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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 30.11.2023***+ **MAC.APP. 535/2023**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: **Mr.Pradeep Gaur & Ms.Sweta Sinha, Advs.**
versus

REENA RAGHAV AND ORS. Respondents
Through: **Mr.Anshuman Bal, Adv. for R-1 to 4.**

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)**CM APPL. 61647/2023 (Exemption)**

1. Allowed, subject to all just exceptions.

CM APPL. 61648/2023

2. For the reasons stated in the application, the delay of 26 days in filing the appeal stands condoned.
3. The application is disposed of.

MAC.APP. 535/2023 & CM APPL. 61646/2023

4. The present appeal has been filed challenging the Award dated 07.07.2023 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal (South-East District), Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.451/2019, titled as ***Reena Raghav & Ors. v. Momin***



& Ors.

5. It was the case of the respondent nos.1 to 4 herein/ claimants before the learned Tribunal, that on 07.05.2019 at about 8 am, the deceased Sumeet Raghav along with his son Sanidhya Raghav was going on a scooty. When he reached Chowki Vardhmanpuram near Manandham Mandir, a bus bearing registration no. UP-15DT-6742 (hereinafter referred to as the 'Offending Vehicle') came from behind at a very high speed and in a rash and negligent manner hit the scooty of the deceased, as a result of which, both the riders of the Scooty fell down on the road and received serious injuries. The deceased was removed to the Yashoda Hospital, Ghaziabad, where he died on 09.05.2019 due to the injuries received in the accident.

6. The learned Tribunal, on appreciation of the evidence led before it, has held that the accident in question has been caused by the Offending Vehicle being driven in a rash and negligent manner, resulting in the death of the deceased. As far as the compensation is concerned, the learned Tribunal, for the purposes of determining the loss of dependency, based on the Income Tax Returns (in short, 'ITR') of the deceased for the Assessment Year 2018-19 has held that the income of the deceased was Rs.5,85,860/-.

7. The first challenge of the appellant to the Impugned Award is on the above determination.

INCOME FROM OTHER SOURCES:

8. The learned counsel for the appellant submits that the ITR of the deceased for the Assessment Year 2018-19 shows the income from 'Business & Profession' as Rs.4,65,500/-. It further shows the 'Income



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from Other Sources' as Rs.1,20,360/-. He submits that the 'income from other sources' cannot be considered for the purpose of determination of the loss of dependency as such income would survive the death of the deceased. He submits that only the income from 'Business & Profession' can be considered for the purposes of determining the loss of dependency.

9. I have considered the submissions made by the learned counsel for the appellant.

10. He has not been able to show to this Court if the witnesses of the respondent nos.1 to 4 herein, that is, the wife of the deceased (PW1) and Officer from the Income Tax Department (PW2) were cross-examined on the nature of the source of the '*income from other sources*'. In the absence of any such cross-examination, the respondent nos.1 to 4 have been denied an opportunity to explain the source from which such income is earned and whether it would survive the death of the deceased.

11. Even otherwise, the Supreme Court in ***K. Ramya v. National Insurance Co. Ltd.***, 2022 SCC OnLine SC 1338, has held that even the income earned from bank interest and remaining investments must be included in the income of the deceased. It was further held that even for the income from House Property and Agricultural land, some percentage thereof has to be attributed towards individual's managerial skills; the value of managerial skills shall depend upon factual consideration. In the present case, for lack of cross-examination, the respondent no. 1 to 4 got no opportunity to explain the source of such income and how much of the same could be



attributed to the managerial skills of the deceased and also whether the same continues to be earned and realised by the respondent no. 1 to 4 post the death of the deceased.

12. In ***Laxmibai (dead) Through LRs. & Anr. v. Bhagwantbuva (dead) Through LRs. & Ors.***, (2013) 4 SCC 97, the Supreme Court has held that:-

“40. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”



13. Further, a reading of the Impugned Award does not reflect if this issue was at all argued before the learned Tribunal.

14. For the above reasons, the appellant cannot be allowed to raise this issue in the present appeal. The challenge is accordingly, rejected.

INCOME TAX

15. The learned counsel for the appellant further submits that in any case, the learned Tribunal has erred in not deducting the tax payable on the income of the deceased.

16. The learned counsel for the respondent nos.1 to 4, who appears on advance notice, does not oppose the above submission of the appellant.

17. As held by the Supreme Court in *National Insurance Company Ltd. v. Pranay Sethi & Ors.*, (2017) 16 SCC 680, the income is the income of the deceased on the date of the accident minus the tax component. The learned Tribunal has, therefore, erred in not deducting the tax payable by the deceased from his income.

18. Accordingly, the income of the deceased is re-determined as Rs.5,85,860 minus Rs.9,572, that is, the tax that is reflected in the Income Tax Returns of the deceased for the Assessment year 2018-19. The income of the deceased is re-determined as Rs.5,76,288/-.

FUTURE POSPECTS

19. The next challenge of the appellant to the Impugned Award is on the future prospects granted at 40% by the learned Tribunal.

20. The learned counsel for the appellant submits that the learned Tribunal has not discussed the evidence on the basis of which it



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arrived at its conclusion that the deceased was aged about 40 years at the time of the accident.

21. On the other hand, the learned counsel for the respondent nos.1 to 4 submits that even in the ITR for the Assessment Year 2018-19, the Date of Birth of the deceased is shown as 26.11.1979. He submits that the accident had taken place on 07.05.2019. Therefore, the deceased was below the age of 40 years, as has rightly been concluded by the learned Tribunal.

22. I find merit in the submission made by the learned counsel for the respondent no. 1 to 4. From the date of birth of the deceased reflected in the ITR itself, it is evident that the deceased was aged below 40 years at the time of the accident. Based thereon, the learned Tribunal has rightly granted the future prospects in terms of the judgment of the Supreme Court in *Pranay Sethi* (supra). I, therefore, do not find any merit in the submission made by the learned counsel for the appellant.

RATE OF INTEREST

23. The last challenge of the learned counsel for the appellant to the Impugned Award is on the rate of interest awarded by the learned Tribunal. The learned counsel for the appellant submits that the rate of interest prevailing and as notified by the Reserve Bank of India at the time of the accident, would not be more than 6.40% per annum. He submits that therefore, the learned Tribunal has erred in awarding the interest at the rate of 9% per annum in favour of the respondent nos.1 to 4.

24. On the other hand, the learned counsel for the respondent nos.1



to 4 submits that in the case of award of compensation for the son of the deceased, the learned Tribunal had also awarded interest at the rate of 9% per annum. The said Award was challenged by the appellant before this Court in form of MAC.APP.460/2023, titled as ***Oriental Insurance Co. Ltd. vs. Reena Raghav & Ors.***, and the said challenge was rejected by this Court.

25. In the judgment dated 16.10.2023 passed in MAC.APP.460/2023, titled as ***Oriental Insurance Co. Ltd v. Reena Raghav and Ors.***, this Court has rejected the similar plea of the appellant by observing as under:

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

12. In Yad Ram (supra), this Court has opined that the rate of interest awarded on compensation payable should be decided on a case-to-case basis, rather than having a fixed measure of the same, as what may be reasonable in one case may not be so in another.

13. In this case, the accident had taken place on 07.05.2019, while the Impugned Award came to be passed on 07.07.2023. The learned Tribunal in exercising its discretion to determine the rate of interest placed reliance on the judgment of the Supreme Court in Erudhaya Priya v. State Express Transport Corporation Ltd., 2020 SCC OnLine SC 601, wherein the Supreme Court had enhanced the given interest from 7.5% to 9% per annum for an accident that took place on 16.08.2011, while the Award was passed on 20.10.2014.

14. Apart from making an oral submission on the prevailing rate of interest, and that too from some Google Internet search, the



appellant has not filed on record any document to show the rate of interest that was prevailing between 2019 to 2023. I, therefore, do not deem it appropriate to interfere with the rate of interest awarded by the learned Tribunal in the Impugned Award."

26. In view of the above, I find no merits in the above challenge as well.

CONCLUSION & DIRECTIONS:

27. For the reasons stated hereinabove, the compensation awarded by the learned Tribunal by the Impugned Award shall stand modified as under:

Sl. No.	Particular	Amount
1.	Income before Tax	Rs.5,85,860/-
2.	(minus) Tax	Rs.9,572/-
3.	Income after Tax	Rs.5,76,288/-
4.	Future Prospects	40% = Rs.8,06,803.20
5.	Deduction	1/3 rd = Rs.5,37,868.80
6.	Multiplier	15 Rs.80,68,032/-
7.	LOSS OF DEPENDENCY	= Rs.80,68,032/-
8.	Non Pecuniary heads	Rs.1,76,000+Rs.16,500+ Rs.16,500 =Rs.2,09,000/-
9.	Medical Expenses	Rs.2,91,674
<u>Total compensation</u>		<u>=Rs.85,68,706/-</u>



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28. The above compensation amount shall carry interest at the rate of 9% per annum as awarded by the learned Tribunal.
29. The appellant shall deposit the awarded amount (as modified) with interest, with the learned Tribunal within a period of four weeks from today.
30. The appellant is exempted from depositing the statutory amount.
31. The appeal partly succeeds in the above terms. The application is disposed of as infructuous.
32. There shall be no order as to cost.

NAVIN CHAWLA, J

NOVEMBER 30, 2023/Arya

Click here to check corrigendum, if any