19.03.2024
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Sl. No. 09 & 10
Ct. No. 551

FMA 160 of 2024
The National Insurance Co. Ltd.
Vs.
Shanti Devi & ors.

With

COT 47 of 2024
Shanti Devi & ors.
Vs.
The National Insurance Co. Ltd.

Mrs. Sucharita Paul
..... for the appellant
Mr. Krishanu Banik
.... for the respondents

The instant appeal is preferred against the Judgment and award dated 14th September, 2023 passed by the learned Judge, Motor Accident claim Tribunal, 6th Bench, City Civil Court, Calcutta in MAC 497 of 2017.

The brief fact of the case if that the deceased Ganesh Pandit had a business and labour contractor who died in a road traffic accident on 31.07.2017 due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy insurance company.

The claimants being the heirs of such victim, filed an application before the learned Tribunal for getting compensation under Section 166 of the Motor Vehicles Act. The learned Tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs. 80,49,440/- as a compensation and directed the

Insurance Company to pay the compensation together with 9% interest per annum from the date of filing of the claim application.

Being aggrieved by and dissatisfied with the said award, the Insurance Company has preferred the instant appeal.

Learned advocate Ms. Sucharita Paul, appearing on behalf of the Insurance Company submits that the award was challenged by the Insurance Company mainly on three grounds that is; (i) The income of the deceased was not calculated properly. (ii) There is no loss of income so the claimants are not entitled to get any compensation. (iii) The interest allowed by the learned Tribunal is excessive.

The claimant also preferred one cross appeal against the said award on the ground that the general damages awarded by the learned Tribunal is not correct it should be enhanced 10% according to the observation of the Hon'ble Supreme Court passed in **National Insurance Company ltd. Vs. Pranay Sethi & ors.** reported in **AIR 2017 SC 5157**.

REGARDING INCOME OF THE DECEASED:-

Mrs. Paul, learned advocate submits that learned Tribunal has adopted the average income of the deceased which appearing in the IT return for the assessment year 2015-2016, 2016-2017 and 2017-2018. She submits that the deceased himself submitted the income tax return lastly for the assessment year 2016-2017 on 17th October, 2016. She further submits that the income tax return for the assessment year 2017-2018 was submitted by the son of the deceased on 7th December, 2017 that is after the death of the deceased. She further submits that the principal adopted by the learned Tribunal regarding taking average income of the deceased in three assessment years is not correct. The last income tax return submitted by the deceased himself for the assessment year 2016-2017 has to be calculated to be the annual income of the deceased.

Mrs. Paul further submits that the evidence of OPW 1, that is, one Shyamal Paul, who is the employee of Sk. Bhartia and Associates, an audit firm, who usually entrusted to audit the income and expenditure of deceased deposed that, the last year income tax return was signed by the son of the deceased namely, Sujit Kumar Pandit. Mrs. Paul further submits that the evidence of OPW 1 shows that the business was carried on by the son of the deceased and there is no loss of income due to the sudden accidental death of the deceased.

Mr. Banik, learned advocate appearing on behalf of the claimants submits that the learned Tribunal has correctly adopted the principle to the effect that the three years average income has to be taken to be the just income of the deceased. He further argued that there are some arithmetical error by the learned

Tribunal in assessing the income of the deceased and the average three years income of the deceased would be 6,73,058/-. He further argued that if the two assessment years' income that is 2015-2016 and 2016-2017 is taken to be consideration then also the average income of the deceased would be 6,27,859/-. So the assessment of income by the learned Tribunal is erroneous.

Heard learned advocates and perused the impugned award passed by the learned Tribunal. The learned Tribunal has adopted annual income of the deceased to be 6,07,957/-. The appellant as well as the respondents both are not happy with the income adopted by the learned Tribunal.

However, Mr. Banik, learned advocate had cited two decisions on this point, i.e., (i) **Shashikala & ors. Vs. Gangalakshmamma & anr.** reported in **_2015 ACJ 1239** and **The Oriental Insurance Co. Ltd. Vs. Sima Sarkar & ors.** reported in **2019 ACJ 683.**

In **Shashikala** (supra), the learned Tribunal has adopted the one year income of the deceased against the said award an appeal was preferred before the Hon'ble High Court wherein the Hon'ble High Court has taken the income of the deceased by averaging two years income of IT Returns. In paragraph 16, the Hon'ble Apex Court has held that the last year income return has to be taken for the purpose of assess the income of the deceased.

In **The Oriental Insurance Co. Ltd. (supra),** the Division Bench of this Court has adopted the view of the **Shashikala** (**supra).**

So it is true that the Hon'ble Apex Court and the Division Bench of this Court has adopted the view that the last year income has to be taken to be the income of the deceased. Thus the average income adopted by the learned Tribunal is not correct to the facts and circumstances of this case and according to the observation to the Hon'ble Apex Court in **Shashikala** (**supra**).

Let me consider income of which year should be taken as an income of the deceased. Admittedly, the deceased has submitted the IT return for the year 2015-2016 and 2016-2017. The IT return for the assessment year of 2017-2018 was submitted by the son of the deceased which has been sufficiently proved. Though it appears that the son of the victim was running the business of the deceased under the same PAN number, but the IT return for the assessment year 2017 cannot be taken as a last year's income of the deceased. So, I am of the view that the income of the deceased appearing in the assessment year 2016-2017, that is, filed by the deceased himself prior to his death would be the just and proper income of the deceased for the calculation of the just and proper compensation of this case.

POINTS REGARDING MANAGERIAL LOSS:-

Mrs. Paul, learned advocate, submits that the in the instant case, it has been proved that the business of the deceased was conducted very well by his son. The income tax return for the assessment year 2017-2018 proved that the income of the firm has been increased considerably. So, there is no loss of income to the bereaved family due to sudden accidental death of the deceased. So, in this case the claimants are not entitled to get compensation on the ground of loss of income, only the loss due to the managerial capacity of the deceased can be considered. She further argued that the same point was raised before the Hon'ble Apex Court in the following decisions: (i) **State of Harayana & anr. vs. Jasbir Kaur & ors.** reported in **(2003) 7 SCC 484.** (ii) **New India Assurance Company vs. Yogesh Devi & ors.** reported in **(2012)3 SCC 613.** (iii) **Rani Gupta & ors. vs. United India Insurance Company Ltd. 7 ors.** reported in **(2009) 13 SCC 498.**

Mrs. Paul further submits that, from observations of the Hon'ble Apex Court on the above mentioned citations, it would be revealed that the applicant has considered the managerial loss due to the demise of the deceased and the compensation awarded by the Tribunal was reduced.

Refuting the contention of the Mrs. Paul, Mr. Banik submits that the Hon'ble Division Bench of this Court has on several occasions dealt with the issue. On all aspect, the Hon'ble Division bench is of view that the award of compensation required to be passed under Section 166 of the Motor Vehicles Act shall not be decreased if the same business was continued by the family member of the deceased. He cited the decisions of the Hon'ble Division Bench of this court in (i) **New India Insurance Company Limited vs. Madhumita Banerjee & ors.** (FMAT 333 of 2019). (ii) **Madhumita Sarkar & ors. vs. Oriental Insurance Com. Ltd. & ors.** reported in **(2010)1WBLR (CAL) 531**. (iii) **Sharmila Singh & ors. vs. Sri Rabin Ghosh & anr.** reported in **2008(3) WBLR 851(HC).**

Mr. Banik also cited the decision of a co-ordinate Bench in **Universal Sompo Genral Insurance Company Limited vs. Bandana Devy & ors. (FMA 342 of 2020)** wherein the entire aspect has been considered by the co-ordinate Bench of this Court and the co-ordinate Bench is of opinion after discussing all the issues that the income earned by the family member of the deceased from the said business cannot decrease just and proper compensation under Section 166 of the Motor Vehicles Act.

Heard the learned advocate perused the decision of the Hon'ble Apex Court and the Division Benches of this Court.

In **Jasbir Kaur (supra),** Hon'ble Apex Court had considered the fact that the deceased has agricultural business which was carried on by the family member, the Hon'ble Apex Court is of opinion that the claim under Section 166 of the Motor Vehicles Act is not a bonanza thus only loss to appoint a manager in place of the deceased was considered and the compensation was decreased.

In case of **Yogesh Devi (supra),** deceased has a business of bus the same business was carried on by the family member of the deceased thus the Hon'ble Apex Court has modified the compensation awarded by the Hon'ble High Court.

In **Rani Gupta (supra),** the Hon'ble Apex Court has considered the business of the deceased which was carried on by the family member of the deceased and the assets of the business were intact so considering the same the compensation was ordered to be decreased.

On the other hand, the Hon'ble Division Bench of this Court in **Madhumita Banerjee(supra)** has considered the income of the deceased under the trade licence pertaining to the advertising agency. It has been proved before the Hon'ble Division Bench that the said licence has been renewed in the name of the one of the claimants. In that case, the Hon'ble Division Bench is of view that there is no evidence to demonstrate that there is no pecuniary loss. In **Madhumita Sarkar(supra),** the deceased has a petrol pump and after the death of the deceased, the said petrol pump was renewed in the name of the widow. In this case, the Hon'ble Division Bench is of the view that renewal of licence of the business of the petrol pump in favour of the widow shall not preclude the claimant to get compensation under Section 166 of the Motor Vehicles Act. In **Sharmila Singh (supra),** the deceased has a business of transport and after her death, the Regional Transport Authority had transferred the ownership of the said vehicle in favour of her widow. The Hon'ble Division Bench is also a view in that case that the just and proper compensation under Section 166 of the Motor Vehicles Act cannot be defeated due to the business carried on by the widow of the deceased.

Considering the entire facts and circumstances and principle thereon as adopted by the Hon'ble Apex Court and the Division Bench of this Court, it appears to me that the Hon'ble Division Bench as well as Hon'ble Apex Court has decided the issue on the basis of peculiar facts and circumstances of each cases. In analyzing the ratio of law laid down by the Hon'ble Apex Court as well as Hon'ble Division Bench of this Court, I am of the view that when the business is running by the family of the deceased, the Hon'ble Apex Court is of the view that there is no such loss of income due to the death of the deceased. But when there is a personal business, the Hon'ble Division Bench is of view that due to the death of the deceased, the business must have hampered and claimants are entitled to just compensation.

Principally, the basic structure of this Legislation (Motor Vehicles Act) is that, when one earning member of a family died in a road traffic accident the bereaved family must have suffered immense loss. The loss of a family member cannot be compensated in terms of money, but the legislature has enacted the legislation with a view that the financial stringency suffered by the bereaved family may be compensated by way of monetary compensation. It has been well approved by the authorities that the instant legislation is beneficial in nature.

Let me consider whether the business carried on by the deceased had actually suffered loss considerably due to the death of the deceased. In claim application, it has been stated that the deceased had a business of labour contractor. Such business of the deceased has been proved by submission of income tax return of several years. The income tax return for the year 2017-2018 has submitted by the son of the deceased on 07.12.2017 after the death of deceased on 31.07.2017. It has been specifically considered that, for the assessment year 2017-2018 the deceased has carried on the business for first four months of that financial year. In considering the nature of business, that is, labour contractor which require the personal capability of a person to deal with the labour as well as to deal with the employer. The personal capability and charisma of the deceased made the business so flourished that the income of the deceased for a financial year is near about Rs. 7,00,000/-. Though it has been proved by the evidence of DW-1 that the business was carried on by the son of the deceased, but it can be well assumed that the business which is typically personal in nature, cannot be dealt with by a new comer(son of the deceased) in the said business as dealt with by a veteran like deceased. In considering the facts and circumstances of this case and also considering the income tax return submitted by the son of the deceased in the year 2018-2019, it appears to me that the business has suffered immense loss due to the sudden accidental death of the deceased. Considering the same and following the decisions of the Hon'ble Division Bench of this Court in **Sharmila Singh(supra), Madhumita Sarkar(supra) and Madhumita Banerjee(supra),** I am of the view that the facts and circumstances of case in hand is not at par with the facts before Hon'ble Apex Court in **Rani Gupta(supra)**, **Yogesh Devi(supra), Jasbir Kaur(supra).** Thus, in this case, the argument advanced by the learned advocate on behalf of the appellant regarding no loss of income due to the death of the deceased has no substance to consider.

INTEREST:-

It appears that the learned Tribunal has ordered that the compensation shall carry 9% interest per annum from the date of filing of the claim petition on default clause. It appears to me that this Court has regularly adopted the interest portion to be 6% per annum. The same principle is to be adopted in this case.

The claimant has filed the cross appeal being COT 47 of 2024 on the ground that the general damages awarded by the learned Tribunal must have to be enhanced 20% as the 6 years has been elapsed after the order passed by the Hon'ble Apex Court in **Pranay Sethi(supra).**

Heard learned advocate, it appears that the Hon'ble Apex Court in **Pranay Sethi(supra),** has observed that the award of general damages should be enhanced 10% after three years. The impugned award was passed on 14th September, 2023. The order of the Hon'ble Apex Court in **Pranay Sethi(supra)** was passed in the month of October 2017 so the claimants are entitled to get the 10% enhancement of the general damages. Considering the all aspects, the award passed by the learned Tribunal requires modification.

The income of the deceased appearing in the IT return in the assessment year 2016-2017 is Rs. 5,65,550/-. The tax portion that is Rs. 14,925/- was deducted thus the applicable annual income of the deceased comes to Rs. 5,50,625/-

Income (after deduction of tax)	***Rs.5,50,625/- p.a.***
Add: 25% of the	***Rs.1,37,656. 25p.***

future prospect	
	Rs.6,88,281.25 p.
Multiplier 14	***96,35,937.50p.***
Less: 1/4th for personal exp.(rounded off)	***24,08,985/-***
	Rs.72,26,925.50 p.
Add: General damages	***Rs.77,000/-***
Total compensation	***Rs.73,03,952.50p.-***

After calculation, the award comes to Rs. 73,03,925.50p. The awards shall carry 6% interest per annum from the date of the filing of the claim application, that is from 21st August, 2017. The Insurance Company is directed to deposit the entire awarded sum together with interest through learned Registrar General, High Court, Calcutta within 6 weeks. On such deposit, the claimants are at liberty to receive the sum from the office of the learned Registrar General, High Court, Calcutta on usual terms and conditions after proper verification and identification. The Insurance Company is at liberty to refund back statutory deposit amount of Rs. 25,000/- along with accrued interest from the office of the learned Registrar General, High Court Calcutta on usual prayer.

The payment of compensation is subject to ascertainment of the payment of deficit Court fees, if any.

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

Accordingly, FMA 160 of 2024 with COT 47 of 2024 along with connected applications, if any, are disposed of.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Subhendu Samanta, J.)