IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

FMA 313 of 2023
With
IA No.:CAN/3/2024

United India Insurance Co. Ltd
Versus
Aman Bazaj & Ors. With

COT 43 of 2023
With
IA No.:CAN/1/2024

Aman Bajaj

Versus

United India Insurance Co. Ltd. & Anr.

For the appellant Insurance Co.	**:**	**Mr. Rajesh Singh, Adv.**
For the respondents	**:**	**Mr. Ashique Mondal, Adv.,** **Mr. Arabinda Pal, Adv.,** **Mr. Saswata Bhattacharya, Adv.**
Reserved on	**:**	**21.08.2024**
Judgment on	**:**	**06.09.2024**

Subhendu Samanta, J.

1. The instant appeal has been preferred against the judgment and award dated 23rd December, 2022 passed by the Learned Judge, Motor Accident Claim Tribunal, FTC 4th Court, Alipur South 24 Parganas in MAC Case no. 627 of 2018.

2. The brief fact of the case is that one Aman Bajaj (deceased claimant) suffered a road traffic accident on 24th

January, 2018 causing serious bodily injury followed by hospitalisation and prolonged treatment resulted to amputation of lower limb.

The injured claimant filed an application before the Learned Tribunal for getting compensation u/s 166 of MV Act. The United Insurance Company Limited contested the case by filing written statement. The Learned Tribunal after hearing the parties and after receiving the evidences from both sides has awarded a sum of Rs. 1,35,42,417/- towards the compensation and directed the Insurance Company to pay the compensation together with 06% interest per annum from the date of the filing of the claim case.

3. Being aggrieved by and dissatisfied with the said award the Insurance Company has filed the instant appeal. The claimant also preferred one cross-appeal against the same award. Let the appeal along with the cross-appeal be taken up together for uniformity of decision.

4. Mr. Rajesh Singh, Learned Counsel, appearing on behalf of the Insurance Company has demonstrated the grounds of appeals as follows:-

Firstly, <u>income of the victim as assessed by the Learned Tribunal is erroneous.</u>

Secondly, <u>future medical expenses is exorbitant</u>.

Thirdly, <u>functional disability has reduced due to use of prosthetics.</u>

Fourthly, <u>interest awarded by reimbursement of medical expenses and future expenses is erroneous</u>.

Fifthly, <u>direction for not deducting TDS on interest portion is erroneous.</u>

5. Mr. Ashique Mondal, Learned Counsel appearing on behalf of the respondent/claimant has demonstrated the ground of cross-appeal as follows:-

Firstly, functional disability should be 100% instead of 80%.

Secondly, non-pecuniary damages not awarded adequately.

<u>Point No.1 Income</u>

Mr. Singh argued that the Learned Tribunal has erroneously assessed the annual income of the victim as Rs. 8,23,173/-. Though it has never been proved before the Learned Tribunal. Mr. Singh further contended that the Learned Tribunal has considered the Income Tax Return of the victim for the assessment year 2018-19 for the purpose of calculation of annual income. The Learned Tribunal has failed to appreciate the fact that the claimant being the victim has filed the income tax return only after the date of accident. The inflated amount was mentioned in the ITR for the assessment year 2018-2019. There are every scope for the claimant to incorporated the inflated amount in the Income Tax Return for the purpose of getting more amount of compensation. The huge amount of income have never been proved before the learned Tribunal except the purported ITR. Mr. Singh further argued that the income of the victim from salary as well as from other source regarding agent has not been properly proved. He further submits that the Hon'ble Supreme Court has specifically observed in several cases that the income tax return filed after the date of accident cannot be accepted.

6. In support of his contention Mr. Singh has cited decisions follows:-

1. V. Subhalaxmi Vs. S. Lakshmi 2008 (1) TAC 817 (SC)
2. Amrit Bhanu Shali Vs. National 2012 (40 TAC 775 SC
3. Kalpanaraj and Ors. Vs. Tamil Nadu State Transport Corporation (2015) 2 SCC 764
4. Shashikala & Ors. Vs. Gangalakshmamma 2015 (2) TAC 867 SC
5. United India Vs. Indiro Devi 2020 (4) SCC 228
6. Malarvizhi & Ors. Vs. United India 2015 (9) SCC 150 SC
7. Sangita Arya and Ors Vs. Oriental Co. Ltd. (2020) 5 SCC 327
8. Smt. Anjali and Ors. Vs. Lokendra and Ors. AIR 2023 SC 44
9. New India Assurance Vs. Amit Ghosh FMA 1119 of 2019 (Calcutta)
10. Smt. Mousumi Banerjee Vs. Sri Jitendra Singh FMA 900 of 2018

7. Mr. Ashique Mandal Learned Counsel submits that the salaried income of the victim has been proved on behest of the Insurance Company themselves. Moreover, the ITR submitted by the victim after the date of accident has been sufficiently proved by the Income Tax Department and it was exhibited before the Learned Tribunal. The evidentiary value of the said exhibit cannot be denied. He further argued that the victim has filed Income Tax Return for assessment year 2016-17, 2017-18 and 2018-19.

8. Mr. Mandal further argued that according to the provisions of Finance Act, 2016, one assesse can file a return

after one year from the end of relevant Financial Year. Thus the respondent No. 1 could file a return up to 31.03.2018 for the financial year 2016-17. Mr. Mandal further argued that from the said provision Income Tax Return for the Assessment Year 2016-17 and AY 2017-18 could have been correctly filed within 31.03.2018; in the present case the respondent had filed the ITR in those relevant year on 29th March 2018 thus, the said returns are thus valid and legal.

9. Mr. Mandal further argued that for the Assessment Year 2018-19, according to the press release dated 08.10.2018, published Press Information Bureau, Government of India, Ministry of Finance, the last date of filing is 31st October 2018. The respondent has filed the Income Tax Return for AY 2018-19 on 30.08.2018; so it is within the due date and it is acceptable and legal. Mr. Mandal further argued that the ITR cannot be manipulated as it has calculated prior income and expenditure of the victim. He further argued the Learned Tribunal has also taken note regarding the TDS deducted on income "other than the salary" which is prior to the accident. Since the TDS had been deducted so there would be no scope of manipulation. He further argued that the income of the victim was well proved by the witness of Insurance Company (DW-1). The gross income and the income certificates issued by the employer of the victim has been sufficiently proved by the evidence of DW 1. He argued that the DW 1 is the witness of insurance Company, who deposed against the interest of the

Insurance Company but the Insurance Company has neither declared the witnesses as hostile under the provisions of Section 154 of Indian Evidence Act, nor any proceeding was initiated against the said witness for making false affidavit before a court of law. The income from the salary of the victim has been sufficiently proved. Thus, the observation of the Learned Tribunal regarding the income of the victim is legally correct and it cannot be challenged in the appeal.

Regarding the evidentiary value of the exhibited documents in Motor Vehicle Claim Case. Mr. Mandal has cited decisions reported in

1. Mohammed Siddique & Anr. V. National Insurance Co. Ltd. & Ors. reported in (2020) 3 SCC 57
2. Lionel Edwards Ltd. Versus State of West Bengal reported in AIR 1967 Cal 191.

10. Mr. Mandal also cited the judgment of Hon'ble Apex Court regarding the value of ITR in a claim case as follows:-

1. Kalpanaraj versus Tamil State Transport Corporation reported (2015) 2 SCC 764
2. Malarvizhi and Others versus United India Insurance Company Limited and Another reported in (2020) 4 SCC 228
3. United India Insurance Company Limited versus Indiro Devi and Others reported in (2018) 7 SCC 715
4. New India Assurance Co. Ltd. versus Smt Rina Ghosh & Ors (FMAT 705 of 2021)
11. Anita Sharma and Others Vs. New India Assurance Company Limited reported in (2021) 1 SCC 171

11. Heard the Learned Advocates. Perused the judgment laws advanced by the Hon'ble Apex Court. In the claim petition,

the victim/ claimant has stated his occupation to be service and commission agent. The name of the employer has stated **J.N. Anchal Saree Private Ltd. and Air care Enterprise.** During the course of evidence the PWs, injured/victim has stated that he earned Rs. 4,00,000/- salary from **J.N. Anchal Private Limited** for the assessment year 2018-19. He also stated being commission agent under **Air care Enterprise,** he used to get commission Rs. 3, 71, 621/- for the assessment year 2018-19. It is the case of the claimant that due to such accidental injury his entire earning from the job has been lost. To prove the income, the claimant has produced one witness i.e. PW 3. He is an inspector of Income Tax Department ITR 29(Calcutta). During his deposition he filed three Income Tax Returns filed by the victim of assessment year 2016-17, 2017-18, 2018-19. No further evidence were produced by the claimant to prove the income. The Insurance Company has called one employee of **JN Anchal Private Limited** to justify the income of the victim. During cross-examination, the DW 1 has identified salary certificate i.e. the salary of the victim for the year 2016-17 and 2017-18. The salary certificates were marked as Exhibits.

12. No document has been proved by the claimant regarding his income as a commission agent under **Air care Enterprise.**

13. The moot question of the appeal is whether the income appearing in the ITR filed by the victim is justified to

assess income of the victim. The same issue was raised before the Learned Tribunal. the Learned Tribunal in, deciding such issue followed the observation of this court passed in **National Insurance Company Limited Vs. Sohna Singh 2019 Supreme (Cal) 782.** The Learned Tribunal is a view that the income appearing in the ITR for the assessment year 2018-2019 should be calculated to be the annual income of the deceased for the purpose of just and proper compensation of this case.

14. It appears from this case that three ITRs were exhibited before this Court; all the three Income Tax Returns were filed by the victim/claimant after the date of accident. Let me consider what is the view of the Hon'ble Apex Court regarding the acceptance of income of the victim appearing in the ITR.

15. In case of **V. Subha Lakhsmi (supra)** the Hon'ble Apex Court has held that:-

> **15. So far as the question in regard to the quantum of compensation awarded in favour of the appellants is concerned, we are of the opinion that the High Court has taken into consideration all the relevant evidences brought on record.**
>
> **The accident took place on 7.5.1997. Income tax returns were filed on 23.6.1997.**
>
> **The Income Tax Returns (Exp. P-14), therefore, have rightly not been relied upon.**
>
> **Ex.P-8 is a deed of lease. It was an unregistered document. Although the document was purported to have been executed on 10.4.1993, the genuineness thereof was open to question.**

> **The stamp paper was purchased in the year 1983 but an interpolation was made therein to show that it was purchased in 1993. The purported receipts granted by the tenant were also unstamped.**

16. In **Amritvanu Shali (Supra)** the Hon'ble Apex Court held that:-

> **The Appellants produced Income Tax Returns of deceased-Ritesh Bhanu Shali for The years 2002 to 2008 which have been marked as Ext.P-10-C. The Income Tax Return for the year 2007-2008 filed on 12.03.2008 at Raipur, four months prior to the accident, shows the income of Rs. 99,000/- per annum. The Tribunal has rightly taken into consideration the aforesaid income of Rs. 99,000/- for computing the compensation.**

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16. In **Kalpanaraj and Ors (supra)** the Hon'ble Apex Court has held that:-

> **7. Accordingly, the High Court held that the unsubstantiated oral evidence alone of PW 1 cannot be taken into consideration in the light of Exts. A-8, A-9 and A-10. The monthly income of the deceased is therefore taken as Rs 3115 per month for computation of the multiplicand on the basis of net average income of the deceased calculated as per the income tax return produced as evidence on record. Therefore, the compensation determined under the head of "loss of income" of the deceased was determined by the High Court at Rs 4,86,000.**

17. In **Sashikala and Ors. (Supra)** the Hon'ble Apex Court has held that:-

> **16. Without adverting to the issue whether additions are to be made towards future prospects or not, as it is obligatory on the part of the Court to award just compensation, considering the age of the deceased and the nature of business he was doing, in my view, the income of the deceased as stated in the income tax return for the year 2006- 07 i.e. Rs. 2,02,911/- may be taken as the income of the deceased. Ten per cent of the said amount i.e. Rs. 20,290/- is to be deducted towards income tax and the remaining comes to Rs. 1,82,620/-. The amount to be deducted for professional tax is Rs. 2,400/- and after deducting the same, the balance comes out to Rs. 1,80,220/-. The income from the house property for the year 2006-07 is shown to be Rs. 20,000/- and after deducting the same, the net amount comes to Rs. 1,60,220/-. Deducting 1/4th (one/fourth) towards personal expenses which comes out to Rs. 40,055/-, the loss of dependency/loss of contribution is arrived at Rs. 1,20,165/- per annum.**

18. In the Case of **United India Vs. Indiro Devi, Malarvizhi, (Supra), Sangita Arya, Smt. Anjali (supra)** the Hon'ble Apex Court has held the similar view that the ITRs filed before the accident can be considered to be the income of the victim for the purpose of determination of the compensation.

19. In **New India Assurance Company Vs. Amit Ghosh (FMA 1119 of 2019)** the Division Bench has held that:-

> **The larger issue that the insurance company raises is as to whether income- tax returns filed after the date of the accident could be given any credence when previous income-tax returns of the victim were not produced to ascertain**

whether the later returns bore any resemblance to the earlier returns.

It is always possible that a person inflates his income and offers to pay nominal tax thereon. As such, there is sufficient basis to the insurance company's suspicion that the returns for assessment years 2015-16 and 2016-17 were filed for the purpose of creating evidence as to the victim's income, particularly since no previous income-tax return of the victim was produced before the tribunal.

At the same time, particularly since a valid drug licence in the name of the victim was produced before the tribunal, the veracity of such licence cannot be questioned nor can the victim's connection with the business of selling medicine be totally discounted. Indeed, in the balance-sheets appended to the income-tax returns, sales and purchases were shown. Though it is possible to tamper with such figures and show inflated sales and purchases, the insurance company did nothing to disprove that the victim had a business of selling medicines. In such a situation, in the state of the evidence as had panned out before the tribunal, it could not be said that the victim had no medicine business at all. But even if it is accepted that the victim had a medicine business at the time of the accident, the amount of income claimed in the claim petition has to be taken to be the more appropriate figure rather than the exaggerated position sought to be demonstrated in the income-tax returns. Since the claimant admitted in the claim petition that his income other than as a security guard was Rs.6,000/- per month, the claimant has to be satisfied if such amount is taken to have been his income from his medicine business at the time of the accident.

20. A Co-ordinate Bench of this court in **Smt. Mousumi Banerjee Vs. Jitendra Singh** in **FMA 900 of 2018** has also not accepted the income of victim appearing in the ITR filed after the accident.

21. In the case of **Malarvizhi (supra)** the Hon'ble Apex Court as of view that the ITR is a statutory document so, reliance must be placed upon such document in calculating the compensation of the victim.

22. It is the observation of Hon'ble Apex Court in all the matters that the ITR cannot be denied if it is filed prior to the accident or appears to be justified regarding the income of the victim. In **Sohona Singh Vs. National Insurance Company Limited.** The Division bench of this Court has relied upon the ITR filed by the victim after the date of accident. Learned Tribunal also excepted the view of the Division Bench passed in **Sohna Singh** in the case of **Sohna Singh** the Division Bench of this Court has accepted the income appearing in the ITR which was filed after the accident only on the ground that the form 16 issued by the employer of the victim regarding the income before his accident has been sufficiently proved along with TDS Certificates.

23. In the present case no such Form 16 or certificate of TDS was placed before the Learned Tribunal. It further appears to me that the three ITRs were filed before this court. while it is the case of the victim that he was engaged with such occupation since long. It comes to my mind that why the victim has not filed the ITRs prior to the assessment year 2016-17. What prompted the victim only to file the ITRs after the date of accident. The conduct of the victim/claimant in filing the three years ITR just after the date of accident is not appears to me

truthful. No form 16 were produced or TDS certificates were placed before the Learned Tribunal as in the case of **Sohna Singh.**

24. The Learned Tribunal has discussed the law laid down by this court in **Sohna Singh** but has not properly read out the entire direction or the proposition law enumerated in **Sohna Singh (supra).** In the case of **Sohna Singh,** there are positive evidences on behalf of the claimants regarding the income and tax deduction at source of the victim. In this present case, the claimant has pleaded that he had earnings from service as well as Commission Agent. Though the certificates and income of the petitioner from **JN Anchal Saree Private Limited** has been proved but nothing has been proved before the Learned Tribunal regarding the income of the victim as a Commission Agent through his proposed employer **Air Care Enterprise.** It is the case of the appellant that the income certificate of victim, placed through DW 1, is not at all valid document. It is true that in a claim case under Motor Vehicles Act, facts are required to be proved on the principle of preponderance of probabilities. The evidence has placed before this court regarding the salaried income of the victim including payment vouchers. Though Pay Slips were not placed but it has been specifically proved that the victim used to earn Rs. 40,000/- per month as a salary from his employer **JN Anchal Saree Private Limited.** Moreover the Insurance Company has not placed any contradictory document to counter the

evidentiary value of Exhibit 27. Moreover the DW 1 is the witness, called by the Insurance Company themselves; but the Insurance Company has not filed any application for declaring DW 1 has hostile thus the evidentiary value of DW 1 cannot be wiped out. It has been specifically proved that the victim used to earn Rs. 39,870/- (less P. Tax) towards the monthly income from **JN Anchal Saree Private Ltd.**

24. The Learned Tribunal has committed error by placing reliance upon the Income Tax Return submitted before him when there are no proof of income in respect of Commission Agent. In my view the Income Tax Return filed with the authority though may be a statutory document but at the same time such IT return being a personal declaration of the assessee/victim which was filed just after the accident, and without any proof of supporting income, placing reliance upon such document would be not justified. The assessee/victim may have the every opportunity to state the inflated amount in the ITR for getting more amount of compensation. Under the above observation, I am of a view that the monthly income as assessed by the Learned Tribunal is erroneous; the monthly income should be correctly calculated to be Rs. 39,870/- so the annual income of the victim would be Rs. 4,78,440/-

25. **Future medical expenses:-**

Mr. Singh submitted that the Learned Tribunal has awarded exorbitant amount under the heading of future medical expenses and provisions for attendant and transportation in this case for the purpose of just and proper compensation future medical expenses should be awarded less.

26. Mr. Mandal submits that the claimant has lost his limb and he was suffering till today due to such elements thus the future medical expenses was awarded correctly.

27. It appears to me that during the pendency of this instant appeal the victim has expired. Thus it appears that the provision of future medical expenses and attendant and transportation charge is not at all required due to the demise of the victim. However, the present claimants/ heirs of the victim are entitled to get the future medical expenses and attendant and transportation charges since the discharge of victim from the hospital till his date of death. Considering the overall situation it appears to me that the victim was discharged from the hospital in the year 2018 and expended money for further medical expenses and transportation till 2024. Thus the claimants are entitled to get future medical expenses and for attendant and transportation charges Rs. 1,00,000/- each under both the heads.

28. **Whether functional disability has been reduced due to use of prosthetics :-**

Mr. Singh submits that the claimant/victim was provided re-imbursement of expenses towards prosthetics amount of Rs. 11,41,000/- The functional disability must have reduced due to the use of such prosthetics. Mr. Singh argued that by using such artificial limb one can run in “Olympic

Race”. In the situation he argued that the functional disability as assessed by the Learned Tribunal i.e. 80% must have reduced by using of such prosthetics. Mr. Mandal has argued that the present victim has lost his all job due to the accident; by such accident one of his leg was amputated followed by several ailments in the entire body. Thus the argument advanced by the Insurance Company is not justifiable.

29. Heard the Learned Advocates. Perused the evidences. The Insurance Company has never advance a single question to the victim petitioner (PW) that his reduced disability has been increased due to the use of prosthetics (artificial limb) So, it was silent before the Learned Tribunal as to whether the functional disability has reduced due to the use of prosthetics. No evidence was laid by the Insurance Company to justify that by using such artificial limb the victim used to start new job or has continued with the earlier job rather the evidence of DW 1 has clarified that after the accident the victim has lost his job.

30. Considering the same I find no justification in the argument advanced by the Insurance Company.

31. **The interest awarded on reimbursement of the medical expenses and future expenses :-**

It appears that the victim has expired during the pendency of this matter. Thus I find no justification to comment on the same ground as future expenses is not awarded to the victim. However in my view the interest upon the compensation is single component which the Learned

Tribunal has awarded. I find no decision to intersect the interest component which was awarded by the Learned Tribunal accordingly; this issue is decided by the Insurance Company.

32. **Whether direction for not deducting TDS or interest portion is erroneous:-**

Mr. Singh submits that the observation of the law on the basis of **Bajaj Allianz General Insurance Company Limited Vs Union of India and Ors.** has observed that TDS is not attracted on the interest component by the compensation awarded till the date of judgment but TDS is applicable interest pay passed the judgment and Tax has to be calculated as income from other sources. He submits that according to the provision of Section 194A(3) of Income Tax Act the insurance Company is duty bound to deduct the TDS on and upon the interest payable to be claimants if it is caused 50%. Mr. Singh further submits the observation of the Learned Tribunal is not justifiable in the eye of law. Mr. Mandal has elaborately discussed about the issue placed the several judgments regarding the relevant precedent surrounding the issue. The relevant precedents are

1. **Smt. Hansaguri Prafulchandra Ladhani Vs. The Oriental Insurance Company Ltd. & Anr. reported in 2007 ACJ 1897.**
2. **Gauri Deepak Patel & Ors. Vs. The New India Assurance Co. Ltd. & Anr. reported in 2009 SCC Online Bom 2047**
3. **Hon'ble Himachal Pradesh High Court's Divison bench in Court on its own motion Vs. The H. P. State**

Cooperative Bank Ltd. and Ors. reported in 2014 SCC Online HP 4273

4. Managing Director Vs. Chinnadurai Reported in AIR 2016 Madras 146

5. New India Assurance Co. Ltd. Vs. Bhoyabhai Haribhai Bharvad & Ors. reported in 20156 SCC Online Guj 7399

6. Commissioner of Income Tax, Rajkot Vs. Smt. Hansaguri Prafulchandra Ladhani Reported in (2017) 13 SCC 114

7. Govindammal Vs. District Collector & Anr. reported in 2019 SCC Online Mad 3943

8. Rupesh Rashmikant Shah Vs. Union of India And 8 Ors. reported in 2019 SCC Online Bom 1518

9. WP (civil) 534/2020 Bajaj Allianz General Insurance Co. Ltd. Vs. Union of India & Ors.

10. WP Civil 787/2021 Amit Sahni Vs. Union of India & Anr.

33. I have perused the observation of the Hon'ble High Court and the Hon'ble Supreme Court in these points Section 194 A of the Income Tax Act, requires a person response for payment of interest to be deducted tax at source in the circumstances specify therein in the second duties Clause (ix) is inserted in Section 194 A (3) of the said act which exempted income credited or paid by way of interest on the compensation amount awarded by the MACT where the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year did not exceed Rs. 50,ooo/-.

34. In **Smt. Hansaguri Prafulchandra Ladhani Vs. The Oriental Insurance Company Ltd. & Anr.** the Division bench of Hon'ble Gujrat High Court has directed that the TDS upon the interest has to be deducted after spreading the same interest amount over the relevant financial years for the period

from the date of filing of the claim petition till the date of deposit. And if it is found that the interest for the particular financial year, after spreading is more than Rs. 50,000/- than it has been deposited according to the law. the Division Bench of Hon'ble Bombay High Court has also deputed the same view. The Hon'ble Division Bench of Himachal Pradesh High court has passed an order in its own motion that the TDS is not required to be paid and the circular No. 8 -2011 (F No. 275/30/2011 IT (b)) has set aside in one of the judgments, The Hon'ble Single Bench of Madras High Court in the case of **Managing Director Vs. Chinnaduari** has observed that the TDS in respect of the interest passed on MACT is not required to be paid. Same view was adopted by the Division Bench of the Gujrat High Court in a case of **New India Assurance Company Limited Vs. Bhaja Bhai Haribhai Bharvad.** However the Commissioner Income Tax has preferred an appeal before the Hon'ble Supreme Court against the order of the Hon'ble Division Bench of Gujrat High Court passed in **Smt. Hansaguri Prafulchandra Ladhani Vs. The Oriental Insurance Company Ltd. & Anr.** wherein the Hon'ble Apex Court has set aside the order of the Division Bench and kept the points upon in the mean time the Division Bench of Bombay High Court in **Rupesh Rashmikanta Sha Vs. Union of India** has adopted a different view of **Smt. Hansaguri Prafulchandra Ladhani** and **Gouri Dipak Patel** has observed that the TDS upon the interest is not required to be deducted.

The Supreme Court in **WP (civil) 534/2020 in Bajaj Allianz General Insurance Company Vs. Union of India** has taken up a specific view for payment of TDS on the interest portion.

35. The Learned Tribunal has directed by virtue of decision of Hon'ble Apex Court in **Bajaj Allianz General Insurance Company Vs. Union of India** the TDS is not attracted on the interest component on the compensation awarded till the judgment but TDS is applicable on the interest paid paused the judgment and Tax has to be collected as income from the other sources. The observation of the Learned Tribunal appears to me not correct. So far as the observation of the Supreme Court is concerned. Let the specific portion of the judgment of the Hon'ble Supreme Court is set out as follows

> **v) The aspect of disparity in the Tax Deduction at Source (TDS) certificate in Motor Accident Claims, wherein from 10% to 20% dependent on whether the claimants have a Pan Card or not can be redressed by a direction that the Legal Services Authority or any Agency/Mediation Group should assist the claimant for obtaining a Pan Card, where the claimant does not have one, in order to avoid 20% deduction of tax at source. The format of the applications for compensation and motor accidents claims is being modified by inserting the relevant column just after the requirement to set out whether the claimant is income tax assessee or not and whether the claimant has a Pan Card or not and in case has a Pan Card to provide the Pan No. and in case the application is so pending, to provide the application/Reference No. The formats of the applications across the country be suitably amended to facilitate this process.**
>
> **Learned Additional Solicitor General appears to have addressed a communication in the larger context to the Finance Minister and we would expect the Finance Ministry to bestow urgent consideration on the same;**

36. So in my view till the matter decided finally by the Hon'ble Apex Court the Insurance Company must follow the direction of Hon'ble Supreme Court as mention above, regarding the issue of deduction of TDS on interest.

37. In considering the grounds of cross-appeal, Mr. Ashiq Mandal Learned Counsel, submits that after the accident the entire job prospect of the petitioner was lost, one leg of the petitioner was amputated thus he could not joined his duties. In this case the functional disability should be 100% instead of 80%. Having heard the Learned Counsel Mr. Mandal as well as Mr. Singh, it appears to me that the learned Tribunal has observed the issue on the basis of the judgment of Hon'ble Apex Court in **Rajkumar Vs. Ajay Kumar** Moreover, the observations of the Learned Tribunal is on the basis of the evidence of a doctor on record, thus I find no justification to interfere with the finding. In this case the functional disability was correctly calculated by the Learned Tribunal to be 80%.

38. It is further ground of the Cross-appeal that non-pecuniary damages were not awarded adequately in this case.

39. It appears that after the accident the claimant has undergone by surgery followed by long hospitalisation. The Learned Tribunal has awarded Rs. 3,00,000/- for pain and suffering and also awarded future medical expenses as well as the provision of attendant and transportation charges.

40. Considering the observations of the Learned Tribunal I find that the non-pecuniary damages were awarded adequately. Under the above observation the award passed by the Learned Tribunal requires modification.

The claimants are also entitled to get the other component awarded by the Learned Tribunal is as follows:

Monthly Income	Rs. 39, 870/-
Yearly Income	Rs. 4,78,440/-
Add Future Prospects 25% (**NICLTD Vs. Pranay Sethi 2017) 4TAC 673 (SC)**	Rs. 1,19,610/- + Rs. 4,78,440/- Rs. 5,98,050/-
Applicable Multiplier 13*5,98,050/-	Rs. 77,74,650/-
Functional disability 80%	62,19,720/-
Pain and suffering	Rs. 3,00,000/-
Future Medical Expenses	Rs. 1,00,000/-
Provision for attendant and transportation	Rs. 1,00,000/
reimbursement of medical expenses	Rs. 9,00,171/-
reimbursement of expenses towards prosthetics	Rs. 11,41,000/-
Total:	Rs. 87,60,891/-.

41. The award shall carry the 06% per annum from the date of filing of the application till its actual realisation.

42. It appears that the Insurance Company has already deposited the entire awarded amount as directed by this court with the office of the Learned Registrar High Court Calcutta and it gaining interest. The claimant has already withdrawn an amount of Rs. 30 lakh in view of the order of this court dated 13th September, 2023. The office of the Learned Registrar General High Court Calcutta is directed to calculate the award as passed by this court and disburse the same in the name of the claimants equally within 04 weeks from the date of passing of this order. After such disbursement, the residue in the account, be refunded to the insurance company along with the accrued interest.

43. The claim of compensation is subject to ascertainment of payment of deficit Court Fee, if any.

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

44. Under the above observation the instant FMA along with Cross appeal be disposed of. Connected application if pending, are also disposed of.

45. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)