12.06.2023
Ct. 654
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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURIDICTION
APPELLATE SIDE

FMAT 394 of 2016
With
IA No. CAN 1 of 2021

Smt. Dewanti Devi & Ors.
-Vs-
The National Insurance Co. Ltd. & Anr.

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

Mr. Afroze Alam
... for the respondent No.1-insurance company

This appeal is directed against the judgment and award dated 19th August, 2015 passed by the learned Additional District Judge-cum- Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Asansol, Paschim Bardhaman in MAC Case No. 13 of 2013 (Old No. 113 of 2012) granting compensation of Rs. 5,78,500/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 26th June, 2012 at about 3.00/3.30 p.m. while the victim was coming to his house at Rambandh, Burnpur from Raniganj on a motor cycle bearing registration No. WB-38Z/2668 and when he reached 'High Way Inn' on NH-2, the offending vehicle bearing registration No. WNF-

7373 dashed the said motor cycle in rash and negligent manner, as a result of which, the victim sustained fatal injuries on his person and he fell down on the road. Immediately, the victim was shifted to Sub-Division Hospital, Asansol by the local people where the attending doctor declared him dead. On account of sudden demise of the victim, the claimants, being the widow, two major sons, daughter and one minor daughter filed application for compensation of Rs. 15,00,000/- under Section 166 of the Motor Vehicles Act, 1988.

The appellants-claimants in order to establish their case examined four witnesses and produced documents, which have been marked as **Exhibits 1** to **11** respectively.

The respondent No. 1-insurance company also adduced evidence of one witness and produced documents, which have been marked as **Exhibits A** & **B** respectively.

Since the respondent No. 2, owner of the offending vehicle did not contest the claim application, hence service of notice of appeal upon the said respondent stands dispensed with.

Upon considering the materials on record and the evidence adduced by the respective parties, the learned Tribunal granted compensation of Rs. 5,78,500/-

together 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 the appellants-claimants submit that the learned Tribunal has erred in taking into account the income of the deceased to the tune of Rs. 3,000/- per month and has failed to consider the income tax returns for the assessment years 2010-11 and 2011-12, marked as **Exhibits - 8** and **9** respectively. He further submits that as per the last income tax return for the assessment year 2011-12, submitted prior to the accident, the income of the deceased was Rs. 1,96,321/- and the tax paid was Rs. 3741/-. Therefore, the learned Tribunal ought to have considered the income disclosed in the income tax return less the tax component to be the actual income of the deceased. Further more, it is submitted that the claimants have also produced the municipal licence issued in favour of the deceased for carrying on business of civil, mechanical contractor and general order supplier under the name and style of "*Singh Constructions*". In support of his contentions, he relies on the decision of the Hon'ble Supreme Court passed in ***Smt. Anjali & Ors. versus Lokendra Rathod & Ors.***, reported in ***2023 SAR (Civ) 18***. He submits that the claimants are also entitled to an amount equivalent to 25% of the annual income of the deceased towards future prospect in view of the decision of the Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others*** reported in ***2017 ACJ 2700***. He fairly submits that the amount towards general damages under the conventional heads should be Rs. 70,000/- instead of Rs. 2,27,500/- granted by the learned Tribunal. In the light of his above submissions, he prays for enhancement and modification of the impugned award.

In reply to the contentions raised on behalf of the appellants-claimants, Mr. Afroze Alam, learned advocate for the respondent No.1-insurance company submits that though the income tax returns for the assessment years 2010-11 and 2011-12 have been filed but there are no supportive documents submitted before the income tax authority pertaining to the business of the deceased and such fact has also been admitted by P.W. 2, Income Tax Officer, Lower Chelidanga Ward No. 1(4). In view of the above submissions, he prays for dismissal of the appeal.

Having heard the learned advocates for the respective parties, it is found that the appellants-claimants have raised the following grounds; *firstly*, whether the learned Tribunal erred in determining the income of the deceased; *secondly*, whether the learned Tribunal ought to have granted an amount equivalent to 25% of the annual income of the deceased towards future prospect and *lastly*, whether the general damages should be Rs. 70,000/- instead of Rs. 2,27,500/- as granted by the learned Tribunal.

With regard to the income of the deceased victim, it is found from the impugned judgment that the learned Tribunal has considered Rs. 3,000/- per month as the income of the deceased. The income tax returns filed on behalf of the appellants-claimants were not considered since no other documents were produced to prove the income of the deceased. The claimants in order to establish the income of the deceased proved two income tax returns for the assessment years 2010-11 and 2011-12 by adducing the evidence of P.W. 2, Awadhesh Kumar, Income Tax Officer, Lower Chelidanga Ward No. 1(4). The appellants-claimants have also produced the receipt for municipal licence issued by the Asansol Municipal Corporation (**Exhibit-11**) in favour of the deceased for carrying on business of civil, mechanical contractor and general order supplier under the name and style of "*Singh Constructions*". The question which arises whether the income tax returns of the deceased victim for the assessment years 2010-11 and 2011-12 can form the basis for determination of the income of the deceased or not. 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 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 & others versus United India Insurance Company Limited & Anr.*** reported in (***2020) 4 SCC 228*** endorsed the finding of the High Court that the determination of the income 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. Such proposition is also laid down by the Hon'ble Supreme Court in *Smt. Ajnali & Ors. (supra)* relied on behalf of the appellants-claimants. 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. In the present case at hand, two income tax returns for assessment years 2010-11 (**Exhibit-8**) and 2011-2012 (**Exhibit-9**) have been proved by the appellants-claimants. Since the income tax return for the assessment year 2011-12 filed on 05.07.2011 is prior and proximate to the date of accident, I am inclined to consider the income disclosed in the said income tax return for the assessment year 2011-12. The income tax return for the assessment year 2011-12 filed prior to death of the deceased shows the total income from business to be Rs. 1,96,321/-and total tax paid is Rs. 3,741/-. Thus, the actual yearly income of the deceased from such business comes to Rs. 1,92,580/- which should be taken into consideration for calculation of compensation.

So far as the second issue is concerned pertaining to future prospect, since at the time of accident the victim was 49 years of age and was self-employed, hence following the observations of the Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to an additional amount of 25% of the annual income of the deceased towards future prospect.

With regard to last issue relating to entitlement of general damages, it is found that the learned Tribunal has granted Rs. 2,27,500/- towards general damages. Mr. Roy, learned advocate for the appellants-claimants fairly submitted relying on the observations of the Hon'ble Supreme Court in *Pranay Sethi (supra)* that the amount of general damages should be restricted to Rs. 70,000/- under the conventional heads. Accordingly, the claimants are 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.

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. 1,92,580/-
Add: 25% towards future prospect	Rs. 48,145/-
Annual Loss of Income	Rs. 2,40,725/-
Less: 1/4th deduction towards personal and living expenses	Rs. 60,181/-
	Rs. 1,80,544/-
Multiplier 13 (Rs.1,80,544/- x 13)	Rs. 23,47,072/-
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. 24,17,072/-

Thus, the appellants-claimants are entitled to compensation of Rs. 24,17,072/- together with interest @ 6% per annum from the date of filing of the claim application till deposit. Admittedly, the claimants have already received an amount of Rs. 5,78,500/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs. 18,38,572/- along with interest @ 6% per annum from the date of filing of the claim application (06.08.2012) till actual deposit.

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

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

Upon deposit of the balance amount of compensation as aforesaid and the interest indicated above, the learned Registrar General, High Court, Calcutta shall release the amount in favour of the appellants-claimants in the following proportions; 1/3rd in favour of the appellant No. 1, widow of the deceased and balance amount in favour of rest appellants in equal share, 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 the appellant No. 5 shall receive the share of the minor on her behalf and shall keep the same is Fixed Deposit Scheme of any Nationalized Bank or Post Office till attainment of majority by the said minor.

With the aforesaid observations, the appeal stands disposed of. The impugned judgement and award of the learned Tribunal 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**.)