

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

FMA 922 of 2012

Halima Khatun & Others

Vs.

National Insurance Company Limited & Others

With

COT 66 of 2013

National Insurance Company Limited

Vs.

Halima Khatun & Others

For the Appellants/Claimants : Mr. Krishanu Banik, Adv.

For the Insurance Company : Mr. Sanjay Paul, Adv.
Ms. Jayita Ghosh, Adv.

Heard on : 13.02.2024

Judgment on : 15.04.2024

Ajay Kumar Gupta, J.

1. Appellants/claimants have filed this First Miscellaneous Appeal being aggrieved by and dissatisfied with a judgment and award dated 30th day of August, 2011 passed by the Motor Accident Claims Tribunal, R-D Court, Additional District Judge, Paschim Medinipur in M.A.C. Case No. 363 of 2010 whereby the learned Tribunal awarded a compensation to the tune of Rs. 4,17,500/- from the Respondent No.1/National Insurance Company Limited together with simple interest @ 9% per annum from the date of filing of this claim application i.e. 29.09.2010 till final realization in an application filed by the wives and his minor children under Section 166 of the Motor Vehicles Act, 1988 in connection with death of victim, Sk. Manirul Islam caused due to motor traffic accident.

2. The brief fact of the case of the appellants/claimants to the effect that on 07.09.2010 at 3.40 pm when the deceased was coming back to his residence from Kolaghat and when he reached near Mechogram on NH-6, one Maruti van bearing No. WB-34T/4997 was coming from opposite side with tremendous

speed dashed the motorcycle of the victim in a rash and negligent manner as a result, the victim died on the spot. He was the sole earning member of the family and prior to the date of accident, he used to earn Rs. 25,000/- per month from his potato and transport business. His age was 29 years old at the time of accident. Claimants have claimed a total sum of Rs. 30 Lakhs as compensation. However, the learned Tribunal Judge, after appreciation of evidence both oral and documentary, finally allowed the compensation as aforesaid considering his income as Rs. 36,000/- per annum as notional income since the claimants have unable to prove his business and his actual income by way of documentary evidence. In such circumstances, the appellants/claimants herein filed this instant appeal praying for enhancement of the compensation as the compensation amount, awarded by the learned Tribunal, is inadequate.

2a. At the same time, the Respondent No.1/Insurance Company filed a cross-objection against the aforesaid judgment and award dated 30th day of August, 2011 and thereby the

National Insurance Company Limited has asserted the grounds that the learned Tribunal has erred in law by granting excess compensation in favour of the claimants. Furthermore, the learned Tribunal adopted the multiplier following the 2nd Schedule of the Motor Vehicles Act since the 2nd Schedule of the Motor Vehicles Act is not at all applicable in an application filed under Section 166 of the Motor Vehicles Act. The National Insurance Company further challenged the rate of interest, allowed by the learned Tribunal, is excessive.

Accordingly, both the First Miscellaneous Appeal and Cross-Objection are taken up together for their disposal.

Submissions on behalf of the Appellants/Claimants:

3. Learned counsel appearing on behalf of the appellants/claimants submitted that only few issues are involved in the instant appeal. The first issue raised by the learned counsel that the learned Tribunal erred in accepting the notional income of the deceased though the claimants have proved his actual income by filing PAN Card and income tax

return for the assessment year 2010-2011. If the income tax return had been considered, the amount of compensation would have increased. Apart from that, the learned Tribunal did not add the future prospect and awarded very low amount of general damages. Learned Advocate prays for addition of future prospect and actual general damages in view of the judgment passed by Hon'ble Supreme Court in **National Insurance Company Limited vs. Pranay Sethi & Ors.**¹ though it has been delivered by the Hon'ble Supreme Court after passing the judgment by the learned Tribunal but the said ratio of the said judgment is applicable in this case as such future prospect @ 40% and general damages to the tune of Rs. 84,000/= are also entitled by the claimants. Furthermore, the learned Tribunal also erred in deducting the personal expenses of the deceased as 1/3rd though the family members of the deceased are more than five in number. He placed a reliance of a judgment reported in **Pranay Sethi Case (Supra)** to support his contention that actual deduction would be 1/4th as such the amount awarded by the learned Tribunal may be modified

¹(2017) 16 SCC 680

adding the compensation towards the heads of future prospect and general damages and considering the actual income of the deceased. Finally, he prays for enhancement of compensation on the basis of provisions of law and judgment of the Hon'ble Supreme Court.

Submissions on behalf of the Respondent No. 1/Insurance

Company:

4. On the other hand, learned advocate appearing on behalf of the respondent no. 1/Insurance Company vehemently opposed the prayer and submitted that there is no dispute with regards to the date, time, mode and manner of accident. However, while assessing the compensation in the instant case, learned Tribunal rightly assessed the income of the victim as notional income since the claimants failed to prove actual income by cogent evidence. Filing of one financial year income tax return is not sufficient to prove actual income of the deceased. Furthermore, the learned Tribunal erred in applying the multiplier as 17 though it would be 16 considering the age

of the victim. Victim's age was actually 31 years old at the time of accident.

Discussions, Analysis and Conclusion of this Court:

5. Having heard the submissions of both sides and on perusal of the aforesaid judgment and awarded dated 30th day of August, 2011, this Court finds the appellants/claimants have substantiated and proved the date, time, mode and manner of the accident. The appellants/claimants also proved the sole negligent driving on the part of the driver of the offending vehicle bearing No. WB-34T/4997. There is no dispute regarding involvement of the vehicle and accident which was occurred due to rash and negligent driving of the driver of the offending vehicle. The said facts have been proved by filing FIR, copy of Charge Sheet, Seizure List, Post Mortem Report, Death Certificate, PAN Card, Voter ID Card, Xerox Copy of Insurance Policy and Income Tax Return marked as Exhibits 1 to 9 respectively. On the other hand, no evidence adduced from the side of insurance company. After appreciation of evidence by the learned Tribunal, the learned Tribunal found the

claimants are entitled to get compensation from the Insurance Company. The learned Tribunal also came to a conclusion that deceased was 31 years old on the date of accident considering the Voter ID Card of the deceased in which it was written as 21 years on 01.01.2001. If that be so, the actual age of the victim was 31 years old on the date of accident. In view of observation made in **Sarla Verma and Others vs. Delhi Transport Corporation and another²** and later, Larger Bench of the Hon'ble Supreme Court affirmed the said manner of selection multiplier in **National Insurance Co. Ltd Vs. Pranay Sethi & others** by indicating therein that the selection of multiplier shall be as indicated in the paragraph in **Sarla Verma's** case as inter alia as follows:

M-18 for (15 to 25 years)

M-17 for (26 to 30 years)

M-16 for (31 to 35 years)

M-15 for (36 to 40 years)

M-14 for (41 to 45 years)

M-13 for (46 to 50 years)

² (2009) 6 SCC 121

M-11 for (51 to 55 years)

M-9 for (56 to 60 years)

M-7 for (61 to 65 years)

The age of the victim was 31 years old as such he falls in the age group of 31 to 35 years and for that, multiplier would be 16. The family members are more than four as such deduction ought to be $1/4^{\text{th}}$ instead of $1/3^{\text{rd}}$ for his personal expenses if he would have alive in view of the judgment reported in **Pranay Sethi's** Case (supra).

6. Now the question arises regarding whether the learned Tribunal has assessed the income of the victim correctly?

So far as the income is concerned, the claimants have stated in their claim application and also corroborated by oral evidence that prior to the accident victim had a potato and transport business.

7. It further appears from the evidence of the parties, save and except, PAN card and the income tax return for the Assessment Year 2010-2011, no other documents brought on

record by the claimants to show that the victim had a business of potato and transport though the victim was the registered owner of a bus bearing No. WB 29/5599. The income tax return was marked as Exhibit 9 which was filed on 31/07/2010 before the Income Tax department i.e. two months prior to the accident of the deceased. During pendency of this appeal, the then Hon'ble Justice Ashim Kumar Banerjee and Hon'ble Justice Dr. Mrinal Kanti Chaudhuri passed an order and directed the Income Tax Officer, Ward-2(2), Range 2, having office at Paschim Medinipur, would make an extensive search with regard to the return in respect of the PAN ABOPI2183F and submit a report to this Court within two weeks from date with regards to filing of Income Tax Return by the deceased. It is further directed the Officer would also submit the fate of the solitary return as referred to the above. In pursuant to the said order dated 08.08.2013, the Income Tax Officer, Ward-2(2), Range 2, having office at Paschim Medinipur submitted a report stating therein that the assessee having PAN ABOPI2183F had filed return of income only for the Assessment Year 2010-2011 on 31.07.2010. The said return of income had been processed

on 24.03.2012 on a total income of Rs. 1,58,840/- with no demand and no refund. In view of the said report, it appears that in the financial year 2010-2011, his income was Rs. 1,58,840/-. However, the learned Tribunal did not consider the said income though the Income Tax Return has assessed by the Income Tax Department, therefore, it cannot be discarded since it was filed prior to the date of accident of the deceased and income of the deceased was processed and satisfied by the Income Tax department on 24.03.2012. Contention of the appellants/ claimants is that one year income tax return filed by the deceased is sufficient to prove his actual income for calculation of compensation amount. On this issue of income, this Court relies a judgment passed in **Smt. Anjali & Others versus Lokendra Rathod & Ors.**³

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

“9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income

³ **2022 Live Law (SC) 1012**

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:

“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.”

9. In view of the observation made by the Hon'ble Supreme Court in aforesaid judgment, it is clear that the income tax return is a statutory document on which reliance can 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/claimants have not only filed income tax return but this Court also gathered

information from the official of Income Tax Department to prove the Income Tax Return submitted by the deceased for the Assessment Year 2010-2011. The Income Tax Department stated the assessee (deceased) having PAN ABOPI2183F had filed return of income only for the Assessment Year 2010-2011 on 31.07.2010. The said return of income had been processed on 24.03.2012 on a total income of Rs. 1,58,840/- with no demand and no refund. In view of the said report, it appears that in the financial years 2010-2011, deceased's income was Rs. 1,58,840/-. In such situation, the actual income as claimed by the appellants could have accepted as Rs. 1,58,840/- per annum as claimed by the appellants instead of Rs. 36,000/= as assessed by the Learned Tribunal. Thus, income of the victim can be safely accepted as Rs. 1,58,840/- per annum.

10. In addition, the appellants/claimants are also entitled to get compensation towards the heads of future prospect and general damages in view of the aforesaid judgment passed in **Pranay Sethi's** Case (supra). Victim's age was 31 years old at the time of accident and it is proved by documentary evidence

before the learned Tribunal. If it is considered his age is 31 years, he would be below the age of 40 years on the date of accident. If the age is less than 40 years, the actual future prospect should be considered 40% of the total yearly income of the deceased.

11. In the light of the above observation, the calculation of compensation is assessed as follows:

CALCULATION OF COMPENSATION

Annual Income	Rs. 1,58,840/-
Future Prospects (40% of the total annual income)	Rs. 63,536/-
Total income	Rs. 2,22,376/-
Less: deduction 1/4 th of the total Annual income (towards personal and living expenses)	Rs 55,594/-

Total Income after deduction	Rs. 1,66,782/-
Rs. 1,66,782/- X 16 (Multiplier)	Rs. 26,68,512/-
Add: General Damages (Loss of estate, Funereal Expenses and Loss of filial consortium)	Rs. 84,000/-
Total Compensation	Rs. 27,52,512/-
Less Awarded Amount	Rs. 4,17,500/-
Total Compensation Receivable	Rs. 23,35,012/-

12. Thus, the appellants/claimants are entitled to get enhanced compensation amount to the tune of Rs. 23,35,012/- (Rupees Twenty-Three Lakhs Thirty-Five Thousand and Twelve Only) which shall carry interest @ 6% per annum from the date

of filing of the claim application i.e. from 29.09.2010 till final payment.

13. The Respondent No. 1-Insurance Company is directed to deposit the total enhanced compensation amount i.e. Rs. 23,35,012/- (Rupees Twenty-Three Lakhs Thirty-Five Thousand and Twelve Only) along with the interest as indicated above by way of cheque in the name of appellants/claimants before the Office of Learned Registrar General, High Court, Calcutta within a period of eight weeks from date. If no amount of compensation, as awarded by the learned Tribunal, paid earlier to the appellants, same also be paid in the same mode and manner as directed by the Learned Tribunal.

14. Learned Registrar General, High Court, Calcutta upon deposit of the amount and interest as indicated above, shall release cheque in favour of the appellants/claimants in the same mode and manner as directed by the learned Tribunal upon proper identification and subject to verification of the

payment of ad valorem Court fees on total awarded amount, if not already paid.

15. The impugned judgment and award of the learned Tribunal dated 30th Day of August, 2011 is modified to the above extent.

16. With the above observations, the appeal being **FMA No. 922 of 2012** stands allowed without order as to costs. Connected applications, if any, are also, thus, disposed of.

17. At the same time, **COT 66 of 2013** is also, thus, disposed of with above observations.

18. Interim order, if any, stands vacated.

19. The legal guardian and mother of the minor claimants shall deposit the compensation amount as per their share in a fixed deposit scheme in any nationalised bank or post office in their respective name till attaining their majority and deposit

the receipt of the same within one month from the date of receiving aforesaid compensation amount before the office of the learned Registrar General, High Court, Calcutta.

20. Let copy of this judgment and order along with Lower Court Records, if received, be forwarded to the learned Tribunal for information.

21. All parties shall act on a server copy of this judgment and order uploaded from the official website of High Court at Calcutta.

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

[AJAY KUMAR GUPTA, J.]

P. Adak