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CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CIVIL APPELLATE JURIDICTION

FMAT 33 of 2019

Anju Devi Chhajer & Ors.
-VS-
The New India Assurance Company Ltd. & Ors.

Mr. Subir Banerjee,
Mr. Abhijit Raja
... for the appellants-claimants

Mr. Rishin Chakraborty
... for the respondent no.1- insurance company

This appeal is preferred against the judgment and award dated 6th February, 2019 passed by the learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Mal, Jalpaiguri in MAC Case No. 66 of 2017 granting compensation of Rs. 21,93,500/- together with interest in favour of the claimant nos. 1, 3 and 5 under Section 166 of the Motor Vehicles Act, 1988.

The brief fact of the case is that on 19th January, 2017 at about 8 a.m. while the victim was going towards Siliguri from Mathabhanga in vehicle bearing registration no. WB 74AF/8043 as occupant at that time the offending vehicle bearing registration no. WB 71A/7536 (Truck) in a rash and negligent dashed the vehicle in which the victim was travelling as a result of which the victim sustained severe injuries and was shifted to Jalpaiguri Sadar Hospital where the attending doctor declared him dead. On account of sudden demise of the victim, the claimants being the widow, sons, daughter and the mother of the deceased filed application for compensation of Rs. 37,50,000/- under Section 166 of the Motor Vehicles Act, 1988.

The claimants in order to establish their case examined three 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.

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

Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs. 21,93,500/- together with interest in favour of the claimant nos. 1, 3 and 5 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. Subir Banerjee, learned advocate for the appellants-claimants submits that the learned Tribunal erred in determining the income of the victim by taking average of the income disclosed in three income tax returns and more so, made arithmetical error while calculating such average. He submits that the income disclosed in the last income tax return of the victim filed just prior to the death should be considered for computing just compensation. Furthermore, he submits that the appellants-claimants are entitled to an amount equivalent to 25% of the annual income of the deceased towards future prospect and general damages of Rs. 70,000/-. In the light of his aforesaid submissions, he prays for enhancement of the compensation amount.

In reply to the contentions raised on behalf of the appellants-claimants, Mr. Rishin Chakraborty learned advocate for the respondent no. 1-insurance company submits that the income tax returns submitted are not the assessed income of the victim. Further, copies of the income tax returns are secondary evidence, which cannot be accepted without seeking permission under Section 65 of the Evidence Act. To buttress his contention, he relies on the decision of the Hon'ble Supreme Court in ***State of Rajasthan versus Khemraj*** reported in ***AIR 2000 SC 1759***. In the light of the aforesaid submissions, he prays for dismissal of the appeal.

Having heard the learned advocates for the respective parties, following issues have fallen for consideration. *Firstly*, whether the learned Tribunal erred in determining the actual income of the deceased; *secondly*, whether the claimants are entitled to an amount equivalent to 25% of the annual income of the deceased towards future prospect and *lastly*, whether the claimants are entitled to general damages of Rs. 70,000/- under the conventional heads.

With regard to the first issue, it is found that the learned Tribunal has taken the average income of the victim disclosed in the three Assessment Years 2014-15, 2015-16 and 2016-17 **(Exhibit 15 collectively)**. Challenge has been thrown to the acceptability of the copies of the income tax return produced by P.W.3 IT Assistant, Jalpaiguri relying on *Khemraj (supra)*. At the outset, it is seen that the decision of the Hon'ble Supreme Court is not passed in respect of any claim appeals under the Motor Vehicles Act. It is trite law that strict rules of evidence as applicable in a criminal trial are not applicable in motor accident compensation cases. Such being the position, the arguments advanced on behalf of the respondent no.1-insurance company in this regard fall short of merit. The income tax returns for the Assessment Years 2014-15, 2015-16 and 2016-17 produced by the claimants have not been challenged so far as the income disclosed therein. No contrary evidence has been produced from the side of respondent no.1-insurance company to primarily establish that the income disclosed in the income tax return is not proper. Now, it is to be seen whether income tax return can form the basis for determination of income of the victim. 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. 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 claimants have produced income tax returns for three Assessment Years. The income tax return for last Assessment Year of 2016-2017 was submitted on 27th July, 2016. The accident has taken place on 19th January, 2017. Thus, the income tax return for Assessment Year 2016-2017 being proximate and just prior to the accident, I am inclined to consider the income disclosed in the said income tax return. It is found from the income tax return for the Assessment Year 2016-2017 that the total annual income of the victim is Rs. 2,89,480/- and the total tax paid is Rs. 2,006/-. Thus, the actual annual income comes to Rs. 2,87,474/-.

With regard to the second issue relating to future prospect, it is found that the victim at the time of accident was a businessman and was aged about 48 years, following the principles of Hon'ble Supreme Court made 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.

With regard to the last issue relating to general damages, following the principles of the Hon'ble Supreme Court laid down in *Pranay Sethi (supra)*, the claimants are also entitled to general damages of Rs. 70,000/- 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 aforesaid, the calculation is made hereunder:

Calculation of Compensation

Annual income	Rs.2,89,480/-
Less: Tax paid	Rs.2,006/-
	Rs.2,87,474/-
Add: 25% of the annual income towards future prospect	Rs.71,868/-
	Rs.3,59,342/-
Deduction: 1/3rd towards personal and living expenses	Rs.1,19,780/-
	Rs.2,39,562/-
Multiplier 13 (Rs.2,39,562/- x 13)	Rs.31,14,306/-
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.31,84,306/-

Thus, the claimants are entitled to compensation of Rs. 31,84,306/- together with interest @ 6% per annum from the date of filing of the claim application (22.02.2017) till payment.

It is informed that the claimants have already received an amount of Rs. 21,93,500/- together with interest in terms of the order of the learned Tribunal. Accordingly, the claimants are entitled to balance amount of compensation of Rs. 9,90,806/- together with interest @ 6% per annum from the date of filing of the claim application (22.02.2017) till payment.

The respondent no.1 -insurance company is directed to deposit the balance amount of compensation of Rs. 9,90,806/- and the interest as indicated above, before the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri by way cheque 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 aforesaid balance amount of compensation and interest as indicated above, the learned Registrar, Circuit Bench of Calcutta High Court at Jalpaiguri shall release the balance amount of compensation in favour of the appellants-claimants, after making payment of Rs. 35,000/- in favour of the appellant no. 1, widow of the deceased (since Rs. 5,000/- has already received) towards spousal consortium, in the proportion that 40% of the balance compensation amount shall be released in favour of the appellant no. 1 and remaining amount shall be released in equal share in favour of the appellant nos. 2 and 3, upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

With the aforesaid observations, the appeal stands 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.

Let a copy of this order along with lower court records be sent down to the learned Tribunal in accordance with rules.

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

(**Bivas Pattanayak, J**.)