

IN THE HIGH COURT, AT CALCUTTA

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE BIVAS PATTANAYAK.

FMA 358 OF 2021

Surendar Kaur Singh

.....Appellant

Versus

United India Insurance Company Limited and Another

.....Respondents

For the Appellant: Mr Ashique Mandal, Advocate.

For the Respondent no.1: Mrs Sucharita Paul, Advocate.

Heard on: 29.11.2022, 30.11.022.

Judgment on: 1.2.2023.

Bivas Pattanayak, J :-

1.The present appeal is preferred against the judgment and award dated 21 August 2018 passed by learned Additional District Judge cum Judge, Motor Accident Claims Tribunal, Fast Track, 2nd Court, Asansol, Paschim Bardhaman in M.A.C Case no. 22 of 2014 granting compensation in favour of the claimant to the tune of Rs. 3,46,800/- alongwith interest under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 20 April 2013 at about 1:30 PM while the victim was returning to his house from Murgasole through Ushagram-Rahalane Road (G.T Road) by taking left side of the road and when he

reached near Rambandhu Talaw the offending vehicle bearing registration no. WB-23A/4034 (tanker) moving from Burnpur side to Ushagram in a rash and negligent manner dashed the victim and other pedestrian, as a result of which the victim died on the spot. On account of sudden demise of the victim, the claimant being the mother of the deceased filed application under Section 166 of the Motor Vehicles Act, 1988 claiming compensation of Rs.12,00,000/-together with interest.

3. The respondent no.1-insurance company contested the claim application before the learned tribunal. However respondent no.2-owner of the offending vehicle though filed written statement but subsequently did not contest the claim application before the learned tribunal and the claim application was disposed of *exparte* against it. By an order dated 15.2.2021 the service of notice of appeal upon respondent no.2-owner of the offending is dispensed with.

4. The claimant in order to prove her case examined three witnesses including the claimant, mother of the deceased and also produced documents which are marked as **Exhibit 1 to 9** respectively.

5. The contesting opposite party no.2-insurance company (respondent no.1 herein) also adduced evidence of two witnesses and proved documents which are marked **Exhibit A, B, C and D** respectively.

6. Upon considering the materials on record as well as the evidence produced on behalf of the respective parties, the learned tribunal granted compensation in favour of the appellant-claimant to the tune of Rs. 3,46,800/- alongwith interest.

7. Being aggrieved by and dissatisfied with the impugned judgment and award the claimant has preferred the present appeal.

8. Mr Ashique Mandal, learned advocate for appellant-claimant submitted that the learned tribunal erred in taking into account the notional income of Rs. 3000/-per month as the income of the deceased-victim instead of the income of the deceased-victim disclosed in the income tax return for the assessment year 2012-13 amounting to Rs.2,01,550/-. The income of the deceased-victim would be the gross income disclosed in the income tax return less the tax component. The learned tribunal refused to accept the income disclosed in the income tax return on the ground that only a single income tax return has been furnished by the claimant. However, it failed to appreciate that since the deceased-victim was aged just 19 years on the relevant date hence he did not have the occasion to file income tax return of more than one assessment year prior to his death. He further submitted that the income tax return being a statutory document should be accepted for determining the income of the deceased. In support of his contention he relied on following decisions of Hon'ble Supreme Court **(i) Malarvizhi and Others versus United India Insurance Company Limited and Another**

reported in **(2020) 4 SCC 228**; (ii) **United India Insurance Company Limited versus Indiro Devi and Others** reported in **(2018) 7 SCC 715**; (iii) **Kalpanaraj versus Tamil State Transport Corporation** reported in **(2015) 2 SCC 764** and (iv) **Sangita Arya and Others versus Oriental Insurance Company Limited and Others** reported in **(2020) 5 SCC 327** and one unreported decision of this Court passed in **New India assurance Co. Ltd. versus Smt Rina Ghosh & Ors** (FMAT 705 of 2021).

He further submitted that the learned tribunal ought to have taken into account an additional amount equalling to 40% of the annual income of the deceased towards future prospect, since the deceased-victim at the time of accident was self-employed and was 19 years of age, in view of observation of Hon'ble Supreme Court made in **National Insurance Company Limited versus Pranay Sethi and Others** reported in **2017 ACJ 2700**.

Moreover, he submitted that the learned tribunal erred in adopting multiplier of 16 whereas it ought to have adopted a multiplier of 18 in view of observation of Hon'ble Supreme Court made in **Sarla Verma and Others versus Delhi Transport Corporation and Another** reported in **2009 ACJ 1298**.

Relying on the decision of Hon'ble Supreme Court passed in **Anita Sharma and Others versus New India Assurance Company Limited** reported in **(2021) 1 SCC 171** he submitted that the standard of proof in claim cases is

one of preponderance of probabilities and not of proving a case beyond reasonable doubt rather to analyse whether the claimant's version is more likely than not true.

In light of his above submissions, he prayed for enhancement of the compensation amount.

9. In reply to the aforesaid contentions raised on behalf of the appellant-claimant, Mrs Sucharita Paul, learned advocate for respondent no.1-insurance company submitted that the income tax return is a self declaration of an assessee which cannot form the basis for determining the income of the deceased-victim until and unless some evidence in support of such income is produced before the court. In the case at hand no such documentary evidence of business namely ledgers, registers or trade licence has been produced before the court to probabalise the existence of business. Furthermore, the evidence of the investigator OPW2 as well as the investigation report (**Exhibit A**) shows that the claimant failed to furnish any document of income of the deceased during investigation and therefore the income disclosed in the income tax return cannot be accepted and the notional income of Rs. 3000/-per month as considered by the learned tribunal is proper and should be affirmed. She further submitted that the decisions of Hon'ble Supreme Court cited on behalf of the appellant-claimant is distinguishable in facts from the case at hand and thus is not applicable.

10. Mr Mandal, learned advocate for appellant-claimant, in reply, submitted that though the income tax return is self declaration but the same is assessed under Section 143 of the Income Tax Act and as such it should be relied upon. He further submitted that the investigator OPW2 in his cross-examination has admitted that he cannot show any document that he went to the house of the deceased and intended to see the documents of income of the deceased and therefore his evidence that the claimant failed to produce any document of income of the deceased should be taken with a pinch of salt.

11. Having heard the learned advocates of respective parties, it is found that the appellant-claimant has thrown challenge to the award of the learned tribunal on threefold grounds *firstly* that the learned tribunal erred in determining the income of the deceased-victim; *secondly* that the learned tribunal ought to have considered an additional amount towards future prospect and *lastly* the multiplier adopted should be 18 instead of 16.

11.1. With regard to determination of income of the deceased-victim, it is found that the learned tribunal considered notional income of Rs. 3000/- per month as the income of the deceased-victim and refused to accept the income disclosed in the income tax return for the assessment year 2012-13 on the ground of absence of supporting documents of business and submission of only one income tax return. The claimant in order to establish the income of the deceased-victim examined one Soumya Santa Ghanty,

Inspector, Income Tax Department as PW3 who produced the true copy of the income tax return for the assessment year 2012-13 marked as **Exhibit 9** filed on 19.12.2012, prior to death of the victim. As per the income tax return for the assessment year 2012-13 (**Exhibit 9**) the gross annual income of the deceased-victim is Rs.2,01,550/- and the tax paid is Rs. 2,310/-and the description of the business is motor parts and order supply. Such income of the deceased-victim appearing in the said income tax return has been challenged by the insurance company on the ground that it has not been duly supported by documentary evidence. Now the question arises whether in the facts and circumstances of the case the income tax return of the deceased victim for the assessment year 2012-13 can form the basis for determination of income of the deceased victim. OPW2, Bijay Ketan Mukhopadhyay (investigator) in his evidence-in-chief stated that he went to the house of the deceased for investigation in connection with the case on behalf of the insurance company but the claimant did not show him any document in respect of income of the deceased on the date of accident. However, it is relevant to note that in cross-examination this witness admitted that at present he had no papers to show that he went to the house of the deceased for investigation and he intended to go through documents in respect of income of the deceased on the date of accident. During the course of proceeding neither any document in support of visit nor a single scrap of paper bearing signature of the claimant with date of such visit was filed from

the side of insurance company to probabalise such visit. Thus in the absence of any document of visit, evidence of the investigator that he visited the house of the claimant and asked for document of income of the deceased falls short of reliability. This witness proved the investigation report marked as **Exhibit A**. Though in the investigation report, **Exhibit A**, it is noted under serial no.8(d) as “ *Income- Not found any income proof papers for authentication*” yet from the four corners of the said report there is no reflection that the investigator served any notice upon the claimant to produce any document relating to business of the deceased. There is nothing to suggest from the said report that the claimant was put on notice of such investigation. Therefore the evidence of the investigator that the claimant did not show him the document of income of the deceased is not reliable. It is relevant to note from the said report under serial no.8(e) that the deceased was a income tax payee. Save and except the income tax return there are no other documents of income of the deceased-victim. It will be profitable to refer to ***Kalpanaraj’s Case (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 income tax return. Further the Hon’ble Supreme Court in ***Malarvizhi’s Case (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 statutory document on which reliance may be placed to determine the annual income of the deceased. In ***Indiro Devi's Case (supra)*** the Hon'ble Supreme Court while dealing with contradiction between the income disclosed in the income tax return and the salary certificate held that in such situation it does not mean that income of the deceased as stated in the income tax return should be totally ignored and it affirmed the finding of the High Court of taking account of the income of the deceased disclosed in the income tax return. The Hon'ble Supreme Court in ***Sangita Arya's Case (supra)*** also took account of the income disclosed in the income tax return filed prior to the death 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 2012-13 has not been discredited by any cogent evidence. I find substance in the submissions of learned advocate for appellant-claimant relying on ***Anita Sharma's Case (supra)*** that the standard of proof in claim cases is one of preponderance of probabilities and not of proving a case beyond reasonable doubt rather to analyse whether the claimant's version is more likely than not true. Accordingly, the income of the deceased-victim disclosed in the income tax return for the assessment

year 2012-13 should be taken into consideration. Thus the annual income of the deceased-victim should be gross income of Rs. 2,01,550/- less tax paid of Rs. 2,310/- which comes to Rs. 1,99,240/-.

11.2. As far as the amount towards future prospect is concerned, it is found from the impugned judgment that the learned tribunal did not take into account the future prospect. Be that as it may, following the observation of Hon'ble Supreme Court made in ***Pranay Sethi's Case (supra)*** since at the time of accident the deceased was 19 years of age and self-employed an additional amount of 40% of annual income of the deceased should be taken into account towards future prospects.

11.3. With regard to the multiplier, the learned tribunal adopted multiplier 16. Since at the time of accident the deceased was 19 years of age hence following the proposition laid down in ***Sarla Verma's case (supra)*** the multiplier should be 18 instead of 16.

12. The other factors and findings of the learned tribunal have not been challenged in the present appeal. Now taking into consideration the aforesaid aspects the compensation amount is calculated as hereunder.

Calculation of compensation

Annual Income.....[Rs.2,01,550/- less Rs. 2,310 (I.Tax)]...Rs 1,99,240/-

Add: Future Prospects @ 40% of total Income.....Rs.79,696/-

Annual loss of Income.....Rs.2,78,936/-

Less: Deduction $\frac{1}{2}$ of the Annual Income
towards personal and living expenses..... Rs.1,39,468/-
Rs.1,39,468/-
Adopting multiplier 18 (Rs.1,39,468/- X 18).....Rs.25,10,424/-
Add: General Damages.....Rs.30,000/-
Loss of estate....Rs.15,000/-
Funeral Expenses.....Rs.15,000/-
Total Compensation.....**Rs.25,40,424/-**

13. Thus the total compensation comes to Rs.25,40,424/-. Admittedly, the claimant has received an amount of Rs.3,46,800/-together with interest as granted by the learned tribunal. Accordingly, the appellant-claimant is entitled to receive balance compensation amount of Rs. 21,93,624/- along with interest @ 6% per annum from the date of filing of the claim application till deposit.

14. The respondent no.1-insurance company is directed to deposit the balance compensation amount of Rs. 21,93,624/- along with interest @ 6% per annum from the date of filing of the claim application till deposit by way of cheque with the learned Registrar General, High Court, Calcutta within a period of four weeks from date.

15. Appellant-claimant is directed to deposit *ad valorem* court fees on the balance compensation assessed, if not already paid.

16. Upon deposit of the aforesaid amount of compensation, learned Registrar General, High Court, Calcutta shall release the said amount along with interest in favour of appellant-claimant on satisfaction of her identity and on payment of *ad valorem* court fees on the balance compensation assessed, if not already paid.

17. Accordingly the appeal stands allowed on contest against respondent no.1-insurance company and *exparte* against respondent no.2-owner of the offending vehicle. The impugned judgment and award of the tribunal stands modified to the aforesaid extent. No order as to costs.

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

19. Interim order, if any, stand vacated..

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

(Bivas Pattanayak,J.)