24.01.2023
Item No.2
Ct. No.654
CHC
(disposed of)

F.M.A.T.335 of 2019
IA NO: CAN/1/2019 (Old No: CAN/10379/2019)

Sanchita Ghoshal & Ors.

Versus.

The National Insurance Company Limited & anr.

Mr. Amit Ranjan Roy
...for the appellants-claimants

Mrs. Sucharita Paul
...for the respondent no.1-Insurance Company

This appeal is directed against the judgement and award dated 21st December, 2017, passed by learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Asansol, Paschim Bardhaman, in M.A.C. Case No.16 of 2014/103 of 2013 under Section 166 of the Motor vehicles Act, 1988 granting Rs.4,41,500/- along with interest.

The brief fact of the case is that on 2nd January, 2013, at about 10 PM, while the victim was coming from Dhanbad to his village by his Motor cycle bearing No.WB-68F/8181, at that time, the offending vehicle bearing registration No.WB-02B/5254 (Maruti Van) in a rash and negligent manner dashed the victim resulting in serious injuries and death of the victim. On account of sudden demise of the deceased victim, claimants being the widow, daughter and parents of the deceased victim filed application under Section 166 of the Motor Vehicles Act, 1988, claiming compensation of Rs.30,00,000/- (Rupees Thirty Lakhs) along with interest.

The claimants in order to establish their case examined three witnesses including claimant no.1, widow of the deceased and produced number of documents which has been marked **Exhibit 1 to 9/1** respectively.

The respondent no.1-Insurance Company did not adduce any evidence.

Upon considering the materials on record and the evidence adduced by the claimants, both oral and documentary, the learned Tribunal granted compensation of Rs.4,41,500/- along 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, the claimants have preferred the present appeal.

Mr. Amit Ranjan Roy, learned advocate for appellants-claimants submits that the claimants in order to establish the income of the deceased victim adduced the evidence of Senior Tax Assistant (PW3) who produced income tax return for assessment year 2011-12 and 2012-13 of the deceased victim marked as **Exhibit 9 and 9/1** respectively. However, learned Tribunal refused to accept such income disclosed in the income tax returns on a unsustainable proposition that the claimants failed to produce any document in support of business of the deceased victim. He submits that as per settled proposition of law, the income disclosed in income tax return is to be taken into account for determining the income of the deceased victim.

He further submits that the claimants are also entitled to an additional amount equalling to 40% of the annual income of the deceased towards future prospect since at the time of accident the deceased was 31 years of age and was self employed and they are also entitled to general damages under the conventional heads amounting to Rs.70,000/-

In his usual fairness, Mr Roy, learned advocate for appellants-claimants submits that the deduction towards personal and living expenses of the deceased should be 1/3rd instead of 1/4th since there is no evidence that claimant no. 4, father of the deceased was dependent on the income of the deceased.

In the light of the above submission he prays for enhancement of compensation amount.

In reply to the contention raised by the appellants-claimants, Mrs. Sucharita Paul, learned advocate for the respondent no.1-Insurance Company submits that the claimants did not produce a single scrap of paper in support of business of the deceased victim, and therefore, the learned tribunal has rightly refused to accept income disclosed in the income tax returns and proceeded to take into account the notional income of Rs.3,000/- per month as income of the deceased which does not call for interference.

She further submits that the deduction towards personal and living expenses of the deceased should be $1/3^{rd}$ instead of $1/4^{th}$ since the father is not dependent on the deceased.

By order dated 4^{th} January, 2023, 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 and case was disposed of *ex parte* against him.

Having heard the learned advocates for respective parties, it is found that the appellants-claimants have thrown challenge to the award of the learned Tribunal precisely on three-fold grounds; *firstly,* that the learned Tribunal erred in determining the income of the deceased; *secondly,* the learned Tribunal ought to have granted additional amount of 40% of the annual income of the deceased victim towards future prospect and *lastly,* the general damages of Rs.70,000/-ought to have been granted.

With regard to the income of the deceased victim, it is found from the impugned judgement that learned Tribunal has taken into account the notional income of Rs.3,000/- per month as income of the deceased victim and did not consider the income disclosed in the income tax returns namely **Exhibit 9 and 9/1** on the ground of absence of documentary evidence of income.

In the proceeding before the learned Tribunal, the claimants in order to establish the income of the deceased victim adduced the evidence of one Arvind Kumar Das, Senior Tax Assistant as PW3 who produced income tax return for assessment year 2011-12 filed by the deceased on 31.3.2012 and the income tax return for assessment year 2012-13 filed on 27.12.2013, after the demise of the victim, which has been marked as **Exhibit 9 and 9/1** (with objection). Mrs Paul, learned advocate for respondent no.1-Insurance Company has strenuously argued that since no documents were placed in support of the business of the deceased, hence the income appearing in income tax returns should not be accepted. Now the question arises whether in the facts and circumstances of the case the income tax returns of the deceased victim for the assessment years 2011-12 and 2012-13 can form the basis for determination of income of the deceased victim. The Hon'ble Supreme Court in ***Sangita Arya and Others versus Oriental Insurance Company Limited and Others*** reported in ***(2020) 5 SCC 327*** took account of the income disclosed in the income tax return filed prior to the death of the deceased. Therefore since the income tax return for the assessment year 2012-13 has been filed on 27.12.2013, after the demise of the victim, hence the income for the said assessment year cannot be taken into consideration. It is undisputed that save and except the income tax returns there are no other document in support of the income of the deceased. At this stage, it will be profitable to refer to ***Kalpanaraj versus Tamil 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 him with the 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 the 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. Bearing in mind the aforesaid observations of the Hon'ble court, it goes without saying that the income tax return being a statutory document is to be relied for determining the income of the deceased even though it is the only available documentary evidence in support of the income of the deceased. The income of the deceased disclosed in the income tax return for assessment year 2011-12 has not been discredited by any cogent evidence. Accordingly, the income tax return for assessment year 2011-12 filed on 31.3.2012, prior to the death of the deceased, should be taken into account for determining the income of the deceased. As per the income tax return for the assessment year 2011-12 **(Exhibit 9)** the gross income of the deceased is Rs.1,56,200/- and the tax paid is Nil and therefore, the annual income of the deceased is Rs.1,56,200/-, which should be taken into account for calculation of compensation.

Further since at the time of accident the deceased was 31 years age and was self employed, following the observation of Hon'ble Supreme Court made in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700*** the claimants are entitled to an additional amount of 40% of the annual income of the deceased towards future prospect.

Further the claimants are also entitled to general damages under the conventional head of loss of estate, loss of consortium and funeral expenses of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively following the observation in ***Pranay Sethi's Case (supra)***

Both the learned advocates for respective parties have submitted that the deduction towards personal and living expenses of the deceased should be 1/3rd instead of 1/4th since the father of the deceased was not dependent on the income of the deceased.

The Hon'ble Supreme Court in case of ***Sarla Verma and Others versus Delhi Transport Corporation and another*** reported in ***2009 ACJ 1298*** has observed that subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependent and mother alone will be considered as dependent. It is found that there is no such evidence of dependency of the father of the deceased on the income of the deceased. Thus, I find substance in the submission advanced in this regard by the learned advocates for the respective parties. Therefore, the deduction towards personal and living expenses of the deceased should be $1/3^{rd}$ instead of $1/4^{th}$ since the number of dependent is less than four.

The other factor namely, the multiplier has not been challenged in this appeal.

Bearing in mind the above, the calculation of compensation is made hereunder:-

Annual Income	Rs.1,56,200/-
Add. 40% future prospect (+)	Rs.62,480/-
Annual loss of income	Rs.2,18,680/-
Less $1/3^{rd}$ towards personal and living expenses (-)	Rs.72,894/-(approx)
	Rs.1,45,786/-
Multiplier 16	X 16
	Rs.23,32,576/-
Add General damages (+)	Rs.70,000/-
	Rs.24,02,576/-

Thus, the total compensation amount comes to Rs.24,02,576/-. Admittedly, the claimants have received an amount of Rs.4,41,500/- along with interest as granted by the learned Tribunal. Accordingly, claimants are entitled to balance amount of compensation of Rs.19,61,076/- along with interest

@ 6% per annum from the date of filing of the claim application till deposit.

Respondent no.1-Insurance Company is directed to deposit the balance compensation amount of Rs.19,61,076/- along with interest @ 6% per annum from the date of filing of the claim application till deposit by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Appellants/claimants are directed to deposit *ad valorem* court fees on the balance compensation amount assessed, if not already paid.

Upon deposit of the aforesaid balance amount of compensation along with interest, the learned Registrar General, High Court, Calcutta, shall release the amount in favour of the claimants, after making payment of Rs.35,000/- in favour of appellant no.1, widow of the deceased (since Rs.5000/- has already received) towards spousal consortium, in equal proportion and upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

The appellant no.1, mother and natural guardian of appellant no.2 shall receive the share of the minor on her behalf and shall keep the same in a Fixed Deposit Scheme of any Nationalized Bank or Post Office till attainment of majority by the said minor.

With the aforesaid observation, the appeal stands allowed on contest against respondent no.1-Insurance Company and *ex parte* against the respondent no.2-owner of the offending vehicle. The impugned judgement and award of the learned Tribunal stands modified to the above extent. No order as to costs.

All connected applications, if any, stands disposed of.

Interim order, if any, stands vacated.

Urgent Photostat certified copy if applied for be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)