

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

25.04.2024
SL No.8 & 9
Court No. 3
Ali

FMA 377 of 2024

Reliance General Insurance Co. Ltd.

Vs.

Arati Chakraborty & Ors.

With

COT 105 of 2019

Arati Chakraborty & Ors.

Vs.

Reliance General Insurance Co. Ltd.

Ms. Gopa Das Mukherjee, Adv.

..... for the appellant.

Mr. Saidur Rahaman, Adv.

...for the respondents/claimants.

The instant appeal has been preferred against the Judgment and Award dated 28th May, 2019, passed by the learned Judge, Motor Accident Claims Tribunal, ADJ, Fast Track, 1st Court, Raiganj, Uttar Dinajpur, in MAC Case no. 189 of 2015.

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

The claim case was contested by the insurance company by filing written statement and also by obtaining a leave under Section 170 of M.V. Act.

After hearing the parties and after receiving the evidences the learned tribunal has awarded a sum of Rs.42,14,522/- together with @ 6% interest per annum from the date of filing of the claim application as compensation and directed the Insurance Company to pay the compensation.

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

The claimants also preferred one separate cross appeal being COT No.105 of 2019 against the same award.

Let the appeal and the COT be taken up together for uniformity of the judgment.

Ms. Gopa Das Mukherjee, learned advocate appearing on behalf of the Insurance Company submits that there are only single grounds to challenge the impugned award. She submits that the learned tribunal has adopted the income of the deceased appearing in the self-assessed ITR for the Assessment Year 2012-2013. No document or evidence was produced before the learned tribunal to prove the business of the deceased. She further

argued that the Tax Return does not contain the specific name of the business as well the Tax Returns are not beyond doubt. She further submits that Trade Licence or other papers for business was not produced by the claimants before the learned tribunal. She again argued that the learned tribunal has misguided himself to assess the income of the deceased. The income or avocation of the deceased was not properly proved. Thus, in this case, the notional income may be adopted.

Learned advocate, Mr. Rahaman submits that the learned tribunal has correctly adopted the income of the deceased on the basis of the ITR. He further submits that the ITRs were produced by the claimants before the learned tribunal and these were proved through the evidence of PW-6 who is one of the employees of the Income Tax Department. He further submits that the ITRs are the statutory document. So, the income of the deceased has been correctly assessed by the learned tribunal. He frankly submits that the claimants have proved the ITR for the Assessment Years 2011-2012, 2013-2014 and 2014-2015. He also submits that the last ITR for the Assessment Year 2014-2015 was filed by the widow of the deceased. He also submits that the learned tribunal has correctly adopted the income of

the deceased from the ITR for the Assessment Year 2012-2013.

Heard the learned advocates.

Let me consider whether the income of a deceased can be considered through the ITR produced by him prior to his death without any document of proper business. The observation of Hon'ble Apex Court is very much relevant to that effect passed in ***Malarvizhi Vs. United India Insurance Co. Ltd.***

“The tax return indicates an annual income of Rs.2,11,131/- in the relevant assessment year. Mr. Jayanth Muth Raj, learned Senior Counsel appearing on behalf of the appellant contended that other documents were marked which reflected the income of the deceased. 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. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for Assessment Year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased”.

The Hon'ble Apex Court in ***Malarvizhi & Ors. (supra)*** has held that the income Tax document is a statutory document and reliance can be placed

upon the ITRs which were filed prior to the death of the deceased. The Hon'ble Apex court has also guided that the higher amount income appearing in the ITR has to be taken for the purpose of assessing the income of the deceased in a case under Section 166 of the M.V. Act.

Following the observation of the Hon'ble Apex Court in ***Malarvizhi & Ors. (supra)*** also observing the fact that the returns were submitted prior to the accident by the deceased himself when there is no scope for filing those returns in any authority to assess his income, the self assessed ITRs can not be disbelieved. It is the general norms, a person having business shall disclose his income lesser to avoid the Tax liability. So, considering the fact, I find no discrepancy in the impugned award by adopting the income of the deceased through the ITR.

In considering the cross appeal, it appears to me that the learned tribunal has held that the deceased was engaged in a business of Hat-Faria. Learned tribunal also opined that the activities of Hat-Faria has been restricted by the Government of West Bengal, so that, the farmers can sale their products directly to the customers.

The observation of the learned tribunal is not at all relevant to the fact and circumstances of

this case where the death of a person is in question; and the claimants have filed an application under Section 166 of M.V. Act.

Considering the same and considering the observation of the learned Apex Court in **National Insurance Co. Ltd. Vs. Pranay Sethi**, in my view, the claimants are entitled to get the future prospects and the general damages as per observation of the Hon'ble Apex Court. In this case, the deceased was within the age group of 40-50 years. So, the future prospects would be 25% to his establish income. The claimants are also entitled to get the general damages of Rs. 70,000/- instead of Rs.55,000/-.

Furthermore, the award shall carry @ 6% per annum simple interest according to the provision of Section 171 of the M.V. Act.

Under the above observation, the award passed by the learned tribunal requires modification.

Calculation of compensation

1. Annual Income	:Rs. 1,88,558/-
2. Add: 25% Future Prospects	:Rs. 47,139/-
	:Rs. 2,35,697/-
3. Less:1/3 rd deduction	:Rs.78,565/-
	:Rs. 1,57,132/-
4. Multiplier 13 (Rs.1,57,132/- X 13)	:Rs.20,42,716/-
5. Add: General Damages	:Rs.70,000/-
	:Rs.21,12,716/-
6. Add: Medical Expenses	:Rs.25,25,344/-
Total Compensation	:Rs.46,38,060/-

After calculation, the award comes to Rs. Rs. 46,38,060/-. The Insurance Company is directed to pay the compensation together with interest @ 6% per annum from the date of filing of the claim application through the office of the learned Registrar General, High Court, Calcutta. It appears that the Insurance Company has deposited the earlier awarded amount together with interest amounting to Rs.62,68,633/-; the office of the learned Registrar General, High Court, Calcutta is directed to disburse the same in the name of the claimants equally within four weeks. After receiving the same the claimants shall inform the office of the Insurance Company regarding the amount they have received along with their bank particulars. After receiving the information from the claimants the Insurance Company shall disburse the balance amount, if any, within six weeks thereafter, directly to their bank.

The payment of compensation is subject to the 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.

LCR be sent down at once, if at all received.

The instant **FMA 377 of 2024** along with **COT 105 of 2019** is disposed of.

All connected pending 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.)