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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 11.07.2023

+ MAC.APP. 120/2022
SMT. RAJBALA & ORS. Appellants
Through: Mr. Ravi Sabharwal, Adv.

versus

SH. KRISHAN KUMAR SHARMA & ORS..... Respondents
Through: Ms. Vandana Kahlon & Mr.
Rudra Kahlon, Advocates for
R-3.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the order dated 23.12.2019 passed by the learned Motor Accidents Claims Tribunal, Patiala House Court (hereinafter referred to as the 'Tribunal') in MACPNo. 231/2017 titled ***Smt. Raj Bala and Ors. v. Sh. Krishan Kumar Sharma @ Kishno and Ors.***

2. The limited challenge to the Impugned Award raised by the learned counsel for the appellants is that the learned Tribunal has erred in taking the average of the income of the deceased disclosed in the Income Tax Returns (hereinafter referred to as the 'ITR') filed for the Assessment Years 2014-15, 2015-16 & 2016-17, instead of the latest ITR, that is the ITR for the Assessment Year 2016-17, which

also had been filed prior to the date of the accident.



3. Placing reliance on the judgment of the Supreme Court in *Shashikala & Ors. v. Gangalakshamma and Anr.*, (2015) 9 SCC 150, the learned counsel for the appellant submits that the Supreme Court has held that while awarding compensation under the Motor Vehicles Act, it is obligatory on the part of the Court to award “just compensation”, considering the age of the deceased and the nature of business he was doing. The Supreme Court held that the latest Income Tax Return should have been taken by the High Court in that case for determining such “just compensation”. He submits that in the present case as well, the learned Tribunal should have placed reliance only on the latest ITR of the deceased for determining his income.

4. On the other hand, the learned counsel for the respondent No. 3, placing reliance on the judgment of the Supreme Court in *Sangita Arya and Ors. v. Oriental Insurance Company Ltd. & Ors.*, (2020) 5 SCC 327, submits that the Supreme Court had, in that case, determined compensation on the basis of the average of the ITRs filed for the Assessment Years 2005-06 & 2006-07. He submits that in case of a self-employed person, the average of the ITRs filed for the preceding years is a better and more reasonable manner of determining “just compensation” payable inasmuch as it does away with abrasions in the income for a particular year.

5. I have considered the submissions made by the learned counsels for the parties.

6. It need not be re-emphasized that the compensation awarded under the Motor Vehicles Act should be ‘just’, ‘fair’, and ‘reasonable’, and for determining the same, no hard and fast rule can



be laid down. In a given fact situation, the Tribunal may very well, for reasons to be recorded, not rely upon the latest Income Tax Return of the deceased and instead may adopt the return which in the opinion of the Tribunal would reflect the true income of the deceased, or may even adopt the average of the income disclosed in the ITRs of the deceased for the preceding few years. However, as a general rule, the latest Income Tax Return of the deceased filed before the date of the accident, except in cases where reasons are shown for disregarding the same, should be taken as a basis for determining the loss of income, as it would be more approximate to the date of the accident and reflect the current income of the deceased on the date of the accident. To give an example, an ITR filed for the Assessment Year 2021-2022 may be ignored on the ground that it may reflect deflated income of the deceased due to his business being affected by the restrictions imposed due to Covid-19 pandemic and that in such a case, the ITR for the Assessment Year prior thereto or an average of income disclosed in ITRs of one/two/three Assessment Years prior thereto may be found to be a more 'just', 'fair', and 'reasonable' evidence to determine the income of the deceased. The latest ITR may also be disregarded where it is shown that it has reflected an abnormal increase in the income of the deceased due to some abrasion or exceptional event, like a windfall gain. However, ordinarily, the latest ITR would truly reflect the income of the deceased at the time of the accident, and should be taken by the Tribunal as evidence thereof. The Tribunal must also remember that while compensation is not a bounty



injured/aggrieved of the loss suffered.

7. In *Shashikla* (supra), the Supreme Court, considering the age of the deceased, which was 45 years, and the business of the deceased, which was transport business of supplying newspapers from the head office to other destinations, held that the High Court had erred in taking the average of the ITRs of the preceding two years rather than awarding compensation on the basis of last ITR.

8. In *Sangeeta Arya* (supra), the issue of whether the latest ITR is to be taken or an average of the ITRs should be taken to determine the loss of income was not raised by the parties and, therefore, the said judgment cannot be cited as a precedent on this issue.

9. In the present case as well, the age of the deceased was 56 years and he was running his own transport business. No reason has been given by the learned Tribunal for not determining the loss of income of the deceased on the basis of the last ITR filed, which was filed prior to the date of the accident. Such ITR did not show a completely unreasonable increase in the income of the deceased for it to be doubted as reflecting the true income of the deceased, nor was it the case of the respondents that it shows an increase in the income of the deceased due to some abnormal event and, therefore, should not be relied upon as reflecting the true income of the deceased.

10. In my view, therefore, the learned Tribunal erred in averaging the income shown in the last three ITRs of the deceased, thereby, in fact, reducing the amount of “just compensation” payable to be claimants.

11. Accordingly, the Impugned Award insofar as the determination



on account of the loss of the income of the deceased determined by the learned Tribunal on the basis of averaging of the ITRs of the Assessment Years 2014-15, 2015-16 & 2016-17, is set aside. The compensation is directed to be reassessed on the basis of the ITR of the deceased for the Assessment Year 2016-17 alone. All other directions of the learned Tribunal in the Impugned Award are sustained and are upheld.

12. The parties shall appear before the learned Tribunal on 21.08.2023 for re-assessment of the compensation payable.

13. The learned Tribunal on determination of the enhancement and interest thereon shall direct the respondent no. 3 to deposit the same, and shall release the enhanced amount along with interest thereon in favour of the claimant No. 1 and claimant no. 4 in accordance with the Impugned Award.

14. The appeal is allowed with the above direction.

NAVIN CHAWLA, J

JULY 11, 2023/sa/am

Click here to check corrigendum, if any