

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

22.04.2024
SL No.217
Court No. 3
Ali

**FMA 1589 of 2018
With
IA No.:CAN/1/2017 (Old No.:CAN/12052/2017)**

**Sutapa Paria @ Sutapa Parya & Ors.
Vs.
The New India Assurance Co. Ltd. & Anr.**

Mr. Amit Ranjan Roy, Adv.
..... for the appellants/claimants.

Mr. Sanjay Paul, Adv.,
Ms. Jaita Ghosh, Adv.
...for the respondent/Insurance Co.

The instant appeal has been preferred against the Judgment and Award dated 29th August, 2017, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, 3rd Court, Tamluk, Purba Medinipur, in MAC Case no. 340 of 2014.

The brief facts of the case is that the victim of this case, namely, Subhra Kanti Paria on 13.06.2014 at about 3.30 p.m. while he was standing at the morrum portion of Egra paniparul road near Egra Electric Sub Station to board a bus. Suddenly the offending vehicle bearing No. WB-32D/6723 (tractor) which was coming from Egra side with an extreme high speed and in a rash and negligent manner dashed the victim with great force. As a result the victim sustained severe head injury

and all over the body and shifted to Egra S.D. Hospital and thereafter, admitted to Sanjiban Hospital at Phuleswar, Uluberia wherein he succumbed to his injury on 16.06.2014.

The widow and the other legal heirs of the deceased preferred an application under Section 166 of the M.V. Act before the learned tribunal for getting compensation on the ground that the accident happened solely due to the rash and negligent driving of the driver of the offending vehicle duly injured under the policy of the Insurance Company.

The claim case was contested by the insurance company by filing written statement also with a leave under Section 170 of M.V. Act.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs.3,92,360/- together with @ 8% interest per annum from the date of filing of the claim application as compensation and directed the Insurance Company to pay the compensation. The Insurance Company has satisfied the award as directed by the learned tribunal.

Being aggrieved by and dissatisfied with the said award, the claimants have preferred the present appeal for enhancement of the award.

Mr. Amit Ranjan Roy, learned advocate for the appellants/ claimants submits that the claimants have only preferred the instant appeal on the ground that the income of the deceased was not at all considered by the learned tribunal. He submits that the deceased was a business man and used to submit a self-assessed ITR to the concerned department. The ITR were filed before the learned tribunal but the learned tribunal has erroneously did not consider the income of the deceased but has fixed the notional income of the deceased to calculate the award. He submits that the ITR submitted by the claimants is a statutory document and the learned tribunal should have considered the income of the deceased on the basis of such statutory document. He further argued that the learned tribunal has also failed to award the compensation by virtue of decision of Hon'ble Apex Court reported in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** in respect of the future prospects and the general damages.

Mr. Paul, learned advocate appearing on behalf of the Insurance Company submits that the learned advocate has committed no error. No document regarding the business of the deceased has been placed before the learned tribunal. He

further argued that the learned tribunal has considered the ITR submitted by the claimants to consider the income of the deceased but they are self-contradictory. Thus the learned tribunal has correctly assessed the compensation fixing the notional income of the deceased.

Heard the learned advocates perused the materials on record. It appears that during trial, PW-4 who is one of the Inspector of Income Tax Department at Haldia has appeared before the learned tribunal and produced the certified copy of ITR filed by the deceased for the Assessment Years 2014-2015 and 2013-2014. The said ITR were marked as Exhibit-9 & 9/1 respectively by the learned tribunal.

The learned tribunal at the time of passing the impugned award is of view that the document of ITR is not at all a document of monthly income of the victim.

Accordingly, the observation of the Hon'ble Apex Court in ***Malarvizhi & Ors. Vs. United India Insurance Com. Ltd.***, the ITR is a statutory document. It has been directed by the Hon'ble Apex Court that in considering the claim application filed under Section 166 of the M.V. Act. the learned tribunal must have considered the income of a

deceased appearing in the ITR. The procedure to follow the ITR in assessing the income of a deceased has been categorically discussed by the Hon'ble Apex Court in ***Malarvizhi & Ors. (supra)***

In ***Malarvizhi & Ors. (supra)*** the Hon'ble Apex Court has also held that:-

“The tax return indicates an annual income of Rs.2,11,131/- in the relevant assessment year. Mr. Jayanth Muth Raj, learned Senior Counsel appearing on behalf of the appellant contended that other documents were marked which reflected the income of the deceased. 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. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for Assessment Year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased”.

Considering the observation of Hon'ble Apex Court, the law has been laid down to the effect that the statement appearing in the self ITR filed by the deceased prior to his death can be considered to be the income of the deceased. In this case, the learned tribunal has failed to appreciate the law laid down by the Hon'ble Apex court in ***Malarvizhi & Ors.***

(supra). Thus, the award passed by the learned tribunal is erroneous.

In this case, it appears that the two ITRs were filed by the claimants before the learned tribunal to consider the income of the deceased. The ITR of 2013-2014 was filed on 14.08.2013 and self-assess ITR of 2014-2015 was filed on 27.07.2014. The ITR for the Assessment year 2013-2014 was filed prior to the death of the deceased.

Accordingly, the ITR of Assessment Year 2013-2014 can only be considered to assess the income of the deceased. The ITR of 2013-2014 disclosed the annual income of the deceased was Rs. 1,75,714/-.

It further appears that the learned tribunal has awarded the compensation by not following the direction of Hon'ble Apex Court passed in **Pranay Sethi**.

Following the observation of Hon'ble Apex Court in **National Insurance Co. Ltd. Vs. Pranay Sethi** the claimants are entitled to get the future prospects which would be 40% in addition to his establish income and the claimants being the widow and other legal heirs of the deceased are entitled to get the general damages of Rs. 70,000/-.

Considering the all aspects the award passed by the learned tribunal need be modified.

Calculation of compensation

1. Annual Income	:Rs. 1,75,714/-
2. Add: 40% Future Prospects	:Rs. 70,285/-
	:Rs. 2,45,999/-
3. Less: 1/3 rd deduction	:Rs. 82,000/-
	:Rs. 1,63,999/-
4. Multiplier 15 (Rs. 1,63,999/- X 15)	:Rs. 24,59,985/-
5. Add: General Damages	:Rs. 70,000/-
	:Rs. 25,29,985/-
6. Add: Medical Expenses	:Rs. 22,860/-
	:Rs. 25,52,845/-
Less: Tribunal awarded	:Rs. 3,92,360/-
Enhance awarded amount	Rs. 21,60,485/-

After calculation, the award comes to Rs. Rs. 25,52,845/-. The claimants have already received the award of Rs. 3,92,360/-. The balance award comes to Rs. 21,60,485/-. The Insurance Company is directed to pay the balance awarded sum together with interest @ 6% per annum from the date of filing of the claim application i.e. from 21.08.2014 till payment. The Insurance Company is further directed to comply the above mentioned award through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such deposit, the claimants are at liberty to receive the same award from the office of the learned Registrar General, High Court, Calcutta equally, according to the prevalent norms of identification and

certification subject to the ascertainment of payment of deficit Court Fees, if any.

The office of the learned Tribunal shall act upon the certified copy of this order to receive the deficit Court Fees, if any.

LCR be sent down at once along with copy of the order through a Special Messenger, cost to be borne by the appellant. The appellant is directed to deposit the Special Messenger cost to the department within a week.

The instant **FMA 1589 of 2018** is disposed of.

All connected pending applications, if any, stand disposed of.

Interim orders, if any, stand vacated.

Parties to act upon the server copy and urgent certified copy of this order be provided on usual terms and conditions.

(Subhendu Samanta, J.)

