HIGH COURT AT CALCUTTA
In the Circuit Bench at JALPAIGURI
(Civil Appellate Jurisdiction)
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 20 of 2023

Nihar Roy & Ors.

Vs.

Iffco-tokio General Insurance Co. Ltd. & Anr.

For the Appellants	: Mr. Gobinda Saha, Adv. Mr. Tamal Kumar Sen, Adv. Ms. Priyanka Dey, Adv. Mr. Milan Ch. Laskar, Adv. Mr. Sanghai Chowdhury, Adv.
For the Insurance Company	: Mr. Hirak Barman, Adv.
Heard on	: 16.10.2023
Judgment on	: 24.11.2023

Ajay Kumar Gupta, J.

1. Appellants/claimants have filed this appeal being aggrieved and dissatisfied with a judgment and award dated 31st January, 2023 passed by the Motor Accident Claims

Tribunal-cum- Additional District and Sessions Judge, Fast Track, 1st Court, Jalpaiguri in M.A.C. Case No. 222 of 2016 thereby the learned Tribunal awarded a compensation to the tune of Rs. 20,95,000/- in total along with simple interest @ 6% per annum from the date of filing of this claim application i.e. from 06.06.2016 till final realization of the entire amount in an application filed under Section 166 of the Motor Vehicles Act, 1988 in connection with death of victim Nandan Ray caused due to motor traffic accident.

2. The brief fact of the case of the appellants/claimants to the effect that on 07.05.2016 at about 11 am while deceased Nandan Ray proceeding towards Coochbehar from Pakurtala by driving one pick-up van bearing registration no. WB-63A-1766 reached near Kathaltala Muri Mill under P.S. Kotwali, at that material point of time, one bus bearing registration no. WGT-1812 was coming from opposite direction with high speed and with rash and negligent manner dashed the vehicle of the deceased victim from the wrong side, as a result accident took place and deceased suffered severe injuries on his person and died on the spot. At the time of accident, the deceased was a business man and used to earn Rs. 21,700/- per month from the said business. Accordingly, the claimants being the legal heirs and representatives of the said deceased filed a claim application for compensation under Section 166 of the Motor Vehicles Act claiming compensation to the tune of Rs. 28 Lakhs.

3. The said case was disposed of by the learned Tribunal holding therein that the offending vehicle was involved in the said accident and the accident was occurred due to rash and negligent driving of the driver of the offending vehicle upon relying the evidence adduced by the parties and documents produced by the claimants i.e. certified copy of F.I.R. including written complaint, certified copy of seizure list, certified copy of charge sheet, certified copy of PM, photocopy of Registration Certificate of the offending vehicle, photocopy of Insurance Policy of the offending vehicle, photocopy of fitness certificate of the offending vehicle, photocopy of Tax Token of the offending vehicle, photocopy of permit, photocopy of D.L. of the accused, photo copy of D.L. of the victim, photocopy of Voter ID Card of the deceased, photo copy of voter card of the petitioner nos. 1 and 2, Birth Certificate of the petitioner nos. 3 and 4, photocopy of PAN Card of the deceased, Original Trade Licence and Authorization letter with Tax Return Certificate marked as Exhibits 1 to 19 respectively and finally arrived at a conclusion that the claimants are entitled to get compensation and awarded a compensation to the tune of Rs. 20,95,000/- as aforesaid.

4. The present appellants/claimants have filed this appeal seeking enhancement of compensation only on the sole ground that the Ld. Tribunal has erred in assessing the actual income of the victim Rs. 12,000/- per month instead of Rs. 21,700/- per month observing therein that the income tax return filed by the claimants only for one assessment year without supporting other documents cannot be taken as income of victim as Rs. 21,700/-. The Ld. Tribunal ought to have allowed income of the victim as Rs. 21,700/- on the basis of income tax return and evidence of P.W. 3, who came from the income tax department.

5. It is submitted that there is no dispute regarding consideration and assessment towards general damages, multiplier and future prospect and deduction i.e. $1/4^{th}$ towards personal expenses of the deceased.

6. It is further submitted that if the income would be taken as Rs. 21,700/- per month then the compensation amount would have increased but Learned Tribunal without considering the income allowed the less compensation amount. Actual income of the victim should be considered otherwise the petitioners will suffer financial loss as such appellants pray for enhancement of compensation.

7. On the other hand, learned advocate appearing on behalf of the respondent no. 1/Insurance Company vehemently argued and submitted that the victim fails to prove his actual income before the learned Tribunal. Only production of copy of income tax return declared by the victim himself for only one assessment year without supporting other documents cannot be wholly relied upon. Accordingly, the Ld. Tribunal has rightly assessed his income as Rs. 12,000/- per month. So, there is no need to interfere with the judgment and award of the learned Tribunal dated 31st January, 2023. There are no other disputes regarding other observations of Learned Tribunal. Therefore, appeal is required to be dismissed.

8. Heard the submissions of both sides and on perusal of the record, it appears that only issue raised by the appellants is regarding determination of the income of the deceased prior to his death. As per the submission of the learned advocate appearing on behalf of the claimants that he was a business man and he used to earn Rs. 21,700/- per month prior to his death. To support of his contention, the claimants have produced the trade licence as well as income tax return for the assessment year 2015-2016. The said income tax return had been filed prior to death of victim. The accident was occurred on 07.05.2016. The income tax return has been proved by the official of the income tax who examined as P.W. 3 who specifically stated income tax return of the victim was filed for the assessment year 2015-2016 and financial year 2014-2015 on 31.03.2016. As per last return, the annual income of the victim was Rs. 2, 61,640/-. However, the learned Tribunal has assessed his income on the basis of his own guesswork as Rs. 12,000/-. Contention of the appellants is that one year income tax return filed by the victim is sufficient to prove his actual income for calculation of compensation amount. To support his contention the following judgments are referred:

i. *2022 LiveLaw (SC) 1012, Smt. Anjali & Ors. Vs. Lokendra Rathod & Ors.*

ii. *2022 ACJ 710, O.S. Kannan Vs. A. Alima and Another.*

iii. *2015 ACJ 1239, Shashikala and Others vs. Gangalakshmamma and Another.*

9. On the contrary, Ld. Advocate for the respondent/Insurance company submitted that the Income tax return filed by the appellants is just for one year before the accident without any supporting documents like book of accounts i.e. profit and loss accounts and balance sheet of the business. It is only a declaration of income from the side of deceased that the deceased had total income of the financial year 2014-2015 but income should be supported by sufficient other documents. Only filing trade licence does not prove the actual income of the victim. Furthermore, income shown in the income tax return is not taxable income. Therefore, Learned Tribunal rightly assessed the income of the victim as Rs.12,000/= for calculation of the compensation amount as such income tax return for only one financial year is not reliable to accept income of the victim as such interference with the finding of the Learned Tribunal does not requires. It reveals from the evidence that the victim had a business of fruits and grocery. It is not clear from the evidence of witnesses that when the business was started by the victim and since when the victim started filing Income tax return. So, question arises before this Court whether filing of income tax return for one financial year is sufficient to accept actual income of the victim without supporting any documents. Ld. Advocate appearing on behalf of the appellants relied a judgment passed in Smt. Anjali & Others versus Lokendra Rathod & Ors[1] on the specific issue.

[1] 2022 LiveLaw (SC) 1012

10. The Hon'ble Supreme Court held in para 9 of the said judgment as follows:

> *"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 & 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:*
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>> *"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.".*"

11. In view of the observation made by the Hon'ble Supreme Court, it is clear that the income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. In the referred case also appellants had filed Income Tax Return (2009-2010) of the deceased. In this instant case, appellants have not only filed income tax return but also adduced evidence from the official of Income tax department to prove the Income tax return submitted by the deased for the assessment year 2015-2016 and financial year 2014-2015. Trade license also filed by the appellants. In such situation, the actual income as claimed by the appellants could have accepted as Rs. 21,700/- per month as claimed by the appellants instead of Rs. 12,000/= as assessed by the Learned Tribunal. Thus, income of the victim can be accepted as Rs. 21,700/- per month.

12. Keeping in mind of the above observation, the calculation of compensation is assessed as follows:

CALCULATION OF COMPENSATION

Monthly Income	Rs. 21,700/-

Future prospects (25% of the income)	Rs. 5,425/-
Total income	Rs. 27,125/-
<u>Total annual income (27,125/= X 12)</u>	Rs. 3,25,500/-
Less: deduction 1/4 of the total Annual income (towards personal and living expenses)	Rs. 81,375/-
Total income after deduction	Rs. 2,44,125/-
Total loss of Dependency Rs. 2,44,125/- X 15 (Multiplier)	Rs. 36,61,875/-
Add: Loss of estate	Rs. 15, 000/-
Add: Funereal Expenses	Rs. 15, 000/-
Add: Loss of filial	Rs. 40, 000/-

consortium	
Total Compensation	Rs. 37,31,875/-

13. Thus, the appellants/claimants are entitled to get total compensation to the tune of Rs. 37,31,875/= (Rupees thirty seven lakhs thirty one thousand eight hundred seventy five only) instead of Rs. 20,95,000/- as awarded by the learned Tribunal, which shall carry interest @ 6% per annum from the date of filing of the claim application i.e. from 06.06.2016 till final payment.

14. The respondent no. 1-Insurance Company is directed to deposit the total compensation amount i.e. Rs. 37, 31,875/= along with the interest as indicated above by way of cheque in the name of appellants before the learned Additional District Judge-cum- Motor Accident Claims Tribunal, F.T.C., 1st Court, Jalpaiguri within a period of eight weeks from date if no amount of compensation as awarded by the learned Tribunal paid earlier to the appellants, in the same manner and mode as directed by the Learned Tribunal.

15. Learned Additional District Judge-cum- Motor Accident Claims Tribunal, F.T.C., 1st Court, Jalpaiguri upon deposit of the amount and interest as indicated above, shall release cheque in favour of the appellants/claimants upon proper identification and subject to verification of the payment of ad valorem Court fees on total awarded amount, if not already paid.

16. With the above observations, the appeal being **FMA No. 20 of 2023** stands allowed and, thus, disposed of.

17. There shall be no order as to costs.

18. The impugned judgment and award of the learned Tribunal dated 31.01.2023 is modified to the above extent.

19. All connected applications, if any, stand disposed of. Interim order, if any, stands vacated.

20. Let copy of this judgment and order along with lower court records, if received, be forwarded to the learned Tribunal for information.

21. Urgent photostat copy of this Judgment and Order be given to the parties upon compliance of all legal formalities.

[AJAY KUMAR GUPTA, J.]

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