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

Date of decision: 21.03.2023

+ MAC.APP. 1003/2018, CM APPL. 47261/2018 (stay) & CM APPL. 53444/2018 (release of amount)

IFFCO TOKIO GENERAL INSURANCE CO LTD

..... Appellant

Through: Mr.Navneet Kumar & Mr.Saurav Tiwari, Advs.

versus

RAMA JAIN & ORS

..... Respondents

Through: Mr.Roshan Lal Goel & Ms.Anju Gupta, Advs. for R-1 to R-5 with respondent no.3 in person.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present appeal preferred by the insurer under section 173 of Motor Vehicles Act (hereinafter referred to as "the Act"), 1988 seeks to assail the award dated 31.07.2018 passed by the learned Motor Accidents Claim Tribunal. Vide the impugned award, the learned Tribunal has awarded a sum of Rs. 89,04,319/- as compensation to the claimants.

2. The brief factual matrix as emerging from the record shows that on 05.01.2014 near Kapoor Factory, Samalkha, while Sh. Rajesh Jain was returning from Panipat refinery his car met with an accident with a truck/canter bearing registration no. HR-65-7236 coming from behind at a very high speed. As a result of the injuries sustained by him, Sh. Rajesh Jain

expired and a claim petition, being MAC 185/2014 under section 140 and 166 of the Act, came to be filed by his widow, parents and children.

3. After considering the evidence led by the parties, the learned Tribunal, by relying on the income tax return for the year 2014-2015 filed on behalf of M/s Jai Chandra Steels, the sole proprietorship of the deceased, accepted his annual income as Rs. 8,16,338/-. By taking his net annual income as Rs 7,24,878/- and making an addition of 25% towards future prospects, the learned Tribunal awarded a sum of Rs. 88,34,329 towards loss of dependency. While determining this amount the learned Tribunal made a deduction of 1/4th towards personal expenses of the deceased and accordingly awarded a sum of Rs. 89,04,319/- along with interest at the rate of 9% pa as compensation under the following heads-

	Heads	Compensation
1.	Annual income of the deceased as per the ITRs of the year 2014-2015	Rs 8,16,338/-
2.	Annual income (after tax deductions)	Rs 7,24,878/-
3.	Future prospect	25% x Rs.7,24,878/-
4.	Deduction towards personal expenses	1/4 x Rs.7,24,878/-
5.	Loss of dependency	Rs 88,34,329/- {[(Rs 7,24,878/- x 25% of Rs 7,24,878) – 1/4 of 7,24,878/-] x 13}
6.	Loss of estate	Rs. 15,000/-

7.	Loss of consortium	Rs. 40,000/-
8.	Funeral Expenses	Rs. 15,000/-
	Total compensation	Rs. 89,04,319/-

4. In support of the appeal, learned counsel for the appellant has raised three submissions. The first and foremost submission being that the learned Tribunal has erred by relying on the Income Tax Returns (ITRs) of the deceased for the Assessment Year (AY) 2014-15, which ITRs were admittedly filed by his legal heirs after the death of the deceased. Furthermore, even the VAT deposits for the last two quarters, for the period preceding the death of the deceased, were made only in May, 2014, i.e., almost five months after his death. He, therefore, contends that the learned Tribunal erred in treating the income of Rs.8,16,338/- as the income of the deceased for the purposes of computing the loss of dependency.

5. He next submits that even if the ITRs for the AY 2014-15 were to be accepted as correct, the learned Tribunal could not have determined the compensation by basing the same solely on the income for the said year without appreciating the fact that the income for the said year was almost double the income reflected in the previous year's ITRs, i.e. for the AY 2013-14. His contention, thus, is that while determining the compensation, the learned Trial Court ought to have taken into account the fact that the deceased was a businessman and not a salaried person and therefore his income for a particular year may have increased due to peculiar circumstances. The same ought not to have been treated as his income for determining the loss of dependency.

6. Finally, he submits that once the widow of the deceased had herself

admitted that she was paid an amount of Rs.1,35,000/- towards her salary for a period of nine months, she could not be treated as dependant on the deceased. He, therefore, contends that a deduction of 1/3rd and not 1/4th ought to have been made towards his personal expenses. In support of his submissions, he relies on the decision of the Apex Court in ***V. Subbulakshmi & Ors v. S.Lakshmi and Anr. 2008 4 SCC 224*** and on the decision of the Bombay High Court in ***“Ravinder Kaur & Others vs. Amarjit Kaur” 2009 SCC OnLine Bom 667.***

7. On the other hand, Mr. Goel, learned counsel for the claimants, while supporting the impugned award, draws my attention not only to the testimonies of PW-1 & PW-2 but also to the testimony of PW-3 Sh. Sanjay Gupta, a Chartered Accountant who had clearly stated that he had audited the accounts and had perused all relevant documents before filing the ITRs of the sole proprietorship concern of the deceased. He submits that once the cross-examination of these witnesses did not elicit anything to show that the statements made by them, that the income of the deceased at the time of his death was Rs.8,16,338/-, the learned Tribunal cannot be faulted for awarding the compensation by accepting the said income. Furthermore, the appellant chose not to summon any witness from the bank or Indian Oil Corporation and therefore its bald plea that the annual income of the deceased was not Rs 8,16,338/- was rightly not accepted by the learned Tribunal who chose to accept the ITRs which is a statutory document.

8. In support of his plea, he seeks to place reliance on a recent decision of the Apex Court in ***“Smt. Anjali & Ors. vs. Lokendra Rathod & Ors.”*** in Civil Appeal No. 009014 of 2022. He also places reliance on the decision of Apex Court in ***“R.V.E. Venkatachala Gounder vs. Arulmigu***

Viswesaraswami and V.P. Temple and another” AIR 2003 SC 4548 as also on a decision of a coordinate bench of this Court in *“Oriental Insurance Co. Ltd. Vs. Anita Gupta & Ors.”* 2014 (143) DRJ 323.

9. After some arguments, Mr. Goel, learned counsel for the claimants/respondent nos. 1-5, on instructions from respondent no.3 who is present in Court, submits that even though this jump in the income of the deceased for the AY 2014-15 as recorded in his ITRs for the said year was justified, the claimants would be satisfied if the income of the deceased for computation of compensation for loss of dependency is decided by taking the average of his income for the years 2013-14 & 2014-15.

10. He, however, submits that the appellant’s plea that the respondent no.1 was drawing a salary from the business of the deceased and was therefore not a dependant, is wholly misconceived. He submits that the amount which was being received by respondent no.1 from her late husband was only towards household expenses and therefore, prays that the appellant’s plea that she could not be treated as a dependent on the deceased for the purpose of computation of loss of dependency be rejected.

11. Having considered the submissions of learned counsel for the parties, I find that two issues arise for consideration in the present appeal. The first being as to whether the learned Tribunal was justified in relying on the ITR of the deceased for the AY 2014-2015 even though, the same was filed after his death and even the deposit towards VAT for the last two quarters of the said year were made belatedly.

12. The second issue which would arise for consideration of this Court would be as to whether respondent no.1 could, in view of the admissions in her cross examination that she was receiving a sum of Rs.1,35,000/- from

her husband as salary in cash, to meet household expenses, be ousted from the category of persons dependent on the deceased.

13. Insofar as the first issue is concerned, learned counsel for the appellant has vehemently contended that that ITR for the AY 2014-2015 which was filed after the death of the deceased ought to have been ignored, especially since there was a radical jump in his income for the said year *vis-a-vis* his income for the earlier year, i.e., AY 2013-2014. As already noted hereinabove, learned counsel for respondents, on instructions, fairly submitted that the claimants would be satisfied in case the average of the income for the AYs 2013-2014 and 2014-2015 were to be taken for the purpose of assessing loss of dependency. I find that, even though the appellant is justified in urging that there was a radical jump in the income of the deceased in the year 2014-2015, this Court cannot lose sight of the fact that the income of the deceased for the year 2014-2015 was primarily based on purchases made by him through banking channels from Indian Oil Corporation, a PSU. The claimants had duly filed the record of these banking transactions with the Indian Oil Corporation and therefore, it cannot be said that income for the AY 2014-15 was deliberately inflated. Even otherwise, once it is an admitted position that the deceased expired on 05.01.2014, i.e., much before the prescribed date for filing of ITR for the AY 2014-15, merely because the said ITR was filed after the death of the deceased or deposits towards VAT were made thereafter, cannot be a ground to altogether discard the said ITR.

14. However, in view of the stand taken by the claimants that they would be satisfied in case, the average of the income for the years 2013-2014 and 2014-2015 is taken into account for determining loss of dependency, I am of

the considered view that despite the radical jump in the income of the deceased for the AY 2014-2015, it would be appropriate to take the average of his income for the AY 2014-2015 and the preceding year, i.e., AY 2013-14. Since the income of the deceased for the AY 2013-14 was Rs.4,28,076/- and Rs.8,16,338/- for the AY 2014-15, his income for the purposes of computation of loss of dependency would be treated as an average of these two figures which works out to Rs. 6,22,207/-. The compensation would accordingly, be computed on the basis of this amount.

15. I have also considered the appellant's plea that since respondent no.1 was receiving Rs.1,35,000/- from her husband by way of salary in cash, she could not be considered as his dependent. In support of this plea, the appellant has relied on the cross-examination of respondent no.1 and, therefore, it would be apposite to note the relevant extract of her cross-examination which reads as under:-

"15.12.2016

*PW-1 Statement of Smt. Rama Jain W/o Late Sh. Rajesh Jain,
R/o H.No. 147, Pocket, D-14, Sector-8, Rohini, Delhi.*

On SA,

I tender my evidence by way of affidavit which is Ex PW1/A, bearing my signatures at point A & B,

I rely upon the documents ie certified copy of FIR and another related documents are Ex.PW1/1 (colly), certified copy of death certificate of deceased is ExPW1/2 and copy of postmortem is marked as mark "A1", photo copy of Aadhar Card of deponent and other petitioners are exhibited as Ex.PW1/3 (OSR) to Ex.PW1/6 (OSR), attested copy of income proof of deceased is marked as mark "A2".

XXXXX by Sh. Shailender Rai, Adv. Ld. Counsel for Iffco-

Tokio GIC Ltd/R3.

I am not an eye witness of the accident. I am housewife. I was not earning. It is wrong to suggest that I was not earning anything at the time of accident. It is further wrong to suggest that I was not dependent upon the income of my deceased husband. It is correct that my deceased husband has showed a salary to me for a sum of Rs. 1,35,000/- per annum. I used to receive my salary as cash. Voluntarily, I was doing nothing but get Rs. 1,35,000/- per annum from my deceased husband for household expenses. My husband was a proprietor of M/s Jai Chandra Steels. After the death of my husband, the said firm was closed. I am not aware how the assets and liabilities of the aforesaid firm were wound up after its closure. I am not aware whether any payment was made towards the liabilities of the aforesaid proprietor firm and I am also not aware whether any receipts were received in the aforesaid proprietorship firm after the death of my husband. Voluntarily, all the information regarding the assets and liabilities were managed by the CA. I do not remember how much amount I have received through my CA in the account of aforesaid proprietorship firm. It is correct that the income tax return for the assessment year 2014-2015 was filed after the death of my husband. It is wrong to suggest that neither I nor my children were dependent upon the income of my deceased husband. It is further wrong to suggest that I was independent and was earning sufficient to maintain myself as well as my children. XXXXX by R1 & R2.”

16. Upon a perusal of the aforesaid cross-examination, I am inclined to agree with the learned counsel for the respondents that merely because the respondent no.1 stated that she was receiving salary in cash from her deceased husband, it must be presumed that she was engaged in the business of the deceased and was, therefore, not dependent on him. In my view, the cross examination of the respondent no. 1, who is a housewife has to be read

in its entirety wherein she has not only categorically stated that she was not engaged in any activity but had also specifically denied the suggestion that she was independent and was earning sufficient to maintain herself. In fact, she had also categorically stated that she was being paid this amount by her husband only to meet the household expenses. Merely because the term 'salary' has been used by her, cannot lead to the conclusion as is sought to be contended by the learned counsel for the appellant that she was employed in the business of the deceased and was, therefore, not dependent on the deceased. I may also note that the appellant did not lead any evidence in support of its plea that the respondent no. 1 was drawing any salary from the business of the deceased. I, therefore, find no merit in the appellant's plea that the respondent no.1 cannot be treated as a dependent.

17. In the light of the aforesaid, the appeal is partly allowed by reducing the compensation payable to the claimants/ respondents no 1 to 5 towards loss of dependency by taking the annual income of the deceased as Rs.6,22,207/-. A sum of Rs. 51,654/- would be deductible from this amount of Rs.6,22,207/- towards income tax, thereby making his net annual income as Rs.5,70,357/-. Consequently, the compensation payable towards loss of dependency would stand reduced in the following manner by making the additions and deductions in terms of the impugned award and applying a multiplier of 13, as per the age of the deceased:

	Heads	Compensation by the Tribunal	Compensation by this Court
1.	Annual Income of the	Rs 8,16,338/-	Rs 6,22,207/-

	Deceased		(Average of ITRs of the financial year 2013-14 and 2014-15)
2.	Annual income (after tax deductions)	Rs 7,24,878/-	Rs 5,70,357/-
3.	Monthly income	Rs 60,406.50/-	Rs 47,529.75/-
3.	Future prospect	25% x Rs.7,24,878/-	Rs 11,882.43/- (Per month)
4.	Deduction towards personal expenses	¼ x Rs.7,24,878/-	Rs 44,559.13/- (Per month)
5.	Loss of dependency	Rs 88,34,329/- {[(Rs 7,24,878/- x 25% of Rs 7,24,878) – ¼ of 7,24,878/-] x 13}(Per annum)	Rs 69,51,225.06/- (Per month)
6.	Loss of estate	Rs. 15,000/-	Rs 15,000/-
7.	Loss of consortium	Rs. 40,000/-	Rs 40,000/-
8.	Funeral Expenses	Rs. 15,000/-	Rs 15,000/-
	Total compensation	Rs. 89,04,319/-	Rs 70,21,225/-

18. The respondents nos. 1 to 5 will, therefore, now be entitled to receive a total compensation of Rs.70,21,225/- as against the compensation of Rs.89,04,319/-, awarded by the learned Tribunal. The said amount would be payable with interest @ 9% p.a. as already directed under the impugned

award. As the appellant has, in terms of this Court's order dated 14.11.2018, deposited the entire awarded amount alongwith up to date interest with the Registrar General of this Court and the respondent nos.1 to 5 have already received 50% of the awarded amount with accrued interest thereon, the Registry will calculate the amount payable to the respondent nos.1 to 5 in terms of this order. The payable amount will be calculated by taking into account interest @ 9% p.a.

19. At this stage, learned counsel for respondent nos.1 to 5, on instructions from respondent nos. 4 & 5, the parents of the deceased, submits that since the total compensation now stands reduced, the said respondents whose needs are now limited, would be satisfied if only a sum of Rs.10 lakhs each alongwith interest @ 9% p.a. is paid to them. This he submits would enable the respondent nos. 2 & 3 to receive a sum of Rs 15 lakhs alongwith interest as directed under the impugned award.

20. Taking into account that the respondent nos.4 & 5 have volunteered that their shares may be reduced so that the amount payable to respondent nos.2 & 3, the sons of the deceased, can be maintained, this prayer of respondent nos. 4 & 5 is accepted. The apportionment of the compensation amount of Rs.70,21,225/- will accordingly be reworked as under and the same would be payable with interest @ 9% p.a.-

Respondent no. 1	Rs.20,21,225/-
Respondent no. 2	Rs.15,00,000/-
Respondent no. 3	Rs.15,00,000/-
Respondent no. 4	Rs.10,00,000/-

Respondent no. 5	Rs.10,00,000/-
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21. The appeal is, accordingly, disposed of by reducing the compensation payable to respondent nos. 1 to 5 to Rs 70,21,225/- and apportioning the same in terms of para no.20 hereinabove. The Registry is directed to calculate and release the amount payable to each of the respondents with interest @ 9% p.a. in terms of this order, after taking into account the amounts already released in their favour. The remaining amount deposited by the appellant as also the statutory amount of Rs.25,000/- be refunded to the appellant alongwith accrued interest thereon.

(REKHA PALLI)
JUDGE

MARCH 21, 2023

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