

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

(FMAT 985 of 2014)

FMA 772 of 2022

Smt. Bedana Patra (Mandal) & Ors.

Vs.

The National Insurance Company Ltd. & Anr.

For the Appellants

: Mr. Amit Ranjan Roy.

**For the Respondent/
Insurance Company**

: Mr. Kanak Kiran Bandyopadhyay.

Hearing concluded on

: 21.06.2024

Judgment on

: 27.06.2024

Shampa Dutt (Paul), J.:

1. The present claims appeal has been preferred against the Judgment and Award passed on 27th November, 2013 by the Motor Accident Claims Tribunal, Fast Track, 2nd Court, Tamluk, Purba Medinipur in M.A.C. Case No. 122 of 2013/ 53 of 2011 **under Section 166 of the Motor Vehicles Act, 1988.**

2. **The facts:-**

“On 11.01.2011 at about 8.00 p.m. when Subhash Mondal was coming from Ruchi after completing his work from Haldia side, on Haldia-Mechada via Tamluk road near Hordkhali more just after crossing Nandakumar more, one Tata-Sumo car bearing No. WB 30C/8103 coming from Haldia side, at high speed, dashed and knocked down Subhash who was coming on his by-cycle. As a result, Subhash sustained severe injuries and when he was taken to Haldia S.D. Hospital, he died and his by-cycle was totally damaged. That accident was caused due to rash and negligent driving of the driver of the said offending vehicle and in consequence of such accident Subhash Mondal died.

The owner did not contest but the insurance company appeared and filed the written objection with entire denial of contention of the petition. It was further claimed by insurance company that for such accident the driver of the offending vehicle is not at all liable because he did not run the vehicle in a rash and negligent manner as alleged. It was further contended that the accident was caused due to negligence or fault on the part of the victim because he was coming on a by-cycle and on losing his control had fallen down in front of the said vehicle which was coming at an average speed.”

3. Sutahata **P.S. Case No. 7 of 2011** dated 12.01.2011 was started under Sections 279/337/304A/338/427 IPC in respect of the accident.

4. The claimants examined three witnesses and proved relevant documents marked Exhibits 1 to 5, being the FIR, Charge-sheet, P.M. Report and wage slips etc.
5. **On considering the materials and evidence on record, the learned Tribunal granted compensation as follows :-**

“M.A.C. Case No. 122 of 2013

M.A.C. Case No. 53 of 2011

Dated: 27th November 2013

PM report establishes that at the time of death the deceased was 40 year of age. So, regarding the age of the deceased I am of the same view of the OP No. 2 i.e. he was around 40 years of age at the time of accident. So, at the time of computation of compensation, the age should be considered as 40 years of the deceased. Regarding income of the deceased at the time of accident some documents are filed by the claimants i.e. the wage certificate (Exhbt. 5 series) and from where it has come into my notice that in the month of June the victim received about Rs.6711/- and on subsequent months from those documents it is revealed that in total he used to earn around Rs.7,000/- per month from his place of service at the time of accident. So, his yearly income will go Rs.7,000/- x 12 = Rs.84,000/-. As per my above stated observation the claimants are three in numbers so, the statutory deduction must be 1/3rd of the total income and so the loss of income will be Rs.84,000/- - Rs.28,000/- = Rs.56,000/-. As the deceased is not found having any expertise in any field so, the concept of future prospect cannot be considered herein. The other argument regarding dependents of the wife as she is working cannot be considered as any bar for awarding compensation. Firstly, the OP No. 2 fails to establish her actual income and also fails to establish the fact that she was not at all dependent of the deceased husband at the time of accident. So, in my opinion the three claimants are entitled to get compensation @ as to be determined by this tribunal following the rules of M.V. Act. As the deceased is found as 40 years of age at the time of accident, the multiplier will be 15 and thus, the total compensation amount will

be Rs.56,000/-x 15 = Rs.8,40,000/-and in addition to that Rs.4,500/- will be given for funeral expenses and so total amount will be Rs.8,44,500/-. As the claimants are in relation of the deceased as wife, minor son and widow mother so, the amount will be divided amongst the claimants accordingly. It is thus finally observed that the insurance company will pay the total amount of compensation of Rs.8,44,500/- @ as given below in detail with rate of interest 9 per cent per annum from the date of filing of this case and within 2 months from the date of order in default the rate of interest will be carried on till recovery of compensation amount.

Out of total amount Rs.8,44,500/-, Rs.2,00,000/- be paid to claimant Nos. 1 & 3 each through account payee cheque in their favour along with interest as stated above and within time limit as directed above and the rest amount of Rs.4,44,500/- will be paid to the claimant No. 2, the minor son but the cheque will be issued in the name of guardian mother (claimant No. 1). It is directed upon claimant No. 1 to fix the entire amount drawn by her as awarded to the son to be deposited in F.D. Scheme in any Nationalised Bank and to submit the report within one month from the date of receiving the said amount. The order regarding payment of interest will be remained same like before.

OP No. 2 is directed to pay the compensation amount in a/c payee cheque in favour of the petitioners and it is further directed if TDS be deducted the certificate of the same is to be filed along with the cheque amount.

Sd/-
Judge, M.A.C. Tribunal
F.T. 2nd Court, Tamluk”

6. Being aggrieved with the said order and judgment, the present appeal has been preferred on the ground that :-

- a) That the learned Tribunal did not consider further prospects and wrongly directed for deduction of tax from compensation awarded.
- b) The deduction towards personal expense should have been 1/4th and not 1/3rd.

- c) *Assessment of general damages is wrong.*
- d) *That the tribunal erroneously directed that TDS be deducted from the compensation to be paid by the Insurance Company.*

7. From the materials on record including the evidence, the following is evident :-

- i) *The victim died in the accident involving the offending vehicle in this case, which was being driven in a rash and negligent manner and the same has not been denied by the owner (**Exhibit 1- FIR and Exhibit – 2 Charge-sheet**). (**The new India assurance Co. Ltd. Vs. Mita Samanta & Ors., FMA 524 of 2008/(2010) 1 WBLR (Cal) 137**)*
- ii) *At the time of his death, the victim was aged about **40 years** (**Exhibit 3 P.M. Report**).*
- iii) *The income of the victim has been proved to be Rs.7,000/- per month (**Exhibit 4 and 5 series**).*
- iv) *The numbers of eligible claimants as decided by the tribunal are **three** and thus the deduction for personal expenses is to be **1/3rd**. (**Sarla Verma (Smt) & Ors. Vs. Delhi Transport Corporation and Anr- (2009) 6 SCC 121**)*
- v) *The age of the victim being **40 years** at the relevant time, **multiplier of 15** is applicable.*
- vi) ***Future prospects** shall be **30%** of the actual salary of the victim as he held a permanent job and was aged 40 years. (**National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680**)*

vii) General damages of Rs. 70,000/- under the conventional heads of loss of estate, loss of the consortium and funeral expenses (**National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)**). General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%)

8. Claims under the MVA may involve delay which may be due to late filing of the compensation claim, investigation, adjudication of claim and various other factors. A provision is made u/s. 171 of the MVA to compensate the injured or his legal heir for the delay, which reads as under:-

“Section 171. Award of interest where any claim is allowed.

Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation, simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.”

CBDT circular No. 8 of 2011 requires deduction of income tax at source on payment of the award amount and interest on deposit made under orders of the court in motor accident claims cases.

The Supreme Court in the case of *Bikram Singh vs. Land Acquisition Collector* 224 ITR 551, held that interest paid on the delayed payment of compensation was a revenue receipt eligible to tax u/s. 4 of the Income-tax Act, 1961.

The Supreme Court, in the case of *T.N.K. Govindaraju Chetty vs. CIT* 66 ITR 465, in the context of interest on compensation awarded for acquisition of land, held that if the source of the obligation imposed by the statute to pay interest arose because the claimant was kept out of his money, the interest received was chargeable to tax as income.

The Supreme Court, in the case of *K.S. Krishna Rao vs. CIT* 181 ITR 408, where interest paid on compensation awarded for compulsory acquisition of land u/s. 28 of the Land Acquisition Act, 1894 was held to be in the nature of income and not capital.

The Supreme Court in the case of *Bikram Singh vs. Land Acquisition Collector* 224 ITR 551, where the Supreme Court had held that interest received on delayed payment of compensation under the Land Acquisition Act was a revenue receipt eligible to income tax.

9. Section 2(28A) of the Income Tax Act, lays down:-

(28A) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized."

10. Section 194A of the Income Tax Act, lays down:-

"194A. Interest other than "Interest on securities".

(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash

or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force :

Provided that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed[one crore rupees in case of business or fifty lakh rupees in case of profession] during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.

Explanation.—For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

(2)[Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.]

(3)The provisions of sub-section (1) shall not apply—

(i)where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person referred to in sub-section (1) to the account of, or to, the payee, does not exceed—

(a)forty thousand rupees, where the payer is a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution, referred to in section 51 of that Act);

(b)forty thousand rupees, where the payer is a co-operative society engaged in carrying on the business of banking;

(c)forty thousand rupees, on any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf; and

(d)five thousand rupees in any other case:

Provided that in respect of the income credited or paid in respect of—

(a)time deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or

(b)time deposits with a co-operative society engaged in carrying on the business of banking;

(c)deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;the aforesaid amount shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society or the public company, as the case may be :

Provided further that the amount referred to in the first proviso shall be computed with reference to the income credited or paid by the banking company or the co-operative society or the public company, as the case may be, where such banking company or the co-operative society or the public company has adopted core banking solutions:

Provided also that in case of payee being a senior citizen, the provisions of sub-clause (a), sub-clause (b), and sub-clause (c) shall have effect as if for the words "forty thousand rupees", the words "fifty thousand rupees" had been substituted.

Explanation.—[***]

(ii)[***]

(iii)to such income credited or paid to—

(a)any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or

(b)any financial corporation established by or under a Central, State or Provincial Act, or

(c)the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or

(d)the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or

(e) any company or co-operative society carrying on the business of insurance, or

(f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

[Provided that no notification under this sub-clause shall be issued on or after the 1st day of April, 2020;]

(iv) to such income credited or paid by a firm to a partner of the firm;

(v) to such income credited or paid by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society;

Explanation.—For the purposes of this clause, "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(vi) to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette;

(vii) to such income credited or paid in respect of deposits (other than time deposits made on or after the 1st day of July, 1995) with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(viii) to such income credited or paid in respect of,—

(a) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;

(b) deposits (other than time deposits made on or after the 1st day of July, 1995) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (a), engaged in carrying on the business of banking;

(viii) to such income credited or paid by the Central Government under any provision of this Act or the Indian Income-tax Act, 1922 (11 of 1922), or the Estate Duty Act, 1953 (34 of 1953), or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Super Profits Tax Act, 1963 (14 of

1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), or the Interest-tax Act, 1974 (45 of 1974);

(ix)to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

(ixa)to such income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees;

(x)to such income which is paid or payable by an infrastructure capital company or infrastructure capital fund or [infrastructure debt fund or] a public sector company or scheduled bank in relation to a zero coupon bond issued on or after the 1st day of June, 2005 by such company or fund or public sector company or scheduled bank;

(xi)to any income by way of interest referred to in clause (23FC) of section 10:

[Provided that a co-operative society referred to in clause (v) or clause (viia) shall be liable to deduct income-tax in accordance with the provisions of sub-section (1), if—

(a)the total sales, gross receipts or turnover of the co-operative society exceeds fifty crore rupees during the financial year immediately preceding the financial year in which the interest referred to in sub-section (1) is credited or paid; and

(b)the amount of interest, or the aggregate of the amounts of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than fifty thousand rupees in case of payee being a senior citizen and forty thousand rupees in any other case.]

Explanation 1.—For the purposes of clauses (i), (vii) and (viia), "time deposits" means deposits (including recurring deposits) repayable on the expiry of fixed periods.

[*Explanation 2.*—For the purposes of this sub-section, "senior citizen" means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year.]

(4) The person responsible for making the payment referred to in sub-section (1) may, at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out of any previous deduction or failure to deduct during the financial year.

[(5) The Central Government may, by notification in the Official Gazette, provide that the deduction of tax shall not be made or shall be made at such lower rate, from such payment to such person or class of persons, as may be specified in the said notification.]

Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.]”

- 11. Section 194A of the Income Tax Act,** requires a person responsible for payment of interest to deduct tax at source in the circumstances specified therein. Clause (ix), inserted with effect from 1st June, 2003 in section 194A(3) 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. 50,000. This clause (ix) has been substituted by clauses (ix) and (ixa) with effect from 1st June, 2015. The new clause (ix) altogether exempts income credited by way of interest on the compensation amount awarded by the MACT from the liability to deduct tax at source u/s. 194A, while clause (ixa) continues to provide for exemption to income paid by way of interest on compensation amount awarded by the MACT where the amount of such income or the aggregate of the amounts of such income paid during the financial year does not

exceed Rs. 50,000. In effect, therefore, no TDS is deductible on interest on such compensation which is merely credited but not paid, or on payment of interest where the amount of interest paid during the financial year does not exceed Rs. 50,000. The issue of applicability of TDS therefore is really relevant only to cases where there is payment of such interest exceeding Rs. 50,000 during the year and that, too, when it was not preceded by the credit thereof.

- 12. Thus, TDS is liable to be deducted from the interest paid on compensation by the Insurance Company, who shall issue the TDS Certificate in the name of the claimants, who receives the compensation, so that the claimants can avail of the benefit to which they are entitled.**

- 13. Thus, the “Just Compensation” in this case would be as follows:-**

<i>Monthly Income</i>	<i>Rs. 7,000/-</i>
<i>Annual Income (7,000 x 12)</i>	<i>Rs. 84,000/-</i>
<i>Less : 1/3rd towards personal and living expenses</i>	<i>Rs. 28,000/-</i>
	<i>Rs. 56,000/-</i>
<i>Add : Future prospects @ 30% of the annual income of the deceased</i>	<i>Rs. 16,800/-</i>
	<i>Rs. 72,800/-</i>
<i>Multiplier x 15 (72,800 x 15)</i>	<i>Rs. 10,92,000/-</i>
<i>Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/-. (Rs. 70,000 + 20% = Rs. 84,000)</i>	<i>Rs. 84,000/-</i>
<i>Total amount:-</i>	<i>Rs. 11,76,000/-</i>

- 14. Admittedly, the Claimants have received the amount of compensation of Rs. 8,44,500/- together with interest in terms of order of the**

learned Tribunal. Accordingly, the claimants are now entitled to the **balance amount of compensation of Rs. 3, 31, 500/- together with interest at the rate of 6% per annum from the date of filing of the claim application till deposit.**

15. Taking into consideration the amount already received by the Claimants/Appellants, the Respondent No. 1/Insurance Company shall deposit the balance amount along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, after payment of the amount for loss of consortium to the appellant/wife, upon satisfaction of their identity and payment of ad-valorem Court fees, if not already paid.
16. **The appeal being FMA 772 of 2022/FMAT 985 of 2014 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.**
17. No order as to costs.
18. All connected applications, if any, stand disposed of.
19. Interim order, if any, stands vacated.
20. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

(Shampa Dutt (Paul), J.)