IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A 869 of 2023

Kusum Shaw & Ors.
-Vs-
The United India Insurance Co. Ltd. & Ors.

For the Appellants/Claimants : Mr. Amit Ranjan Roy

For the Respondents/
Insurance Company : Mr. Parimal Kumar Pahari

Heard on : 27.06.2024

Judgment on : 06.11.2024

Ananya Bandyopadhyay, J.:-

1. Three legal heirs of deceased Shibu Shaw filed an application under Section 166 of the M.V. Act in the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, 2nd Court at Asansol being MAC Case No.85/2015, claiming an award of Rs.20 lakhs whereby the aforesaid deceased expired due to a road traffic accident on 14.01.2015 at about 2.20 p.m.

2. The offending vehicle, a motorcycle bearing Registration No. WB-40G-7396 hit the aforesaid deceased approaching in a rash and negligent manner while the victim was travelling by his bicycle proceeding to his house Kajora from his working place, Jamuria.

3. Consequently, the victim was declared dead on the spot and local people took him to the Kenda Police Station under the jurisdiction of Jamuria Police Station. The post-mortem was held at S.D. Hospital, Asansol.
4. Subsequently, based on a written complaint, Jamuria P.S. Case No. 13/2015 dated 14.01.2015 under Sections 279/304A of the Indian Penal Code was instituted against the driver of the offending motorcycle as aforesaid.
5. The owner of the offending vehicle did not appear before the Court to contest the MAC case No.85/2015 in the Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, 2nd Court, Asansol.
6. The respondent, the New Indian Assurance Company Ltd. 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.8,86,000/- as compensation to the claimants along with the interest at the rate of 6 per cent per annum on the amount of compensation from the date of filing of the application till its realization in full subject to deposit of deficit Court fee.
8. The Learned Advocate of the appellants/claimants agitated the following issues:-
    i. The income tax return which had been exhibited, being a statutory document should have been considered for assessment of just compensation.

ii. Moreover the evidence of PW-2 (ITO) was disregarded for the purpose of assessment of just compensation rejecting the yearly income of the deceased as stated in the income tax return.

iii. The amount to be granted for future prospect corresponding to the age of the deceased was not assessed and erroneously 20 per cent instead of 50 per cent as future prospect in respect of the age of the deceased was considered.

iv. Consortium was not awarded to each of the claimants.

9. The learned advocate representing the insurance company controverted the submissions of the learned advocate representing the appellant claimant, further stating that the learned tribunal did not commit any error in deducing the amount of compensation.

10. The victim was aged twenty-eight years at the time of his demise resulting from the accident as aforesaid. The occurrence of the accident with the involvement of the offending vehicle, the driving license, the insurance policy etc and other ancillary issues had not been denied or contradicted by the learned advocate representing respondent insurance company.

11. PW-2 authorized by the concerned income tax department by virtue of the authorization letter marked as exhibit 10 appeared before the learned tribunal to dispose pursuant to the issuance of summons to the Income Tax Department. PW-2 had filed the income tax return for the assessment year 2013-14 and 2014-15 concerning the payment of income tax by the deceased victim i.e. Shibu Shaw which were marked as exhibit 11 and 12 respectively indicating the aforesaid victim to be the assessee in the capacity

of a business man, delineating his business income for the year 2013-14 and his business income plus salary income for the year 2014-15.

12. During the cross examination of PW-2 by the insurance company, PW-2 contended as per the Income Tax Rules, papers relating to the source of income of the assessee was not required to be shown for the respective financial year of assessment of income tax. The source of income of the deceased victim was not verified by the concerned income tax department in the absence of any adverse report.

13. 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."*

14. 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."*

15. 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…"*

16. Considering the evidence of PW-2 as well as the decisions cited above, the last income tax return filed by the deceased victim prior to his death indubitably clarified and justified the yearly income of the victim for the sake of assessment of compensation.

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

17. The yearly income of the victim in view of the document marked as exhibit 12 pertaining to the assessment year 2014-15 filed on 9th of January, 2015 denoted the taxable total income to be Two lakhs twenty five thousand eight fifty only. The said document was not contradicted by the respondent insurance company before the learned tribunal. The aforesaid income tax return was filed on 9th of January, 2015 before the death of the victim resulting from the accident which occurred on 14.01.2015 and the same can be relied upon without suspicion to be a valid statement of his yearly income for the purpose of the computation of the compensation amount.
18. In view of the aforesaid decision, the claimants are entitled to an enhanced rate of 20% with regard to loss of estate, loss of spousal consortium and funeral expenses for the period of 2014-2015.
19. 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. 8,86,000/- is modified as follows:-

Annual Income	2,25,850/-
Income Tax Deduction	640/-
Less Annual Income (2,25,850-640)	2,25,210/-
Future Prospect to be added (40%)	90,084/-
	3,15,294/-
Less 1/3rd Personal Expenses	1,05,098/-
	2,10,196/-
Multiplier to be "17"	X 17

[4] 2017(4)TAC 673(S.C)
[5] (2009) 6 SC 121

	35,73,332/-
General Damages to be added (20%)	84,000/-
Total	36,57,332/-

20. The learned advocate for the appellants/claimants submitted that the appellants/claimants have withdrawn a sum of Rs.8,86,000/-. The appellants/claimants are entitled to a sum of Rs.36,57,332/- along with 6% interest 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.
21. The learned advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs.36,57,332/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the Learned Registrar General, High Court Calcutta within four weeks from the date of passing of this order.
22. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the amount to the present appellants/claimants in equal proportion as mentioned in the award passed by the Learned Court of Motor Accident Claims Tribunal, Additional District and Sessions Judge, 2nd Court at Asansol being MAC Case No.85/2015 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Courts fees.
23. The instant appeal being FMA 869 of 2023 is accordingly disposed of along with connected applications, if any.
24. Interim orders, if any, are vacated.

25. Parties to act upon the server copy of this judgment.

26. The urgent certified copy of this order be provided complying terms and conditions.

(Ananya Bandyopadhyay, J.)