26.07.2023
Ct. no.654
Sl. No. 8
KB

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

F.M.A. 348 of 2021
with
IA No. CAN 1 of 2021

Madhuchanda Roy
Vs.
The Oriental Insurance Co. Ltd. & Anr.

Mr. Amit Ranjan Ray
... For the appellant/claimant.

Mr. Parimal Kumar Pahari
... For the Respondent/ Ins. Co.

This appeal is preferred against the judgment and award dated 20th October, 2020 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, 2nd Court, Asansol, Paschim Bardhaman in MAC Case No.46 of 2016 granting compensation of Rs.16,50,000/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 19th February, 2016 at about 10.30 P.M. while the victim was returning to his house at Purnasree Pally, Asansol from Barakar through NH-2 by riding a Motor cycle bearing registration no. WB-38X-8662 and when he reached near Gagharburi Temple under Police Station Asansol(S), the offending vehicle bearing registration no. WB-37B-4675 (TATA ACC) dashed the Motor cycle of the victim from behind in a rash and negligent manner. As a result of such accident the victim sustained fatal injuries and fell down on the road. The local people immediately shifted him to Asansol District Hospital where the attending doctor declared him brought dead. On account of sudden demise of the victim the claimant, being the mother filed application for compensation of Rs.50,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The claimant in order to establish her case examined herself and two witnesses and also produced documents which have been marked as **Exhibit 1** to **23 (series)**.

The Insurance Company also adduced evidence of Motor Vehicles Inspector (Technical), Transport Department, Asansol who produced documents marked as **Exhibit A** to **E** respectively.

By Order dated 20th February, 2023 the service of notice of appeal upon the respondent no.2-owner of the offending vehicle has been dispensed with, since he did not contest the claim application.

Upon considering the materials on record and the evidence adduced on behalf of respective parties, the learned Tribunal granted compensation of Rs.16,50,000/- together with interest in favour of the claimant under Section 166 of the Motor Vehicles Act, 1988.

Being aggrieved and dissatisfied with the impugned judgment and award of the learned Tribunal, the claimant has preferred the present appeal.

Mr. Amit Ranjan Roy, Learned Advocate for the appellant-claimant submits that the learned Tribunal erred in determining the income of the deceased-victim of Rs.10,000/- per month without taking into consideration the income tax returns of the deceased for assessment years 2014-15 and 2015-16 produced by the claimant. As per the last Income Tax Return for the assessment year 2015-16 filed just prior to his death, the annual income of the deceased is Rs.3,60,000/- and the amount of tax paid is Rs.9,735/- and therefore the total income less tax paid should be the actual income of the deceased. The income disclosed in the said Income Tax Return has been discounted by the learned Tribunal on the ground that the tax has been paid after the death of the deceased. However, as per settled proposition of law since the Income Tax Return has been filed prior to the death of the deceased, the income disclosed therein should be taken into account for assessment of compensation. He in his usual fairness submits that the future prospect should be calculated at the rate of 40% of the annual income of the deceased instead of 50% granted by the learned Tribunal. In light of his aforesaid submission, he prays for enhancement of the compensation amount.

In reply to the aforesaid contention raised on behalf of the appellant-claimant, Mr. Parimal Kumar Pahari, Learned Advocate for the respondent no.1-insurance company submits that since tax payable on the income has been deposited after the death of the victim, as such Income Tax Return for assessment years 2014-15 and 2015-16 cannot be taken into consideration. To buttress his contention, he relies on the decision of the Hon'ble Supreme Court passed in ***V. Subbulakshmi and others versus S. Lakshmi and another*** reported in ***2008 ACJ 936***. He also submits that the future prospect should be scaled down to 40% of the annual income of the deceased instead of 50% granted by the learned Tribunal.

Having heard the Learned Advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining income of the deceased and *secondly*, whether the learned Tribunal erred in granting 50% of the annual income of the deceased towards future prospect.

With regard to the first issue, it is found that learned Tribunal has determined the income of the deceased victim to the tune of Rs.10,000/- per month. In order to establish the income of the deceased the claimant examined Senior Tax Assistant of Income Tax Office, Paramour Building, Asansol who produced the attested copy of Income Tax Return for assessment years

2014-2015 and 2015-2016 of the deceased marked as **Exhibit 22** and **23 (series)** respectively. Income Tax Return for assessment year 2014-2015 is filed on 31st March, 2015 and for assessment year 2015-2016 it has been filed on 21st December, 2015. Thus both the Income Tax Returns for the aforesaid assessment years have been filed prior to the death of the deceased. Now it is to be seen whether such Income Tax Returns can be considered and can form the basis of determination of income of the deceased. Mr. Parimal Kumar Pahari, Learned Advocate for respondent no.1-insurance company relying on the decision of the Hon'ble Supreme Court in *V. Subbulakshmi (supra)* argued that since the tax on income is paid after the death of the deceased hence the income tax return cannot be taken into account. It is relevant to note that in the case before the Hon'ble Supreme Court Income Tax Return was filed after the death of the deceased and for such reason, it was not considered. Whereas in the case at hand, it is found that both the Income Tax Returns for the aforesaid assessment years have been filed prior to the death of the deceased. It is true that the tax on Income Tax assessed has been filed after the death of the deceased. However, such aspect does not make the income disclosed in the Income Tax Return filed prior to the death doubtful. There is no contrary evidence challenging the income of the victim as disclosed in the Income Tax Return. P.W.2, Bipul Kumar, Senior Tax Assistant in his evidence-in-chief has deposed that the returns submitted by the deceased-victim has been duly processed and the tax has also been paid in respect of the aforesaid two assessment years, namely 2014-2015 and 2015-2016.

At this stage, it will be profitable to refer to the decision of 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 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 income tax return. Further, the Hon'ble Supreme Court in ***Malarvizhi and others versus United India Insurance Company Limited and Another*** reported in ***(2020) 4 SCC 228*** endorsed the finding of the High Court that the determination must proceed on the basis of income tax return, where available. The income tax return is statutory document on which reliance may be placed to determine the annual income of the deceased. From the aforesaid observation of the Hon'ble 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. Reverting back to the facts of this case, it is found that the claimant has produced Income Tax Returns for two assessment years, namely, 2014-2015 and 2015-2016. Since Income Tax Return for assessment year 2015-2016 is proximate and immediate prior to the death of the deceased, hence I am inclined to consider the income disclosed in the Income Tax Return for the assessment year 2015-2016 **(Exhibit 23 series)**. The income disclosed in the aforesaid Income Tax Return for assessment year 2015-2016 of the victim is Rs.3,60,000/- and tax paid as per challan issued by Income Tax Department is Rs.9,735/-. Therefore, the actual income of the victim would be (Rs.3,60,000/- less Rs.9,735/-) Rs.3,50,265/-.

With regard to the second issue, it is found that the learned Tribunal has granted 50% of the annual income of the deceased towards future prospect. Since at the time of accident the victim was admittedly 24 years of age and was self employed, hence following the decision of ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***, the claimant is entitled to an amount equivalent to 40% of the annual income of the deceased towards future prospect instead of 50% granted by the learned Tribunal.

The other factors have not been challenged in this appeal.

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

Calculation of Compensation

Yearly income (Rs.3,60,000/- less Rs. 9735/-)	Rs.3,50,265/-
Add: 40% of the yearly income towards future prospect	Rs.1,40,106/-
	Rs.4,90,371/-
Less: 50% towards personal and living expenses	Rs.2,45,185/-
	Rs.2,45,186/-
Multiplier 18 (Rs.2,45,186/- x 18)	Rs.44,13,348/-
Add: General damages Loss of estate: Rs.15,000/- Funeral expenses: Rs.15,000/-	Rs.30,000/-
Total	Rs.44,43,348/

Thus, the claimant is entitled to compensation of Rs.44,43,348/- together with interest @ 6% per annum from the date of filing of claim application (i.e. 14.06.2016) till payment.

It is informed that the claimant has already received the compensation of Rs.16,50,000/- together with interest in terms of order of the learned Tribunal.

Accordingly, the appellant-claimant is entitled to balance amount of compensation of Rs.27,93,348/- together with interest at the rate of 6% per annum from the date of filing of the claim application(14.06.2016) till payment.

Respondent no.1-insurance company is directed to deposit the balance amount of compensation and interest as indicated above by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Appellant-claimant is directed to deposit *ad valorem* court fees on the balance amount of compensation assessed, if not already paid.

Upon deposit of the balance amount and the interest as above, learned Registrar General High Court, Calcutta shall release the aforesaid amount in favour of the appellant-claimant upon satisfaction of her identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the appeal stands disposed of. The impugned judgement and award is modified to the above extent. No order as to costs.

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

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)