

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**FMA No.2709 of 2016
CAN No.1 of 2019 (Old CAN No.11144 of 2019)**

**Shipra Dutta & Ors.
versus
The Oriental Insurance Company Limited & Ors.**

For the appellants- : Mr. Amit Ranjan Roy, Advocate
claimants

For the respondent : Mr. Rajesh Singh, Advocate
No.1- Oriental
Insurance Company
Limited

For the respondent : Mrs. Sucharita Paul, Advocate
No.2-Bajaj Allianz
General Insurance
Company Limited

Heard on : 01.12.2022

Judgment on : 17.05.2023

Bivas Pattanayak, J. :-

1. This appeal is preferred against the judgment and award dated 28th January, 2016 passed by learned Judge, Motor Accident Claim Tribunal, 2nd Court, Hooghly, in M.A.C. Case No. 34 of 2012 granting compensation of Rs.2,73,500/- in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 10th October, 2011 at about 5:30 hours while the victim was travelling by the vehicle bearing registration No. WB-16N/3000 (scorpio) through Delhi Road from Kolkata to Bandel and

when the said vehicle reached near 100 Begha under Bhadreswar P.S. the offending vehicle bearing registration No. WB-25D/5438 (lorry) driven in a rash and negligent manner dashed the vehicle in which the victim was travelling. Due to the said accident, the victim along with one other sustained grievous injury and they were taken to Serampore Walsh Hospital where the victim succumbed to his injuries and died. On account of sudden demise of the victim, the claimants being the widow, son, mother and married daughter filed application for compensation of Rs. 6,50,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

3. The claimants in order to establish their case, examined three witnesses and produced documents which have been marked as **Exhibit 1** to **11** respectively.

4. The respondent nos. 1 & 2-insurance companies did not adduce evidence.

5. Owners of both the vehicles namely, respondent no. 3 and 4 did not contest the claim application and the case was disposed of *ex parte* against them. For the aforesaid reasons, by order dated 12th August, 2022, the service of notice of appeal upon the said respondents was dispensed with.

6. Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 2,73,500/- in favour of the claimants. Although the claim application was allowed on contest against both the insurance companies namely, Oriental Insurance Company Limited (respondent no. 1) and Bajaj Allianz General

Insurance Company Limited (respondent no. 2), yet the learned tribunal directed only respondent no.1 to satisfy the award.

7. Being aggrieved by and dissatisfied with the impugned judgment and award, the claimants have preferred the present appeal.

8. During the pendency of the instant appeal, appellant no. 3, Smt. Abha Rani Dutta died on 19th March, 2017 and her name has been deleted from the memorandum of appeal by order of this Court dated 12th August, 2022.

9. Mr. Amit Ranjan Roy, learned Advocate for the appellants-claimants, submitted that learned Tribunal erred in considering the notional income of Rs. 36,000/- per annum as income of the deceased and failed to take into account the income tax return for the assessment year 2010-2011 filed prior to the death of the deceased and the subsequent income tax return for the assessment year 2011-2012 filed after the death of the deceased by the legal heirs who are entitled to furnish the return under Section 159 of the Income Tax Act. He further submitted that the last income tax return for the assessment year 2011-2012 filed by the legal heirs disclosing income tax of the deceased of Rs. 1,78,810/- less tax component of Rs. 2,089/- is the actual income of the deceased-victim which should be taken into consideration for computation of compensation amount. To buttress his aforesaid contentions, he relied on the decision of the Hon'ble Supreme Court passed in ***Kalpanaraj & Ors. versus Tamil Nadu State Transport Corporation*** reported in **(2015) 2 SCC 764** and another decision passed in ***Malarvizhi & Ors. versus United India Insurance Company Limited & Anr.*** reported in **(2020) 4 SCC 228**. He further submitted that the

claimants are also entitled to an amount equivalent to 10% of annual income of the deceased towards future prospect and general damages of Rs.70,000/-. In light of his aforesaid submissions, he prayed for enhancement of compensation amount.

10. Mr. Rajesh Singh, learned Advocate appearing for the respondent no.1- Oriental Insurance Company Limited, submitted that, as per the settled proposition of law, the income tax disclosed in income tax return filed prior to the death of the deceased is to be taken into account for assessment of compensation. In support of his contention, he relied upon the following decisions of the Hon'ble Supreme Court.

(i) V. Subbulakshmi and Ors. versus S. Lakshmi and Ors. reported in **(2008) 4 SCC 224;**

(ii) Amrit Bhanu Shali and Ors. versus National Insurance Co. Ltd. and Ors. reported in **(2012) 11 SCC 738** and

(iii) Shashikala and Ors. versus Gangalakshmamma and Ors. reported in **(2015) 9 SCC 150.**

He further submitted that the claimants though entitled to further prospect, but such future prospect shall not carry interest, since future prospect is with regard to probable income to be received in the future and thus, there is no requirement to compensate the claimants by way of future interest for the loss that is to occur in the future. In support of his contention, he relied on the decision of the Hon'ble Supreme Court passed in **R.D. Hattangadi versus Pest Control (India) Pvt. Ltd. and Ors.** reported in **(1995) 1 SCC 551** and the decision of Gauhati High Court passed in **The Oriental**

Insurance Co. Ltd. versus Champabati Ray and Ors. reported in ***MANU/GH/0730/2019***.

11. Having heard the learned Advocates for the respective parties precisely, following issues are raised in this appeal:

Firstly, whether the learned Tribunal erred in considering notional income of the deceased at Rs. 36,000/- per annum;

Secondly, whether the claimants are entitled to an amount equivalent to 10% of annual income of the deceased towards future prospect, and

Lastly, whether the claimants are entitled to general damages of Rs. 70,000/-.

11.1. With regard to the first issue relating to determination of income by the learned Tribunal, it is found that the learned Tribunal considered the notional income of the deceased at Rs. 36,000/- per annum and did not consider the income tax returns submitted on behalf of the claimants on the ground that those were not supported by any document. The claimants, in order to establish the income of the deceased, adduced the evidence of one Prasun Halder, Inspector, Income Tax Department, Chinsurah who proved the income tax returns for the assessment year 2010-2011 and 2011-2012 which has been marked as **Exhibit 10** and **11** respectively. The question that arises is whether such income tax returns are acceptable in the absence of supportive documents. It will be profitable to refer to the decisions 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 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 the income tax return. Further the Hon'ble Supreme Court in *Malarvizhi (supra)* 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 a 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. Mr. Roy, learned Advocate for the appellants-claimants, strenuously argued that the income tax return filed after the death of the deceased in terms of Section 159 of the Income Tax Act by the legal heirs of the deceased should be taken into account. *Per contra*, Mr. Singh, relying on the decisions of the Hon'ble Supreme Court in *V. Subbulakshmi (supra)*, *Amrit Bhanu Shali (supra)* and *Shashikala (supra)*, refuted such contention and submitted that the income tax return filed prior to the death should be taken into consideration for assessing the income of the deceased. In *V. Subbulakshmi (supra)*, the Hon'ble Supreme Court endorsed the view of the High Court in not relying on the income tax return filed after the accident. In *Amrit Bhanu Shali (supra)* the Hon'ble Supreme Court affirmed the view taken by the tribunal in considering the income disclosed in the income tax return filed prior to the death of the deceased. Further in *Shashikala (supra)*, the Hon'ble Supreme Court considered the

income disclosed in income tax return filed prior to the accident. Moreover, in ***Sangita Arya versus Oriental Insurance Company Limited*** reported in **(2020) 5 SCC 327** the Hon'ble Supreme Court considered the income tax return for assessment years filed prior to the death of the deceased for determining the income of the deceased victim. Bearing in mind the aforesaid observation the income disclosed in the income tax returns of the deceased-victim, filed prior to his death, is to be considered for in determining the income of the deceased. The deceased died on 10.10.2011. The claimants have produced two income tax returns for the assessment year 2010-2011 (**Exhibit 10**) filed on 31.03.2011 and 2011-2012 (**Exhibit 11**) filed on 29.03.2012. Therefore, the income tax return for the assessment year 2010-2011 (**Exhibit 10**) filed prior to the death of the deceased should be taken into consideration for determining the income of the deceased. As per the income tax return for the assessment year 2010-2011, the total gross income of the deceased is Rs. 1,55,400/- and tax paid is nil. Therefore, actual yearly income of the deceased is determined at Rs.1,55,400/-.

11.2. With regard to the second issue relating to future prospect, it is found that the learned Tribunal has not considered any amount towards future prospect. Be that as it may, at the time of accident, the deceased was self-employed and was 54 years 10 months old. Following the proposition laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in **(2017) 16 SCC 680**,

the claimants are entitled to an amount equivalent to 10% of the annual income of the deceased towards future prospect.

11.3. With regard to last issue relating to general damages, it is found that learned Tribunal has granted general damages of Rs. 9,500/- under the conventional heads. However, following the observation of the Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to general damages under the conventional heads of loss of estate, loss of consortium and loss of funeral expenses of Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively.

12. Mr. Rajesh Singh, learned Advocate for the insurance company has raised an issue during the course of hearing of the appeal referring to the decision in *R.D. Hattangadi (supra)* of Hon'ble Supreme Court and *Champabati Ray (supra)* of Gauhati High Court that the claimants are not entitled to interest on future prospect, since future prospect is with regard to probable income to be received in the future and thus, there is no requirement to compensate the claimants by way of future interest for the loss that is to occur in the future.

12.1. At the very beginning, the decision of the Hon'ble Supreme Court in *R.D. Hattangadi (supra)* is a proposition that the interest is to be paid over the amount which becomes payable on the date of the award and not which is to be paid for expenditures to be incurred in future. Thus, the said report deals with interest on future expenditure and not on future prospect and, therefore, is distinguishable from the case at hand. While dealing with the

issue of future prospect, the Hon'ble Supreme Court in *Pranay Sethi (supra)* at paragraph 55 of the decision has made following observation:

*“55. Section 168 of the Act deals with the concept of “just compensation” and the same has to be determined on the foundation of fairness, reasonableness and equitability on acceptable legal standard because such determination can never be in arithmetical exactitude. It can never be perfect. The aim is to achieve an acceptable degree of proximity to arithmetical precision on the basis of materials brought on record in an individual case. The conception of “just compensation” has to be viewed through the prism of fairness, reasonableness and non-violation of the principle of equitability. In a case of death, the legal heirs of the claimants cannot expect a windfall. Simultaneously, the compensation granted cannot be an apology for compensation. It cannot be a pittance. Though the discretion vested in the tribunal is quite wide, yet it is obligatory on the part of the tribunal to be guided by the expression, that is, “just compensation”. The determination has to be on the foundation of evidence brought on record as regards the age and income of the deceased and thereafter the apposite multiplier to be applied. The formula relating to multiplier has been clearly stated in *Sarla Verma (supra)* and it has been approved in *Reshma Kumari (supra)*. The age and income, as stated earlier, have to be established by adducing evidence. The tribunal and the Courts have to bear in mind that the basic principle lies in pragmatic computation which is in proximity to reality. It is a well accepted norm that money cannot substitute a life lost but an effort has to be made for grant of just compensation having uniformity of approach. There has to be a balance between the two extremes, that is, a windfall and the pittance, a bonanza and the modicum. In such an*

adjudication, the duty of the tribunal and the Courts is difficult and hence, an endeavour has been made by this Court for standardization which in its ambit includes addition of future prospects on the proven income at present. As far as future prospects are concerned, there has been standardization keeping in view the principle of certainty, stability and consistency. We approve the principle of "standardization" so that a specific and certain multiplicand is determined for applying the multiplier on the basis of age."

The Hon'ble Supreme Court in order to provide just compensation having uniformity of approach approved for standardization which in its ambit includes addition of future prospects on the present proven income. Accordingly, the determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated under Section 168 of the Act. Therefore, future prospect is not to be recorded as probable income which is to be received in the future. The principle laid down by the Hon'ble Supreme Court in *Pranay Sethi (supra)* is to assess just compensation on the foundation of fairness, reasonableness and equitability. It is pertinent to note that while dealing with future prospect, the Constitution Bench in the aforesaid report never observed that such additional amount of future prospect shall not carry interest. In *Champabati Ray (supra)* the Gauhati High Court negated future interest since future prospect is with regard to probable income which is to be received in the future, however in view of proposition of Hon'ble Supreme Court, I most humbly differ from the observation of Gauhati High Court in *Champabati Ray (supra)*. For the

aforesaid reasons, the argument advanced by Mr. Singh, learned advocate for respondent no.1-insurance company is not acceptable.

13. Other factors have not been challenged in this appeal. The compensation is calculated as hereunder:

Calculation of Compensation

Annual income	Rs. 1,55,400/-
Add: 10% of annual income towards future prospect	Rs. 15,540/-
Total income	Rs. 1,70,940/-
Less: 1/3 rd towards personal and living expenses	Rs. 56,980/-
Loss of annual dependency	Rs. 1,13,960/-
Adopting the multiplier 11 (1,13,960x11)	Rs. 12,53,560/-
Add: General damages Loss of estate..... Rs.15,000/- Loss of consortium. Rs.40,000/- Funeral expenses... Rs. 15,000/-	Rs. 70,000/-
Total amount	Rs. 13,23,560/-

14. Thus, the total compensation amount is calculated to Rs. 13,23,560/-. The claimants have received the amount Rs. 2,73,500/- as per the order of the learned Tribunal. It is found that no interest was awarded by the learned Tribunal on the compensation amount. Thus, the claimants are entitled to interest at the rate of 6% per annum on Rs. 2,73,500/- from the date of filing of the claim application (21.02.2012) till deposit of the said amount before the learned Tribunal. The claimants are further entitled to balance amount of compensation of Rs. 10,50,060/- together with interest at the

rate of 6% per annum from the date of filing of the claim application (21.02.2012) till payment.

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

16. The appellants-claimants are directed to deposit *ad valorem* Court fees on the balance amount of the compensation assessed, if not already paid.

17. Upon deposit of the aforesaid amount, learned Registrar General, High Court, Calcutta shall release the said amount in favour of the claimants after making payment of Rs. 40,000/- in favour of the appellant no.1-widow of the deceased towards loss of consortium, in the following proportion that appellant no.1 shall receive $\frac{1}{2}$ (half) of the balance amount and appellant nos. 2 & 4 shall receive the rest amount in equal shares, upon satisfaction of their identity and payment of *ad valorem* Court fees on the balance amount, if not already paid.

18. With the aforesaid observation, the appeal stands disposed of. The impugned judgment and award of the learned tribunal is modified to the above extent.

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

20. Interim order, if any, stands vacated.

21. Let a copy of this judgment be forwarded to the learned Tribunal along with lower court records for information.

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

(Bivas Pattanayak, J.)