportion as indicated in the order of the learned Tribunal upon verifying the identity of the claimants and the payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the appeal stands dismissed. The impugned order of the learned Tribunal is affirmed. No order as to costs.

Let a copy of this order alongwith the lower court records be sent down to the learned Court below at once.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)