08.05.2023
Ct. no.654
Item no.100
sn/ss

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

FMA 475 of 2021

Swapna Bera & Ors.
Vs.
The New India Assurance Co. Ltd. & Ors.

Ms. Seema Ghosh
...for the Appellants
Mr. Sanjoy Paul
..for the Insurance Co./ respondent no.1

This appeal is preferred against the judgement and award dated 8th July, 2019 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunals, 3rd Court, Suri, Birbhum in MAC case no.118 of 2015 granting compensation of Rs.35,51,500/- together with interest in favour of the appellants-claimants under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 27th January, 2015 at about 09-55 hours while the victim was proceeding to his office situated at Abdarpur riding his bi-cycle through Panagarh-Moregram Highway and when he reached FCI go-down at that time the offending vehicle bearing registration number WB-37C/4449 (truck) driven in a high speed and in rash and negligent manner dashed the victim, as a result of which the victim sustained severe injuries on his person and died on the spot. On account of sudden demise of the victim, the claimant being the widow, two sons and married daughter filed application for compensation of Rs.40,00,000/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

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

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

Upon considering the materials on record and evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.35,51,500/- 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 judgement and award of the learned Tribunal, the claimants have preferred the present appeal.

Ms. Seema Ghosh, learned advocate for the appellants-claimants, submits that the learned Tribunal erred in determining the income of the deceased by not considering the statement of earnings and deductions noted in **Exhibit-11** which ought to have been considered for assessment of just compensation. She further submits that deduction towards personal and living expenses of the deceased should be $1/4^{th}$ instead of $1/3^{rd}$ since the number of dependants is 4(four). Furthermore, she submits that the claimants are entitled to general damages of Rs.70,000/- under the conventional heads. In view of her aforesaid submissions, she prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellants- claimants, Mr. Sanjay Paul, learned advocate for the respondent no.1-insurance company submits that the claimants have produced pay-slip of the deceased-victim for the month of December, 2014, which should be taken into account for determining the income of the deceased-victim. He further submits that though the victim was an employee of Food Corporation of India, yet no such Form-16 has been produced by the claimants in respect of the salary statement **(Exhibit-11)** and therefore such income relating to labour incentive and labour O.T. incentive should be ignored. He also indicated that P.W.2 has categorically stated that incentive cannot be treated as a part of salary. He further submits that the daughter of the deceased is married and she resides in her matrimonial home and, therefore, she is not dependant on the income of the deceased and thus deduction towards personal and living expenses of the deceased of 1/3rd considered by the learned Tribunal should not be interfered with.

By order dated 21st November, 2022 service of notice of appeal upon respondent no.2, owner of the offending vehicle, has been dispensed with.

Having heard the learned Advocates for the respective parties the following issues have fallen for consideration. *Firstly,* whether the learned Tribunal erred in determining the income of the deceased-victim; *secondly,* whether the deduction towards personal and living expenses of the deceased should be 1/4th instead of 1/3rd of his annual income and *lastly,* whether the claimants are entitled to general damages of Rs.70,000/- under the conventional heads.

With regard to determination of income of the deceased, it is found that the learned Tribunal determined the income of the deceased at the rate of Rs.35,000/- per month. The claimants in their application have stated the monthly income of the victim to be Rs.40,000/- per month along with incentive of not less than Rs.30,000/- per month. P.W.1, Prasanta Bera, son of the deceased, deposed that his father Haru Bera at the time of accident used to earn Rs.40,000/- per month along with incentive of not less than Rs.30,000/- per month. It is strenuously argued on behalf of the appellants-claimants that amount of labour incentive noted in the salary statement should be taken into account for determining the income of the deceased. *Per* *contra,* it is argued on behalf of the respondent no.1-Insurance Company that the income appearing in pay slip for December, 2014 should be taken into account since no Form-16 has been produced disclosing any income under the head of labour incentive. It is a fact that the claimants have neither produced the income tax return of the deceased nor have produced the Form-16 issued by his employer. Be that as it may, the claimants have proved the statement of earnings and deductions for the period from January, 2014 to December 2014 **(Exhibit 11)** by adducing the evidence of P.W.2, Somnath Roy, Manager (Legal), F.C.I, Suri, Birbhum. The statement of earnings and deductions for the aforesaid period precisely shows earnings of the victim and deduction for 12 months prior to his death in the month of January, 2015. Such statement being an official document produced and proved by P.W.2, who is Manager (Legal) should be taken into account since its authenticity and genuineness is never under challenge.

The income of the deceased for the month of January, 2014 to December, 2014 as per details of earnings and deductions **(Exhibit 11)** is reproduced hereinbelow:-

January, 2014		
Attendance Day allowance	Rs.2,602	
Basic	Rs.16,390	
D.A.	Rs.12,679	
H.R.A. Labour incentive Labour O.T. incentive	Rs.1,639 Rs.13,271 Rs.3,788	

Lunch subsidy Transport allowance Washing allowance Total Deduction : Income Tax Professional Tax Actual Income	Rs.250 Rs.531 Rs.127 Rs.51,277 Rs.25,000 Rs.200	 Rs.51,277 Rs.25,200 Rs.26,077
February, 2014		
Attendance Day allowance	Rs.1,609	
Basic	Rs.16,240	
D.A.	Rs.12,563	
H.R.A. Labour incentive Labour O.T. incentive Lunch subsidy Transport allowance Washing allowance Total Deduction : Income Tax Professional Tax Actual Income	Rs.1,689 Rs.17,377 Rs.11,365 Rs.250 Rs.480 Rs.115 Rs.61,688 Rs.11,500 Rs.200	 Rs.61,688 Rs.11,700 Rs.49,988
March, 2014		
Attendance Day allowance	Rs.2,681	
Basic	Rs.16,890	
D.A.	Rs.13,066	
H.R.A. Labour incentive Labour O.T. incentive Lunch subsidy Transport allowance Washing allowance Total Deduction : Income Tax Professional Tax Net Income	Rs.1,689 Rs.15,878 Rs.15,141 Rs.250 Rs.531 Rs.127 Rs.66,253 Rs.1119 Rs.200	 Rs.66,253 Rs.1319 Rs.64,934
April, 2014		
Attendance Day allowance	Rs.2,652	
Basic	Rs.16,240	
D.A.	Rs.12,272	
H.R.A. Labour incentive Labour O.T. incentive Lunch subsidy Transport allowance Washing allowance Total Deduction : Income Tax Professional Tax Actual Income	Rs.1,689 Rs.63,922 Rs.25,645 Rs.250 Rs.509 Rs.123 Rs.1,23,302 Rs.3589 Rs.200	 Rs.1,23,302 Rs.3,789 Rs.1,19,513
May, 2014		
Attendance Day allowance	Rs.2,652	
Basic	Rs.16,890	

D.A.	Rs.12,763	
H.R.A.	Rs.1,689	
Labour incentive	Rs.53,206	
Labour O.T. incentive	Rs.22,926	
Lunch subsidy	Rs.250	
Transport allowance	Rs.526	
Washing allowance	Rs.127	
Total	Rs.1,11,029	
		Rs.1,11,029
	Rs.5,706	
Deduction : Income Tax	Rs.200	
Professional Tax		Rs.5,906
Actual Income		Rs.1,05,123
June, 2014		
Attendance Day allowance	Rs.586	
Basic	Rs.32,614	
D.A.	Rs.5,631	
H.R.A.	Rs.2,924	
Labour incentive	Rs.9,686	
Labour O.T. incentive	Rs.55,170	
Lunch subsidy	Rs.250	
Transport allowance	Rs.631	
Washing allowance	Rs.153	
Total	Rs.1,07,645	
		Rs.1,07,645
Deduction : Income Tax	Rs.9,020	
Professional Tax	Rs.200	
		Rs.9,220
Actual Income		Rs.98,425
July, 2014		
Attendance Day allowance	Rs.2,379	
Basic	Rs.30,365	
D.A.	Rs.5,723	
H.R.A.	Rs.2,924	
Labour incentive	Rs.1,635	
Labour O.T. incentive	Rs.44,624	
Lunch subsidy	Rs.250	
Transport allowance	Rs.662	
Washing allowance	Rs.158	
Total	Rs.88,720	
		Rs.88,720
Deduction : Income Tax	Rs.11,168	
Professional Tax	Rs.200	
		Rs.11,368
Actual Income		Rs.77,352
August, 2014		
Attendance Day allowance	Rs.595	
Basic	Rs.33,738	
D.A.	Rs.6,359	
H.R.A.	Rs.2,924	
Labour incentive	Rs.18,379	
Labour O.T. incentive	Rs.55,964	
Lunch subsidy	Rs.250	
Transport allowance	Rs.662	
Washing allowance	Rs.158	
Total	Rs.1,19,029	
		Rs.1,19,029
Deduction : Income Tax	Rs.23,802	
Professional Tax	Rs.200	
		Rs.24,002
Actual Income		Rs.95,027

September, 2014		
Attendance Day allowance	Rs.2,379	
Basic	Rs.29,240	
D.A.	Rs.5,511	
H.R.A.	Rs.2,924	
Labour incentive	Rs.4,887	
Labour O.T. incentive	Rs.56,366	
Lunch subsidy	Rs.250	
Transport allowance	Rs.641	
Washing allowance	Rs.153	
Total	Rs.1,02,351	
		Rs.1,02,351
	Rs.18,191	
Deduction : Income Tax	Rs.200	Rs.18,391
Professional Tax		
Actual Income		Rs.83,960
October, 2014		
Attendance Day allowance	Rs.1,848	
Basic	Rs.31,489	
D.A.	Rs.7,106	
H.R.A.	Rs.2,924	
Labour incentive	Rs.30,812	
Labour O.T. incentive	Rs.18,032	
Lunch subsidy	Rs.250	
Transport allowance	Rs.686	
Washing allowance	Rs.158	
Total	Rs.93,305	
		Rs.93,305
Deduction : Income Tax	Rs.19,757	
Professional Tax	Rs.200	
		Rs.19,957
Actual Income		Rs.73,348
November, 2014		
Attendance Day allowance	Rs.1,904	
Basic	Rs.30,456	
D.A.	Rs.6,873	
H.R.A.	Rs.3,012	
Labour incentive	Rs.nil	
Labour O.T. incentive	Rs.nil	
Lunch subsidy	Rs.250	
Transport allowance	Rs.664	
Washing allowance	Rs.153	
Total	Rs.43,312	
		Rs.43,312
Deduction : Income Tax	Rs.5962	
Professional Tax	Rs.200	
		Rs.6,162
Actual Income		Rs.37,150
December, 2014		
Attendance Day allowance	Rs.635	
Basic	Rs.34,753	
D.A.	Rs.7,843	
H.R.A.	Rs.3,012	
Labour incentive	Rs.nil	
Labour O.T. incentive	Rs.nil	
Lunch subsidy	Rs.250	
Transport allowance	Rs.686	
Washing allowance	Rs.158	
Total	Rs.47,337	
		Rs.47,337
Deduction : Income Tax	Rs.5861	

Professional Tax	Rs.200	Rs.6061
Actual Income		Rs.41,276

From the aforesaid statement, the actual amount of income for the period from January, 2014 to December, 2014 is as follows:

January, 2014	Rs.26,077
February, 2014	Rs.49,988
March, 2014	Rs.64,934
April, 2014	Rs.1,19,513
May, 2014	Rs.1,05,123
June, 2014	Rs.98,425
July, 2014	Rs.77,352
August, 2014	Rs.95,027
September, 2014	Rs.83,960
October, 2014	Rs.73,348
November, 2014	Rs.37,150
December, 2014	Rs.41,276
Total annual Income	Rs.8,72,173

Although P.W.2 stated in cross-examination that incentive is not a part of salary yet from the statement of earnings and deductions **(Exhibit 11)** it goes without saying that the incentive is part of income of the deceased.

So far as the personal and living expenses of the deceased is concerned, it is found that the learned Tribunal deducted 1/3rd of the annual income of the deceased towards his personal and living expenses. Mr. Sanjay Paul, learned Advocate for the appellant-Insurance Company has indicated that since claimant No.4 is the married daughter of the deceased, hence should not be considered to be dependent on the income of the deceased. The records show that the claim application has been filed by the widow, two sons and one married daughter. It is not in dispute that claimant no.4, daughter of the deceased, is married and she resides at Gayespur, P.S. Kalyani, Dist. Nadia which is different from the place of abode of the other claimants, namely the widow and the sons of the victim. It is not the case of the claimants that at the time of accident the daughter was unmarried and subsequently she got married after the accident. Such being the position, I do not find any impropriety in the determination of the learned Tribunal in deducting $1/3^{rd}$ of the annual income of the deceased towards personal and living expenses of the deceased.

With regard to entitlement of general damages under the conventional heads it is found that the learned Tribunal has granted Rs.9,500/- under the general damages. However, following the decision 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 general damages under the conventional heads of loss of estate, loss of consortium and funeral expenses to the tune of Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

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

Calculation of Compensation

Annual Income be assessed as	Rs.8,72,173/-
Add: Future prospect @ 15% of annual income of victim	Rs.1,30,826/- (approx)
	Rs.10,02,999/-
Less : Personal and living expenses (1/3rd)	Rs.3,34,333/-
	Rs.6,68,666/-
Multiplier '11'	Rs.73,55,326/-
Add : General damages	Rs.70,000/-
Loss of estate : Rs.15,000/-	
Loss of consortium: Rs.40,000/-	
Funeral expenses : Rs.15,000/-	
Total :	**Rs.74,25,326/-**

Thus, the total compensation amount comes to Rs.74,25,326/-. It is informed that the claimants have received Rs.35,51,500/- together with interest. Accordingly, the claimants are entitled to the balance amount of Rs. 38,73,826/- together with interest @ 6% per annum from the date of filing of the claim application till deposit.

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

The respondent no.1-Insurance Company is directed to deposit of the aforesaid amount and interest indicated by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from date.

Upon deposit of the aforesaid amount learned Registrar General, High Court, Calcutta shall disburse the amount in favour of the claimants after making payment of Rs.35,000/- in favour of the appellant no.1, widow of the deceased towards loss of consortium (since Rs.5,000/- has already been received by the appellant no.1 towards such head) in the proportion that appellant No.1-widow of the deceased shall receive 1/2 (half) of the balance compensation amount and rest shall be divided equally amongst rest appellant Nos. 2, 3 and 4 respectively, upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

With the above observations, the instant appeal stands disposed of. The impugned judgment and award of the learned Tribunal is modified to the above extent.

All connected applications, if any, stand disposed of.

Interim order, if any, stands vacated.

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

(Bivas Pattanayak, J.)