**IN THE HIGH COURT AT CALUTTA**
**Civil Appellate Jurisdiction**

**08.03.2024**
**SL No. 16**
**Court No. 551**
**Ali**

**FMA 977 of 2023**

**Indira Patra (Jana) & Ors.**
**Vs.**
**United India Insurance Co. Ltd. & Anr.**

Mr. Pingal Bhattacharyya,
Mr. S. Biswas
………. for the appellant.

Mr. Parimal Kumar Pahari
…for the Insurance Co.

The instant appeal has been preferred against the judgment and award dated 7th December, 2021, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, FTC-II, Tamluk, Purba Medinipur, in MAC Case no. 22 of 2017.

The brief facts of the case is that the present appellants being the claimants preferred an application before the learned Tribunal under Section 166 of M.V. Act on the ground that their predecessor died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the Insurance Company.

The claim case was contested by the Insurance Company by filing written statement.

The learned Tribunal after hearing the parties and after receiving the evidences has awarded a sum of Rs.46,87,270/- towards the compensation and directed the Insurance Company to pay the compensation.

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

Learned advocate, Mr. Pingal Bhattacharyya appearing on behalf of the appellants/claimants submits that there are only single grounds in the instant appeal to be agitated before this Appellate Court. The learned Tribunal at the time of assessing the compensation has calculated the income of the deceased to be Rs.2,93,170/- per annum. He argued that the deceased was a self-employed and he used to submit the Income Tax Return before the concerned department. In the Income Tax Return it would be revealed that the earning of the deceased was Rs.3,93,172/- but the learned Tribunal has erroneously deducted Rs.1,00,000/- towards his payment under Chapter-VI(A) of the Income Tax Act.

Mr. Bhattacharyya further submits that the deduction towards Chapter-VI(A) is the amount which he used to invest in LICI and other to investment and that such investment cannot be deducted from the yearly income of the deceased.

Learned advocate, Mr. Parimal Kumar Pahari appearing on behalf of the Insurance Company submits that the income of the deceased appearing in the Income Tax Return for the

Assessment Year 2014-2015 can be taken to be the correct income of the deceased. Mr. Pahari further submits that the Tax component i.e. Rs. 9,317/- has to be deducted from the income of the deceased.

Heard the learned advocates perused the Income Tax Return submitted by the deceased for the Assessment Year 2014-2015. The deceased died in a road traffic accident on 04.05.2015. The Tax Return submitted by the deceased for the Assessment Year 2014-2015 is the last Income Tax Return submitted by the deceased prior to his death. From the said return, it appears that the gross total income of the deceased was stated to be Rs.3,93,172/-. The Tax payable upon such income was assessed as Rs. 9,317/-. The rebate was available upon such computation under Section 87(A) of Rs.2,000/-. So, after deduction of such rebate from the Tax component, the Tax payable is Rs.7,317/-, There is a cess or education of Rs220/-. So, after adding the education cess the net Tax liability appears to be Rs.7,537/-. So, it appears that for calculation of the just and proper compensation of this case the income of the deceased would be Rs.3,93,172/-less Rs.7537/-. So, after deduction the Tax component the annual income of the deceased come to Rs. 3,85,635/-. No other ground has been raised by the appellant.

Considering the above observation the award passed by the learned Tribunal need be modified.

Considering the all aspects, the just and proper compensation of this case is as follows:-

**<u>Calculation of compensation</u>**

| | |
|---|---|
| 1. Annual Income | :Rs.3,85,635/- |
| 2. Add: 40% Future Prospects | :Rs.1,54,254/- |
| | :Rs.5,39,889/- |
| 3. 1/4th Deduction towards personal and living Expenses | :Rs.1,34,972/- |
| | :Rs.4,04,917/- |
| 4. Multiplier 15 (Rs.4,04,917/- X 15) | :Rs.60,73,755/- |
| 5. Add: General Damages | :Rs.70,000/- |
| | :Rs.61,43,755/- |
| 6. Less: Award already received | :Rs.46,87,270/- |
| | **:Rs.14,56,485/-** |

After calculation the award comes to Rs. 61,43,755/-. The claimant has already received the awarded sum of Rs.46,87,270/- so the balance award comes to Rs.14,56,485/-. 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 through the office of the learned Tribunal within eight weeks. On such deposit the office of the learned Tribunal shall disburse the same to the claimants according to the direction of the learned Tribunal subject to 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.

The instant **FMA 977 of 2023** is disposed of.

All connected 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.)**