06-07-2023
Court No.3
Sh/75.

In The High Court At Calcutta
Jalpaiguri Circuit Bench

F.M.A.T. 54 of 2019

Shabana Begum & Others.
-Vs-
United India Insurance Company Ltd. & Anr.

Mr. Hirak Barman,
Ms. Debashruti Bose.
..For the Appellants.
Mr. Pasupati Nath.
.. For the Insurance Co.

This is an appeal assailing the judgment and award passed in Motor Accident Claim Case No.281 of 2016 under Section 166 of the Motor Vehicles Act, 1988, solely on the ground of refusal of income tax return by the learned tribunal in assessing compensation.

The claim petition, under Section 166 of the Motor Vehicles Act, 1988, was filed by the legal heirs, namely, Shabana Begum and others on account of death of Safi Ahamed Sha in a motor accident on 6th April, 2016 at about 11 a.m. while he was going towards Banarhat Chowpathi side from his house on foot along the left plank of the road. At that time one school bus bearing registration No.WB-71A/0496 coming from the Malbazar side with high speed in a rash and negligent manner dashed the victim from back side. The deceased sustained severe injury and was taken to Banarhat Hospital where he succumbed to injury.

At the time of death the victim was a man of 47 years and used to earn Rs.22,908/- per month from his business. That is why the claim petition was filed by the legal heirs of the deceased claiming Rs.25 lakhs as compensation.

The owner of the School bus did not contest but the insurer of the bus i.e., United India Insurance Co. Ltd. contested the application by filing written objection denying the averments made in the claim petition contended inter alia, that the claimants are not entitled to any compensation as prayed for.

In course of the evidence two witnesses were examined, namely, Sabana Begum, wife of the deceased, as PW-1 and Ajoy Kumar Routh as PW-2. In course of their evidence written complaint, formal FIR, seizure list, charge sheet, post mortem report, insurance policy and income tax returns were admitted in evidence as exhibits 6 series.

Learned advocate appearing on behalf of the parties to this appeal did not make any submission regarding accidental death of Safi Ahamed Sah. In other words, none of the learned advocates appearing on behalf of the parties to this appeal disputed regarding accidental death of Safi Ahamed Sah at the instance of the offending School bus bearing registration WB-71A/0496.

This appeal has been preferred only on the ground of computation of compensation by the learned tribunal without considering the income tax return for the assessment years 2013-2014, 2014-2015 and 2015-2016.

Mr. Hirak Barman, learned counsel appearing on behalf of the appellants/claimants has submitted that returns were submitted by the deceased himself while he was alive and those returns cannot be ignored on the plea of self-assessment. In support of his contention he relied on a case of Smt. Anjali & Ors. Vs. Lokendra Rathod & ors., reported in 2023(I) TAC 92 (SC) wherein the Hon'ble Apex Court in dealing with the case of motor accident observed as follows:-

> *"6. The deceased was aged 28 years at the time of the accident, and he used to run a business of scrap and earned Rs. 15,000/- per month as claimed by the Appellants, in support the Appellants had filed the deceased's Income Tax Return for financial year 2009-2010 before the Tribunal which showed the total income of deceased to be Rs. 1,18,261/-, approx. Rs. 9855/- per month. The MACT disregarded the deceased's Income Tax Return on the ground that neither any ITR prior to 2009-2010 nor any other document with regard to the deceased's income was filed before the Tribunal. The MACT while relying on this Court's judgment in Laxmi Devi and Ors. v. Mohammad Tabbar and Anr. MANU/SC/7368/2008MANU/SC/7368/2008 : (2008) 12 SCC 165, held the deceased to be a skilled labour and fixed his income at Rs. 4000/- per month i.e., Rs. 48,000/- per annum. The Tribunal applied a multiplier of '17' and deducted one-fourth (1/4th) of the income towards his personal expenses for the purpose of calculation of the compensation under the head of loss of dependency. A total sum of Rs. 6,12,000/- was awarded towards loss of dependency, to this Rs. 10,000/- was added for loss of pain & suffering and Rs. 2,000/- for funeral expenses. The MACT awarded a total sum of Rs. 6,24,000/- (Rupees Six Lakh Twenty-Four Thousand only) towards compensation with interest @ 6% per annum from the date of the Claim Petition till date of realization.*

9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The Appellants had filed the Income Tax Return (2009-2010) of the deceased, which reflects the deceased's annual income to be Rs. 1,18,261/-, approx. Rs. 9,855/- per month. This Court in Malarvizhi and Ors. (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (Supra), this Court has laid as under:

"10....We are in agreement with 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."

Hence, this Court is of the opinion that the deceased's annual income be fixed at Rs. 1,18,261/-, approx. Rs. 9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010.

10. The provisions of the Motor Vehicles Act, 1988 (for short, "MV Act") gives paramount importance to the concept of 'just and fair' compensation. It is a beneficial legislation which has been framed with the object of providing relief to the victims or their families. Section 168 of the MV Act deals with the concept of 'just compensation' which ought to be determined on the foundation of fairness, reasonableness and equitability. Although such determination can never be arithmetically exact or

> *perfect, an endeavor should be made by the Court to award just and fair compensation irrespective of the amount claimed by the applicant/s. In Sarla Verma and Ors. v. Delhi Transport Corporation and Anr. MANU/SC/0606/2009MANU/SC/0606/2009 : (2009) 6 SCC 121, this Court has laid down as under:*
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> *"16...."Just compensation" is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."*

Mr. Pasupati Nath, learned advocate appearing on behalf of the Insurance Company has submitted that income tax returns admitted in the evidence with objection, were not duly received by the income tax department as there is no seal and signature of the income tax department. In support of his argument he refers to a case of Kiran Tomar & Ors. Vs State of Uttar Pradesh & Anr., reported in 2022 LiveLaw (SC) 904, wherein the Hon'ble Apex Court dealt with an issue in a matrimonial suit and in that case the Hon'ble Apex Court observed that the returns do not necessarily furnish an accurate guide of real income. Particularly, when parties are engaged in a matrimonial conflict, there is a tendency to underestimate the income. Accordingly, the Hon'ble Apex Court left the matter to determine on a holistic assessment of the evidence what will be the real income of the second respondents so as to enable the appellants to live in a condition commensurate with the status to which they were accustomed during the time when they were staying together.

The aforesaid ratio enunciated in Kiran Tomar(supra) is not applicable in the instant case where income of the deceased is to be determined on the basis of income tax return which was filed by the deceased himself while he was alive and that too without any contemplation of his own death.

However, learned tribunal at the time of refusing to rely upon the income tax return has observed that the return submitted being self-assessment by the deceased himself and that is why the document was not considered for computing the compensation.

Relying on the ratio of Lokendra Rathod (supra), I am not agreeable with the learned tribunal that at the time of assessment of compensation, income tax return being self assessment cannot be relied upon.

Accordingly, fact of this case where the deceased, a business man having income of Rs.22,908/- per month from his business is identical to the facts of the case dealt with by the Hon'ble Apex Court in Lokendra Rathod (supra).

In the aforesaid view of the matter, I am of the opinion that compensation should be computed after applying the income appearing in the income tax returns (exhibit 6 series).

Accordingly, I find it justified to reassess the compensation in terms of the ratio laid down in National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., reported in 2017 16 SCC 680.

Monthly income – Rs.22,908=00
Future prospect – 25% (deceased 47 years)
Monthly income + future prospect=Rs.28,635=00
Annual income (28635/- X 12)= Rs.3,43,620=00
Deduction (1/5th) as 8 petitioners= Rs.68724=00
Income after deduction = Rs. 2,74,896=00

Multiplier "13"
Income X multiplier(274896 x 13) =Rs.3573648.00
Loss of Estate =Rs.15,000.00
Loss of consortium =Rs.40,000=00
Funeral expenses =Rs.15000=00

Total Compensation =Rs.36,43,648=00

Therefore, the claimants are entitled to compensation to the tune of Rs.36,43,648/-

Mr. Pasupati Nath, learned counsel appearing on behalf of the Insurance company has submitted that the claimants have already received Rs.5,72,000/- on 24th July, 2017.

Therefore, the claimants are entitled to compensation to the tune of Rs.30,71,648=00 along with interest at the rate of 6% per annum from the date of filing of the application till the date of deposit of the said amount before the tribunal.

The respondents/insurance company is directed to pay rest of the amount of compensation by issuing account payee cheques within six weeks from date.

Learned Judge, Motor Accident Claim Tribunal, 2nd Fast Track Court, Jalpaiguri is requested to disburse the amount amongst the claimants in the manner prescribed in the judgment and award passed in Motor Accident Claim Case No. 281 of 2016.

The appeal being FMAT No. 54 of 2019 and the connected application, if any, stand disposed of.

Photostat certified copy of this order, if applied for, be supplied to the learned advocates appearing for the parties expeditiously subject to compliance of all requisite formalities.

(Bibhas Ranjan De, J.)