

15.06.2023
Ct. 654
D/L 2 & 3
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**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 666 of 2021

With

IA No. CAN 1 of 2021

Saroj Debi Singh and others

-Vs-

The New India Assurance Company Limited & Anr.

With

COT 43 of 2022

The New India Assurance Company Limited & Anr.

-Vs-

Saroj Debi Singh and others

Mr. Amit Ranjan Roy

... for the appellants-claimants

Ms. Sucharita Paul

... for the respondent No.1-insurance company

This appeal is preferred against the judgment and award dated 2nd December, 2020 passed by the learned Additional District Judge-cum- Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Asansol, Paschim Bardhaman in MAC Case No. 106 of 2016 (Old No. 72 of 2014) granting compensation of Rs. 10,89,200/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 09.10.2013 at about 8 p.m. while the victim was returning to his

house through N.H-2 and when he reached near Mangalapur More under PS-Raniganj, the offending vehicle bearing registration No. WB-02A/2149 (Maruti Van) going towards Asansol side in a rash and negligent manner dashed the victim, as a result of which the victim sustained severe injuries and fell down on the road. The local people immediately shifted him to Sub-Divisional Hospital, Asansol where the victim was declared brought dead by the attending doctor. On account of sudden demise of the victim, the claimants, being the widow, son, minor daughter and mother of the victim filed application for compensation of Rs. 30,00,000/- 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 15** respectively.

The respondent No. 1-insurance company did not adduce any evidence.

By order dated 10.02.2023, service of notice of appeal upon the respondent No. 2, owner of the offending vehicle has been dispensed with since she did not contest the claim application.

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of

Rs.10,89,200/- 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.

Challenging the award of the learned Tribunal, the respondent No. 1-insurance company has also filed a cross objection being COT 43 of 2022.

Both the appeal and the cross objection are taken up together for consideration and disposal.

Mr. Amit Ranjan Roy, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the income of the deceased victim at Rs. 7,000/- per month and failed to consider the income tax returns for the assessment years 2012-13 and 2013-14 which was filed prior to the death of the deceased. He submits that the income tax return being a statutory document ought to have been considered by the learned Tribunal in determining the income of the deceased. 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 further submits that the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd adopted by the learned Tribunal. In the light of the aforesaid

submissions, he prays for enhancement and modification of the impugned award.

In reply to the contentions raised on behalf of the appellants-claimants, Ms. Sucharita Paul, leaned advocate for respondent no. 1-insurance company submits that though such income tax returns for the assessment years 2012-13 and 2013-14 have been produced on behalf of the claimants but those are not supported by any other documents of income of the deceased victim and hence the income disclosed in the income tax returns is not acceptable. She further submits that the certificate of the income issued by the P.W. 3 cannot be relied upon since the same has been issued after four years of the accident. Further more, she submits that the learned Tribunal erred in granting future prospect of 30% of the annual income of the deceased which ought to have been 25%.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the income of the deceased; *secondly*, whether the deduction towards personal and living expenses of the deceased should be $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$ adopted by the leaned Tribunal and *lastly*, whether the learned Tribunal erred in granting future prospect 30% of the annual income of the deceased which ought to have been 25%.

With regard to the income of the deceased victim, it is found that the learned Tribunal determined Rs. 7,000/- per month as income of the deceased victim. The claimants in order to establish the income of the deceased has produced the income tax returns for the assessment years 2012-13 and 2013-14 (collectively marked as **Exhibit-14**). Ms. Paul, learned advocate for the respondent No. 1-insurance company has strenuously argued that such income disclosed in the income tax return should not be accepted since it is not supported by any document. The question arises whether the income tax return can form the basis for determination of income of the deceased. At this stage, it would be profitable to refer to the decision of the Hon'ble Supreme Court 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 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 a 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. In the case at hand, the claimants have produced two income tax returns for the assessment years 2012-13 and 2013-14 (collectively marked as **Exhibit-14**). However, since the income tax return for the assessment year 2013-14 is immediate prior and proximate to the date of accident, hence the income disclosed in the income tax return for the assessment year 2013-14 should be taken into account for determining the income of the deceased. As per the income tax return for the assessment year 2013-14, the gross income of the deceased victim is 2,76,000/- and the total tax paid is Rs. 7,828/-. Therefore, the actual yearly income of the deceased comes to Rs. 2,68,172/-.

So far as the deduction towards person and living expenses is concerned, it is found that the learned Tribunal has adopted 1/3rd of the annual income of the deceased towards his personal and living expenses. However, the number of dependants of the deceased at

the time of accident is four, hence following the principle laid down by Hon'ble Supreme Court in **Sarla Verma and Others versus Delhi Transport Corporation and another** reported in **2009 ACJ 1298**, the deduction towards personal and living expenses should be $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$.

With regard to future prospect, it is found that the learned Tribunal granted 30% of the annual income towards future prospect. Since at the time of accident, the victim was aged about 41 years and was self-employed, following the observations of the Hon'ble Supreme Court in **National Insurance Company Limited versus Pranay Sethi and Others** reported in **2017 ACJ 2700** the claimants are entitled to an amount equivalent to 25% of the annual income of the deceased towards future prospect.

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. 2,76,000/-
Less: Income Tax	Rs. 7,828/-
	Rs. 2,68,172/-
Add: 25% of annual income towards future prospect	Rs. 67,043/-
	Rs. 3,35,215/-
Less: $1/4^{\text{th}}$ towards personal and living expenses	Rs. 83,804/-
	Rs. 2,51,411/-
Multiplier 14 (Rs. 2,51,411/- x 14)	Rs.35,19,754/-
Add: General damages	Rs.70,000/-

Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	
Total amount	Rs. 35,89,754/-

Thus, the appellants-claimants are entitled to compensation of Rs. 35,89,754/- together with interest @ 6% per annum from the date of filing of the claim application (25.04.2014) till deposit. Admittedly, the appellants-claimants have already received an amount of Rs. 10,89,200/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs. 25,00,554/- along with interest @ 6% per annum from the date of filing of the claim application (25.04.2014) 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 equal proportions upon

satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the appeal and the cross objection stand 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.**)