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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**F.M.A 376 of 2024**

**Smt. Sikha Maji & Ors.**
**-Vs-**
**The Oriental Insurance Co. Ltd. & Anr.**

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| For the Appellants | : Mr. Amit Ranjan Roy |
| For the Respondents/ Insurance Company | : Mr. Sanjoy Paul<br>Ms. Jaita Ghosh |
| Heard on | : 26.06.2024 |
| Judgment on | : 07.11.2024 |

**Ananya Bandyopadhyay, J.:-**

1. Three claimants of deceased Shantimoy Maji filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track, 1st Court, Asansol being MAC Case No. 08 of 2016/No.111 of 2014 claiming an award of Rs.24 lakhs towards loss of income, future prospects, mental pain and suffering due to the death of the victim in a road traffic accident on 15.12.2013.

2. The offending vehicle, one TATA Indigo vehicle bearing Registration No. WB-38P/7741 hit the aforesaid victim riding on his motorcycle in a rash and negligent manner near Bora Bathan football math.

3. Consequently, the victim was declared dead on the spot and his friend pillion rider sustained serious injury on his person and was admitted in the District Hospital, Asansol.
4. Subsequently, based on a written complaint, Barabani P.S. Case No. 227/2013 dated 16.12.2013 under Sections 279/338/427/304-A of the Indian Penal Code was instituted against the driver of the offending vehicle as aforesaid.
5. Though owner of the offending vehicle appeared at the initial stage but did not subsequently contest the aforesaid MAC Case No. 08 of 2016/No.111 of 2014. The case was heard ex parte against the owner of the vehicle.
6. The respondent, Oriental Insurance Company contested the aforesaid MAC case.
7. The Learned Tribunal as aforesaid disposed of the issues framed considering the oral as well as documentary evidences and awarded a sum of Rs.10,22,000/- as compensation, subject to deposit of Court fees. Oriental Insurance Company was directed to pay the compensation to the claimant widow of the deceased amounting to Rs. 3,80,668/- and claimant nos. 2 and 3 amounting to Rs. 3,20,666/- each through the Tribunal by two A/C payee cheques within two months thereof with interest at the rate of 6 per cent per annum on the amount of awarded compensation from the date of filing of the application till the date of realization in full subject to deposit of deficit Court fees.
8. The Learned Advocate representing the Appellant submitted as follows:-

a. The monthly income of the deceased Rs. 17,000/- per month instead of Rs. 5,000/- per month as considered in the impugned award ought to have been considered.

b. Assessment of just compensation would basically depend on proved income of the deceased, and not on the source of income of the deceased.

c. The evidence of PW-3 was the conclusive proof of evidence regarding income of the deceased and could not be diluted and/or ignored on presumption beyond the evidence.

9. The Hon'ble Supreme Court held the following in ***Anjali v. Lokendra Rathod***[1] ***:-***

> *"9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income 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 (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:*
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> *"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."*

10. In ***K. Ramya v. National Insurance Co. Ltd.***[2]***,*** the following was held by the Hon'ble Supreme Court:-

[1] 2022 SCC OnLine SC 1683

> ***"14.*** *In contrast, the High Court set aside the same on the ground that the income earned was out of capital assets and cannot be said to have been earned out of personal skills of the deceased. It consequently went on to determine the income of the Deceased on a notional basis as per his educational qualification. Unfortunately, such an approach, in our opinion, is erroneous in view of the decisions of this court in Amrit Bhanu Shali v. National Insurance Co. Ltd. and Kalpanaraj v. Tamil Nadu State Transport Corpn. wherein this court has held that documents such as income tax returns and audit reports are reliable evidence to determine the income of the deceased. Hence, we are obliged to modify the compensation, especially when neither any additional evidence has been produced to showcase that the income of the Deceased was contrary to the amount mentioned in the audit reports nor it is the stand taken by the Insurance Company that the said reports inflated the income."*

11. The Hon'ble Supreme Court held the following in ***Kalpanaraj v. T.N. State Transport Corpn.[3]:-***

> *"8.It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return…"*

12. The Senior Tax Assistant of the Income Tax Office Asansol, deposed as PW-3, inter alia stating as follows:-

> *"I have come today before the learned Tribunal in connection with this case after receiving same from the learned Tribunal and after being permitted by my competent authority. This is the said*

[2] 2022 SCC OnLine SC 1338
[3] (2015) 2 SCC 764

*summons. I have brought today with me to the learned Tribunal. (This is the return of Shantimoy Maji for the assessment year 2012-2013 be marked exhibit 7 which was earlier marked "Y" for identification with objection). (This is the return of Shantimoy Maji for the assessment year 2013-2014 be marked exhibit 8 which was earlier marked "Y/1" for Identification with objection), I have file today attested copy of Income Tax Return V for the assessment year 2012-2013 and 2013-2014 together with statement under Section 143 (1) of Income Tax Act about the pan card holder Shantimoy Maji being Pan no. BNIPM49688 for the assessment year 2012-2013 and assessment year 2013-2014 be marked exhibit 8/1 and 8/2 with objection."*

13. The respondent insurance company did not challenge exhibit 7 and 8 respectively in the cross examination as false, invalid or illegal.

14. Considering the Income Tax Return of the deceased victim of 2013-14 where the total income as mentioned in exhibit 8, the total income of the deceased victim had been Rs. 2,06,580/- and the net tax payable had been Rs. 680/-. Therefore, the annual income of the victim was Rs. 2,06,580 – Rs. 680 that equals to Rs. 2,05,900/-.

15. In view of the above observation of the Hon'ble Supreme Court in the decisions cited in ***National Insurance Company Ltd. Vs. Pranay Shetty & Anr***.[4] and ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr***[5] the impugned award of Rs. Rs.10,22,000/- is modified as follows:-

| | | |
|---|---|---|
| Annual Income | 2,06,580 | |
| Income Tax | 680 | |

4 2017(4)TAC 673(S.C)

5 (2009) 6 SC 121

| | | |
|---|---|---|
| Deduction | | |
| Annual Income | 2,05,900 | |
| Future Prospect | 82,360 | 40% |
| Annual Income + Future Prospect | 2,88,260 | |
| Deduction towards Personal Expenses | 96,087 | 1/3 of total income |
| Total Annual Income | 1,92,173 | |
| Multiplier | 32,66,941 | 17 |
| Loss of Estate + Loss of Spousal Consortium + Funeral Expenses | 15,000 + 40,000 + 15,000 | Total is 70,000 plus 20% of 70,000 = 84,000 |
| Total | 33,50,941 | |

16. The appellant/claimant is entitled to a sum of Rs. 33,50,941/- along with an interest at rate of 6% per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.

17. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 33,50,941/- along with an interest at rate of 6% per annum from the date of filing of the claim application before the

office of the learned Registrar General, High Court Calcutta within six weeks from the date of passing of this order.

18. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same to the present appellant/claimant as mentioned in the award passed by the learned Judge, the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, Fast Track, 1st Court, Asansol in MAC Case No. 08 of 2016/No.111 of 2014 on proof of proper identification of the appellant/claimant subject to payment of ad valorem Court's fees.
19. The instant appeal is disposed of accordingly.
20. The Trial Court Records shall be sent down to the concerned tribunal forthwith.
21. Copy of the order be sent to the Department as well as concerned tribunal for information.

**(Ananya Bandyopadhyay, J.)**