

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

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**FMA 743 of 2022
New India Assurance Co. Ltd.
versus
Mrs. Sushila Jhunjhunwala & Others**

For the Appellant- Insurance Company	: Mr. Sanjay Paul, Advocate Ms. Jaita Ghosh, Advocate
For the Respondents- Claimants	: Mr. Samrat Chowdhury, Advocate Mr. Pradip Sencheti, Advocate Mr. Biswajit Chowdhury, Advocate
Heard on	: 29.08.2023, 31.08.2023
Judgment on	: 19.02.2024

Bivas Pattanayak, J. :-

1. This appeal is preferred against the judgment and award dated 30th November, 2021 passed by learned Additional District Judge-cum-Judge, Motor Accident Claims Tribunal, Fast Track, 4th Court, Alipore, 24-Parganas (South) in M.A.C. Case No. 1 of 2002 granting compensation of Rs.21,52,140/- together with interest @ 9% per annum in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

2. The brief fact of the case is that on 10th August, 2001 at around 8:30 P.M. while the victim was travelling in a Hyundai Car bearing registration no. KA-OS-C/2107, at that time, the offending vehicle bearing registration no. TN-09D-0561 (tanker lorry), in a rash and negligent manner, dashed the said car from behind at Mogili Ghat on Palamaner-Bangarupalem

Road, Chittoor, Andhra Pradesh. As a result of which, the said car collided with another lorry coming from the opposite direction. In the said accident, the victim and two other occupants died on the spot and one of the occupants sustained injuries. On account of sudden demise of the victim, the claimants being the widow, son and daughter of the deceased filed application for compensation of Rs. 18,84,500/- together with interest under Section 166 of the Motor Vehicles Act, 1988.

3. The claimants in order to establish their case examined two witnesses and produced documents which have marked as **Exhibits 1 to 11** respectively.

4. The appellant-insurance company did not adduce any evidence.

5. It is found that the respondent no.4, owner of the offending vehicle did not contest the case and the same was disposed of *ex parte* against him. In the aforesaid backdrop, service of notice of appeal upon the said respondent stands dispensed with.

6. Upon considering the materials on record and the evidence adduced on behalf of the claimants, the learned Tribunal granted compensation of Rs.21,52,140/- together with interest @ 9% per annum in favour of the claimants under Section 166 of the Motor Vehicles Act, 1988.

7. Being aggrieved by and dissatisfied with the impugned judgment and award of the learned Tribunal, the insurance company has preferred the present appeal.

8. Mr. Sanjay Paul, learned advocate for the appellant-insurance company submitted that the learned Tribunal erred in determining the

income of the deceased at Rs. 1,67,896/- per annum on the basis of income tax assessment order for the Assessment Year 2000-01 which has not been proved in accordance with law. The income tax assessment order **(Exhibit 11)** has been produced by P.W.1, son of the deceased at the time of his examination and such document issued by the income tax authority has been marked as exhibit after objection raised on behalf of the insurance company. Since during examination of P.W.1 such document has been objected to, hence it became imperative upon the claimants to prove such document in accordance with law. Mere admission of a document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof which is required to be done in accordance with law. Thus, even if the document has been marked as exhibit with objection, in the absence of proof, such document loses its credibility and is of no probative value. To buttress his contention, he relied on the following decisions:

- i. ***Life Insurance Corporation of India and Another versus Ram Pal Singh Bisen***¹
- ii. ***National Insurance Co. Ltd. (CR)-I versus Sri Subhasis Manna & Anr.***²
- iii. ***Bajaj Allianz General Insurance Company Limited versus Smt. Santa Dey and Others***³

¹ (2010) 4 SCC 491

² FMA 1544 of 2018 (Decision of High Court at Calcutta)

³ 2018 (3) T.A.C. 473 (Cal.)

Therefore, since the income tax assessment order has not been proved in accordance with law, the income reflected in the said assessment order should not have been considered by the learned Tribunal.

Moreover, he submitted that the deceased, at the time of accident, was on a fixed salary and, therefore, in view of the decision of the Hon'ble Supreme Court passed in ***National Insurance Company Limited versus Pranay Sethi and Others***⁴, the amount towards future prospect should be equivalent to 25% of the annual income of the deceased instead of 30% of the annual income granted by the learned Tribunal.

He further submitted that as per the decision of the Hon'ble Supreme Court passed in *Pranay Sethi (supra)*, only the widow is entitled to spousal consortium and thus the learned Tribunal erred in granting parental consortium of Rs. 44,000/- each to the son and daughter respectively.

Lastly, he submitted that the learned Tribunal ought to have applied the prevailing banking rate of interest instead of interest at a higher rate of 9% per annum on the compensation from the date of filing of the claim application.

In light of his aforesaid submissions, he prayed for setting aside and/or modification of the impugned judgment and award of the learned Tribunal.

9. In reply to the contentions raised on behalf of the appellant-insurance company, Mr. Samrat Chowdhury, learned advocate for the respondents-claimants submitted that the income tax assessment order produced by P.W.1 is a public document under Section 74 of Evidence Act bearing the seal and signature of the officials of Income Tax Department, which carries

⁴ (2017) 16 SCC 680

a presumption of correctness as per Section 79 of the Evidence Act. Though during cross-examination of P.W.1, suggestion was put by the insurance company of such document being manufactured, but no evidence has been led from the side of the insurance company to establish that the document produced by the claimants namely income tax assessment order is a manufactured one. The burden of proof under Sections 101 and 103 of the Evidence Act lies on a person who alleges *mala fides* of any document.

Furthermore, relying on the decisions of Hon'ble Supreme Court passed in ***Kalpanaraj and Others versus Tamil Nadu State Transport Corporation***⁵ and ***Anjali and Others versus Lokendra Rathod and Others***⁶, he submitted that the income of the victim disclosed in the income tax return should be considered for determining his actual income. He further submitted that the victim, at the time of accident, was a permanent employee of *Grapco Industries Limited* at Salt Lake and, therefore, the learned Tribunal has rightly assessed the future prospect equivalent to 30% of the annual income of the deceased in view of the proposition laid down in *Pranay Sethi (supra)*.

Further, relying on *Kalpanaraj (supra)*, he submitted that interest granted by the learned Tribunal @ 9% per annum is correct and should be upheld. In light of his aforesaid submissions, he prayed that the impugned judgment and award of the learned Tribunal should be affirmed.

⁵ (2015) 2 SCC 764

⁶ 2022 SCC OnLine SC 1683

10. Having heard the learned advocates for respective parties, following issues have fallen for consideration:

- i. Whether the learned Tribunal erred in determining the income of the victim on the basis of the income tax assessment order **(Exhibit 11)**.
- ii. Whether the learned Tribunal erred in granting future prospect equivalent to 30% of the annual income of the victim.
- iii. Whether the learned Tribunal erred in granting parental consortium to the son and daughter of the deceased.
- iv. Whether the learned Tribunal erred in granting interest @ 9% per annum on the compensation assessed.

Issue No.1: Whether the learned Tribunal erred in determining the income of the victim on the basis of the income tax assessment order (Exhibit 11).

11. With regard to the first issue as above, it is found that the learned Tribunal has determined the income of the victim on the basis of the income disclosed in the income tax assessment order for the assessment year 2000-01. The claimants through P.W.1, Abhishek Jhunjunwala, son of the deceased, produced the assessment order and tax challan of the victim Raghunath Prasad Jhunjunwala for the assessment year 2000-01, which has been marked as **Exhibit 11** on objection. Such document of the income tax department has been challenged by the appellant- insurance company, relying on *Ram Pal Singh Bisen (supra)*, *Smt. Santa Dey (supra)* and *Subhasis Manna (supra)*, on the ground that mere marking of exhibit

on a document namely the assessment order and the tax challan (**Exhibit 11**) does not dispense with its proof, which is required to be done in accordance with law and since the same has not been proved by any official of the income tax department, hence such document loses its credibility and it shall not carry any probative value. At the outset, the Evidence Act, 1872 in its *stricto sensu* does not apply to proceedings under section 166 of the Motor Vehicles Act before the learned Tribunal, however the principles flowing therefrom, to the extent possible, may be applied for ends of justice. In *Subhasis Manna (supra)*, this court observed as follows:

“15.7... If a party produces a document before the tribunal along with his claim application seeking to rely on it at the same forms part of the records but no endeavour is made by him to prove the content of such document either by himself or through the testimony of any other witness on his behalf, the said document does not constitute legal evidence before the tribunal that can be relied upon in support of the claim. After all, a document does not prove itself. Mere marking of it as an exhibit cannot also dispense with proof. There ought to be some oral evidence from the side of the party relying on it as to what the document is and why same is adduced as evidence. Once this procedure is followed, this would enable the other side to contest the document by effectively cross-examining the witness and produce contra-evidence, if possible, through its witness to persuade the tribunal not to rely on the said document.”

11.1. Bearing in mind the aforesaid proposition, now I revert back to the fact of the case. At the first instance, the materials on record show that the document of the income tax department has been placed at the time of the

examination of P.W.1, son of the deceased. The witness in his evidence deposed that he filed the balance sheet with assessment order and tax challan of the victim Raghunath Prasad Jhunjhunwala for the year 2000-01 showing total annual income of Rs. 1,64,340/-and it bears the seal the signature of Income Tax Authority. Thus, there is oral evidence from the side of the claimants as to what is the document and why the same is adduced as evidence. The aforesaid procedure adopted by the claimants enabled the appellant-insurance company to effectively cross-examine the witness and produce any contrary evidence against the said document. As such the burden of the claimants in respect of the said document stands discharged as far as the present proceedings under the Motor Vehicles Act is concerned. It is relevant to note that save and except a solitary suggestion that the said documents of the Income Tax Department are manufactured and fabricated for the purpose of getting compensation, there are no further cross-examination challenging the said document. There is also no contrary evidence produced at the instance of the appellant-insurance company to controvert the said document. The materials on record clearly suggests that it is not the circumstances where there is no oral evidence from the side of the claimants and that the documents have only been produced along with the claim application as is the circumstances appearing in *Subhasis Manna (supra)*. The assessment order and income tax challan (**Exhibit 11**) also bears the seal and signature of Deputy Commissioner of Income Tax, Central Circle XIX, Calcutta. It is pertinent to note that the said document of Income Tax

Department has been issued by a public officer in discharge of his official duties. Section 74(1) Clause (iii) of the Evidence Act provides that the documents forming the acts or records of the acts of public officers, legislative, judicial and executive [of any part of India or of the Commonwealth] or of foreign country are Public Documents. The records of income tax department must be regarded as the record of the acts of the income tax officer in making assessment order and, therefore, any document properly on the record is just as much a public document as the final assessment order. Hence, a profit and loss statement and a statement showing details of net income, filed by an assessee in support of his return of income furnished under the Income Tax Act are public document under section 74 of Evidence Act. **(See *Kartikeneni Venkata Gopala Narasimha Rama Rao versus Chitluri Venkataramayya*⁷; *Pentakota Surya Appa Rao and Ors versus Pentakota Seethayamma and Ors*⁸).** The assessment order and tax challan bearing the seal and signature of the issuing authority has been challenged by the insurance company on the ground of it being manufactured and fabricated.

11.2. The Hon'ble Supreme Court in ***Uniworth Textiles Ltd versus Commissioner of Central Excise, Raipur***⁹ observed as follows:

“24. Further, we are not convinced with the finding of the Tribunal which placed the onus of providing evidence in support of bona fide conduct, by observing that “the appellants had not brought anything on record” to prove their claim of bona fide conduct, on the appellant. It is a

⁷ AIR 1940 Mad 768

⁸ [1976] 103 ITR 222 (AP)

⁹ (2013) 9 SCC 753

cardinal postulate of law that the burden of proving any form of mala fides lies on the shoulders of the one alleging it. This Court observed in Union of India v. Ashok Kumar [(2005) 8 SCC 760 : 2006 SCC (L&S) 47] that: (SCC p. 770, para 21)

“21. ... It cannot be overlooked that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.”

11.3. Bearing in mind the above proposition, since the insurance company has raised the ground of *malafide* concerning the document issued by the income tax department, the burden lies upon them to establish such *malafide*. Section 101 of the Evidence Act provides that whoever desires the court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. It is pertinent to note that no such evidence has been led by the insurance company to discharge its burden in proving such fact.

11.4. Mr. Paul, learned advocate for the appellant-insurance company relying on *Smt. Santa Dey (supra)* submitted that mere marking of the document as an exhibit does not dispense with proof which is required to be proved in accordance with provisions of the Evidence Act and in absence of the process being undertaken such document shall lose its credibility and is of no probative value. At the very outset, it is found that the purported document in the cited decision is in the nature of a communication issued by the Licensing Authority, Purba Medinipur

addressed to a surveyor appointed by the insurance company which was Exhibited on behalf of the insurance company without objection from the side of the claimants. The Division Bench of this court following the proposition of Hon'ble Supreme Court in *Ram Pal Singh Bisen (supra)* held that even if the document had been marked as Exhibit without objection, without a formal proof thereof in accordance with the provisions of the Evidence Act, such document lost its credibility and is of no probative value. Be that as it may, one cannot be oblivious to the fact that the nature of the document in the cited decision is a communication issued by the Licensing Authority, Purba Medinipur addressed to a surveyor appointed by the insurance company and not a document of assessment order and tax challan in the nature of a public document bearing the seal and signature of the official authorized to sign. Such being the position the ratio of the cited decision does not apply to the facts of the present case.

11.5. From the materials on record, it is palpable that the document of assessment order and tax challan for the Assessment Year 2000-01 has not been discredited by the appellant-insurance company to be manufactured or fabricated. Thus, the assessment order and tax challan **(Exhibit 11)** can be relied and acted upon.

11.6. Now it is to be seen whether such assessment order and tax challan can form the basis of determination of income of the deceased. The Hon'ble Supreme Court in *Kalpanaraj (supra)* observed that the High Court was correct to determine the monthly income on the basis of income tax return in the circumstances where 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. In ***Malarvizhi & Ors. versus United India Insurance Company Limited & Anr.***¹⁰, the Hon'ble Supreme Court endorsed the findings of 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. Similarly, in *Anjali (supra)*, the Hon'ble Supreme Court following the observation in *Malarvizhi (supra)* considered the income tax return of the deceased filed with the Income Tax Department. From the aforesaid observation of the Hon'ble Supreme Court, it goes without saying that the income tax return being the statutory document should be relied upon for determining the income of the deceased even though it is the only available documentary evidence. It is trite law that the actual income of the deceased should be gross income less tax paid. The total income of the victim for the Assessment Year 2000-2001 is Rs.1,64,340/-. The tax paid is Rs.12,432/-. Thus, actual income of the victim comes to Rs. 1,51,908/- (Rs.1,64,340/- less Rs.12,432/-).

Issue No.2: Whether the learned Tribunal erred in granting future prospect of 30% of the actual income of the victim.

12. With regard to the second issue relating to grant of future prospect, it is found that the learned Tribunal granted 30% of the annual income of the victim towards future prospect. Mr. Paul, learned advocate for appellant-insurance company relying on *Pranay Sethi (supra)* has urged

¹⁰ (2020) 4 SCC 228

that since the victim was not a permanent employee and was on a fixed salary, the amount towards future prospect should be equivalent to 25% of the actual income of the victim. *Per contra*, Mr. Chowdhury, learned advocate for the respondents-claimants have argued that the victim was a permanent employee of *Grapco Industries Limited* at Salt Lake and as such the grant of future prospect at 30% of the annual income of the victim by the learned Tribunal should be affirmed. From the evidence of P.W.1, Abhishek Jhunhunwala, son of the deceased, it is found that he has deposed that his deceased father was in service as M.D. of *Grapco Industries Limited*. Be that as it may, no records of the *Grapco Industries Limited* has been proved to primarily suffice that the victim was a permanent employee of the *Grapco Industries Limited*. Admittedly, the victim at the time of accident was 45 years of age. Such being the position, following the observation of Hon'ble Supreme Court in *Pranay Sethi (supra)*, the grant of future prospect should be 25% of the annual income of the victim instead of 30% of the annual income of the victim granted by the learned Tribunal.

Issue No.3: Whether the learned Tribunal erred in granting parental consortium to the son and daughter of the deceased.

13. The next issue relates to the challenge towards grant of parental consortium in favour of the son and daughter of the deceased by the learned Tribunal. In order to appreciate the aforesaid issue, the observation of Hon'ble Supreme Court in *Pranay Sethi (supra)* in paragraph nos.46 and 52 are reproduced hereunder.

“46. Another aspect which has created confusion pertains to grant of loss of estate, loss of consortium and funeral expenses. In *Santosh Devi* [*Santosh Devi v. National Insurance Co. Ltd.*, (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] , the two-Judge Bench followed the traditional method and granted Rs 5000 for transportation of the body, Rs 10,000 as funeral expenses and Rs 10,000 as regards the loss of consortium. In *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , the Court granted Rs 5000 under the head of loss of estate, Rs 5000 towards funeral expenses and Rs 10,000 towards loss of consortium. In *Rajesh* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , the Court granted Rs 1,00,000 towards loss of consortium and Rs 25,000 towards funeral expenses. It also granted Rs 1,00,000 towards loss of care and guidance for minor children. The Court enhanced the same on the principle that a formula framed to achieve uniformity and consistency on a socio-economic issue has to be contrasted from a legal principle and ought to be periodically revisited as has been held in *Santosh Devi* [*Santosh Devi v. National Insurance Co. Ltd.*, (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] . On the principle of revisit, it fixed different amount on conventional heads. What weighed with the Court is factum of inflation and the price index. It has also been moved by the concept of loss of consortium. We are inclined to think so, for what it states in that regard. We quote : (*Rajesh case* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] , SCC p. 63, para 17)

“17. ... In legal parlance, “consortium” is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English courts have also recognised the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse's affection, comfort, solace, companionship, society, assistance, protection, care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.”

x x x

52. *As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] . It has granted Rs 25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 1,00,000 towards loss of care and guidance for minor children. The head relating to loss of*

care and minor children does not exist. Though *Rajesh* [*Rajesh v. Rajbir Singh*, (2013) 9 SCC 54 : (2013) 4 SCC (Civ) 179 : (2013) 3 SCC (Cri) 817 : (2014) 1 SCC (L&S) 149] refers to *Santosh Devi* [*Santosh Devi v. National Insurance Co. Ltd.*, (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167], it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

13.1. Upon conjointly reading of paragraph nos.46 and 52 of the decision in *Pranay Sethi (supra)*, it is manifest that the head under 'loss of consortium' is confined only to the spouse. In view of the above, only spouse i.e. widow of the deceased is entitled to spousal consortium.

Issue No.4: Whether the learned Tribunal erred in granting interest @ 9% per annum.

14. Coming to the last issue of grant of interest on the compensation amount, it is urged on behalf of the appellant-insurance company that the interest should be applied as per the prevailing banking rate of interest. *Per contra*, relying on the decision of the Hon'ble Supreme Court in *Kalpanaraj (supra)*, the learned advocate for the respondents-claimants submitted that the interest should be @ 9% per annum as allowed by the learned Tribunal. The Hon'ble Supreme Court in *Kalpanaraj (supra)* has concurred with the rate of interest of 9% per annum granted by the High Court following the decision in ***MCD versus Uphaar Tragedy Victims Assn.*¹¹** However, the said decision does not lay down any principle to be applied for the grant of rate of interest. The question what should be the rate of interest in the motor accident claim cases fell for consideration before the Hon'ble Supreme Court in ***Abati Bezbaruah versus Dy. Director General, Geological Survey of India and Another*¹²** which observed as follows:

“18. Three decisions were cited before us by Mr A.P. Mohanty, learned counsel appearing on behalf of the appellant, in support of his contentions. No ratio has

¹¹ (2011) 14 SCC 481

¹² (2003) 3 SCC 148

been laid down in any of the decisions in regard to the rate of interest and the rate of interest was awarded on the amount of compensation as a matter of judicial discretion. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering, loss of future income, loss of enjoyment of life etc., into consideration. No rate of interest is fixed under Section 171 of the Motor Vehicles Act, 1988. Varying rates of interest are being awarded by Tribunals, High Courts and the Supreme Court. Interest can be granted even if a claimant does not specifically plead for the same as it is consequential in the eye of law. Interest is compensation for forbearance or detention of money and that interest being awarded to a party only for being kept out of the money which ought to have been paid to him. No principle could be deduced nor can any rate of interest be fixed to have a general application in motor accident claim cases having regard to the nature of provision under Section 171 giving discretion to the Tribunal in such matter. In other matters, awarding of interest depends upon the statutory provisions, mercantile usage and doctrine of equity. Neither Section 34 CPC nor Section 4-A(3) of the Workmen's Compensation Act are applicable in the matter of fixing rate of interest in a claim under the Motor Vehicles Act. The courts have awarded the interest at different rates depending upon the facts and circumstances of each case. Therefore, in my opinion, there cannot be any hard-and-fast rule in awarding interest and the award of interest is solely on the

discretion of the Tribunal or the High Court as indicated above.”

14.1. Therefore, following the aforesaid proposition of Hon’ble Supreme Court and bearing in mind the prevailing banking rate of interest, this Court is of the opinion that interest @ 6% per annum on the compensation amount should be just and appropriate in the facts and circumstances of the case.

15. In view of the above discussion, the calculation of compensation is made hereunder:

Calculation of Compensation

Annual income	Rs. 1,51,908/-
Add: Future prospect @ 25% of the annual income	Rs. 37,977/-
	Rs. 1,89,885/-
Less: 1/3 rd towards personal and living expenses	Rs. 63,295/-
	Rs. 1,26,590/-
Adopting multiplier 14 (Rs. 1,26,590/- x 14)	Rs. 17,72,260/-
Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-	Rs. 70,000/-
Add: 10% escalation on general damages	Rs. 7,000/-
Total compensation	Rs. 18,49,260/-

16. Thus, the claimants are entitled to compensation of Rs. 18,49,260/- together with interest at the rate of 6% per annum from the date filing of the claim application till payment.

17. It is found the appellant-insurance company has made statutory deposit of Rs. 25,000/- vide OD Challan No. 36 dated 1st April, 2022 and has also deposited a sum of Rs. 21,27,140/- vide OD Challan No. 299

dated 27th April, 2022 in terms of order of this Court dated 1st April, 2022. Both the aforesaid deposits together with accrued interest shall be adjusted against the entire compensation amount and the interest thereon.

18. The appellant-insurance company is directed to deposit balance amount, if any, including interest by way of cheque before the learned Registrar General, High Court, Calcutta within a period of six weeks from the date of this order.

19. Respondents-claimants are directed to deposit *ad valorem* court fees on the compensation amount assessed, if not already paid.

20. Upon deposit of balance amount, if any, and interest as indicated in the foregoing paragraph, learned Registrar General, High Court, Calcutta shall release the amount in favour of the respondents-claimants, after making payment of Rs. 44,000/- to the respondent no.1-widow of the deceased towards spousal consortium, in the proportion that respondent no.1-widow of the deceased shall receive 50% of the compensation and respondent no.2 (son) and respondent no.3 (daughter) shall receive 25% each of the compensation amount, upon satisfaction of their identity and payment of *ad valorem* court fees, if not already paid.

21. With the above observation, the appeal stands disposed of. The impugned judgment and award of the learned Tribunal stands modified to the above extent. No order as to costs.

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

23. Interim order, if any, stands vacated.

24. Let a copy of this judgment be forwarded to the learned Tribunal along with lower court records for information in accordance with rules.

25. Urgent photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)