

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.132

Case No. : FAO-2473-2023 (O&M)

Date of Decision : August 29, 2023

Magma HDI General Insurance Co. Ltd. Appellant
vs.

Parul and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

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Present : Mr. Sanjeev Goyal, Advocate
for the applicant-appellant.

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GURBIR SINGH, J. :

1. **CM-8829-C-II-2023** : This is application under Section 5 of the Limitation Act for condonation of delay of 14 days in filing the present appeal. For the reasons mentioned in the application, the same is allowed and delay of 14 days in filing the present appeal is condoned. The application stands disposed of.

2. **Main Appeal** : This appeal has been filed by Magma HDI General Insurance Co. Ltd. (for short – Insurance Company) against the Award dated 17.01.2023, passed by learned Motor Accident Claims Tribunal, Panipat (for brevity – the Tribunal), in MACP case No.513 of 2019, whereby a sum of Rs.57,56,112/- has been awarded in favour of the claimants (respondents no.1 to 4 herein) along with interest @ 6% per annum from the date of filing the petition till actual realization, on account of death of Narender Sharma, in the motor vehicular accident, which took

place on 21.02.2019.

3. The learned Tribunal came to the conclusion that Narender Sharma had died in the accident caused by Inderpal (respondent no.5) while driving Truck bearing registration No.UP-85-AT-5079 in a rash and negligent manner. The claimants are the dependents of the deceased, who was about 33 years of age at the time of his death. His income was assessed at Rs.3,38,458/- per annum, on the basis of Income Tax Returns (Ex.P-11). Since there were four claimants, $\frac{1}{4}$ th amount was deducted as personal expenses. Keeping in view the age, multiplier of 16 was adopted and 40% income of the deceased was added by way of future prospects and Rs.70,000/- was awarded for loss of consortium, funeral expenses and loss of estate.

4. Learned counsel for the appellant has submitted that the learned Tribunal failed to take note of the fact that net income of the deceased was Rs.2,98,360/- as there is deduction of Rs.40,100/-, shown in the Income Tax Return, from the income of the deceased. No Income Tax Returns of M/s Marble and Stone Company were produced by the claimants. The said business is being run by the claimants after death of Narender Sharma and is not closed. At the most, the claimants have suffered loss of managerial services, which were being provided by the deceased. Therefore, it is contended that the income of the deceased has been assessed by the Tribunal on a higher side.

5. I have heard the submissions of learned counsel for the appellant and also perused the case file.

6. As per the Income Tax Returns for the Assessment Year 2019-20, income of the deceased is Rs.3,38,458/- for said year. The net taxable income is shown to be Rs.2,98,360/-, after deducting Rs.40,100/-, which is on account of rebate under Section 80-C of the Income Tax Act. When a person deposits some part of his income in Life Insurance or contributes towards Provident Fund etc., then said person is given rebate under Section 80-C of the Income Tax Act on the said income and said amount cannot be deducted from the income of the deceased for assessing his income. Net income is the amount, which an individual gets after tax and deductions. In other words, it is not earning. But taxable income is the amount of one's income which is subject to income tax. Thus, the deductions permissible under law are part of income of an individual but same is not taxable. There is a difference between net income and taxable income. Since a sum of Rs.40,100/- is income of the deceased and is shown to be deducted from taxable income for the purpose of levying tax, the argument of learned counsel for the appellant that the said amount is required to be deducted from income of the deceased, is without any basis. The income of the deceased shown in the Income Tax Return is from his business, which is proprietorship concern of the deceased and it cannot be said that the claimants have suffered loss only on account of managerial services and not more than that. A manager cannot yield result what a Proprietor can do. In case of corporate bodies, position is different. The learned Tribunal has also relied on two judgments of Hon'ble Apex Court in **Malarvizhi and others vs. United India Insurance Company Limited and others – (2020) 4 SCC**

228 and Smt. Anjali and others vs. Lokendra Rathod and others – Civil Appeal No.009014 of 2022, decided on 06.12.2022, for placing reliance on the Income Tax Return of the deceased, for the purpose of assessing the income of deceased. The Income Tax Return is such a document which is submitted as per the Statute and Tribunal is required to place reliance on such a document, in the absence of any other evidence, for assessing the amount of compensation. The learned Tribunal has rightly assessed the income of the deceased.

7. In view of the above discussion, I do not find any illegality or perversity in the impugned Award dated 17.01.2023, passed by the learned Tribunal. The present appeal, therefore, is without any merit and the same is accordingly dismissed in limine. The amount of Rs.25,000/-, deposited by the appellant for filing the appeal, is ordered to be sent to the concerned Tribunal.

8. Pending applications, if any, shall stand disposed of along with this judgment.

August 29, 2023
monika

(GURBIR SINGH)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>