IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction

13.02.2024
SL No. 8 & 9
Court No. 551
Ali

FMA 163 of 2023
With
IA No.: CAN/2/2022

National Insurance Co. Ltd.
Vs.
Maitrayee Das & Anr.
With
COT 5 of 2023
Maitrayee Das & Anr.
Vs.
National Insurance Co. Ltd.

Mr. Afroze Alam
.... for the appellant.

Mr. Amit Ranjan Roy
...for the respondents/claimants.

Learned advocate for the Insurance Company Mr. Afroze Alam submits that in pursuance to the order of this Court dated 01.12.2023 the Insurance Company has deposited the entire awarded sum together with interest less the statutory deposit with the office of the learned Registrar General, High Court, Calcutta. Mr. Alam undertakes to submit the copy of the Challan to this Court by the next week.

The claimants are represented by learned Advocate Mr. Amit Ranjan Roy.

The matter is otherwise ready for hearing.

Let the instant appeal alongwith COT 5 of 2023 is taken up for hearing.

FMA 163 of 2023

The instant appeal has been preferred against the judgment and award dated 25th August, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, Fast Track, 1st Court, Tamluk, Purba Medinipur, in MAC Case no. 114 of 2016.

The learned tribunal has awarded a sum of Rs. 20,92,000/- in favour of the claimants towards the compensation and directed the Insurance Company to pay the said compensation.

Being aggrieved by and dissatisfied with the said award the Insurance Company has preferred the instant appeal against the said award.

The claimants also preferred a cross appeal against the said award.

Both the appeals and the cross appeal be taken up together for brevity of discussion.

The sole point involved in the appeal as well as the cross appeal is the annual income of the deceased.

Mr. Alam, learned advocate appearing on behalf of the Insurance Company submits that to prove the annual income of the deceased the claimants has produced the ITR submitted by the claimants for the assessment years 2013-2014, 2014-2015 and 2015-2016. The learned tribunal has adopted the average income of deceased in ITR 2014-2015 and 2015-2016 to be the annual income of the deceased. He submits that when three years ITR was produced, the learned tribunal must have calculate the income by averaging the three years income of the deceased. He argued that as the three years average has not been adopted, thus, the observation of the learned tribunal is erroneous. He further argued that the income appearing in the last assessment year cannot be taken to be true, as the deceased was self-employed in varieties of the business in such business there must have a fall. Thus the last years income of the deceased cannot be taken to be the income of the deceased.

By filling cross appeal, the claimants submit that the income of the deceased for the last assessment year i.e. 2015-2016 has to be taken for assessing just compensation. Mr. Roy submits that from the Income Tax Return it would be revealed that the income of the deceased is increasing day by day so the last year income appearing in the ITR should be taken to be the income of the deceased. In support of his contention, he cited a decision of Hon'ble Apex Court in ***Malarvizhi Vs. United India Insurance Co. Ltd.***

Heard the learned advocates perused the observation of the learned tribunal.

The learned tribunal is of view that the deceased was engaged in a business which is a private business and in that business they may have ups and downs. So, he taken the average income of assessment years 2014-2015 and 2015-2016. By averaging such yearly income in the ITR he taken the yearly earning of the victim appears to be Rs. 9,26,100/-. The ITRs were marked as exhibit. From the said ITR it appears that in the assessment years 2013-2014 the gross total income of the deceased was Rs.6,04,905/-, in the years 2014-2015 the gross income was Rs.7,25,745/- and for the assessment years 2015-2016 the gross total income was mentioned as Rs. 14,39,179/-. The ITR of assessment years 2015-2016 was filed on 25.03.2016. The deceased was died in a road traffic accident in 1st of June, 2016. Thus, the ITR of 2015-2016 is the last ITR submitted by the deceased. The Hon'ble Supreme Court in ***Malarvizhi Vs. United India Insurance Co. Ltd.*** as held that:

> ***"5. The Tribunal assessed the agricultural income of the deceased at Rs. 3,40,708/- per annum and the total income from business at Rs. 89,590/-. The Tribunal added to this Rs.30,000/- per annum for income through real estate and contract business. The annual income of the deceased was assessed at Rs. 4,60,298/-. 30% was added to this towards future prospects bringing the annual income to Rs. 5,98,387.40/-. After a deduction of 1/4th of the total income towards living expenses, the Tribunal used a multiplier of 13 to arrive at a compensation of Rs. 58,34,277/-. Damages under conventional heads, including funeral expenses, loss of consortium and loss of love and***

affection were computed at Rs. 70,000/-. A total compensation of Rs. 59,04,000/- was awarded.

6. In appeal, the High Court concluded that on an analysis of the income tax returns filed by the deceased for the financial years 1995-1996 to 2000-2001, the income declared for the financial year 1997-1998 was the highest and must be taken as the annual income of the deceased. Hence, Rs. 2,09,211/- was determined to be the annual income of the deceased. Rs. 40,000/- per annum was added towards future prospects. The total income was thus arrived at Rs. 2,50,000/- per annum. No deduction was made towards personal expenses. Applying a multiplier of 13, the loss of dependency was calculated to be Rs. 32,50,000/-. To this, funeral expenses, loss of consortium and loss of love and affection were added in the amount of Rs. 1,05,000/-. A total compensation of Rs. 33,55,000/- was awarded".

In considering the argument of the learned advocate for the Insurance Company it appears to me that the business of a person which is private in nature, must have some ups and downs but in the present fact and scenario of this case goes to show that the business of the deceased was going up year to year. The ITR was filed by the deceased which is self-assessed ITR. The deceased person when submitted the ITR before the Income Tax

Department did not have expectation of his death in the accident. Thus, the income stated by the deceased himself prior to the four months of his death can be taken to be the income of the deceased.

By virtue of decision of Hon'ble Supreme Court in ***Malarvizhi (supra),*** it appears that the last year income stated in the ITR has to be adopted. The ITR is a statutory document so the income of the deceased appearing in the last year ITR would be the correct income of the deceased to calculate the just and proper compensation of this case.

Accordingly, I think it necessary that the award passed by the learned tribunal need some modification.

It appears from ITR that in the assessment years 2015-2016 the gross total income of the deceased was mentioned as Rs.14,39,179/- the net tax along with interest appears to be Rs.2,35,701/-. The tax component is to be deducted from the gross total income. The deceased was aged about 58 years so the claimants are entitled to get the future prospects as per observation of Hon'ble Supreme Court in ***National Insurance Co. Ltd. Vs. Pranay Sethi*** to the tune of 10% of his establish income. The applicable multiplier would be 9. It further appears that the learned tribunal has awarded consortium to the tune of Rs.1,32,000/-. In my view, the consortium should be Rs.40,000/- by virtue of decision of Hon'ble Supreme Court in ***Pranay Sethi.*** However, the claimants are entitled to get the 10% of the general damages as three years has already been passed after the pronouncement of the judgment of ***Pranay Sethi.***

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

Calculation of compensation

1. Yearly Income	:Rs.14,39,179/-
2. Less: Tax payable	:Rs.2,35,701/-
	:Rs.12,03,478/-
3. Add: 10% Future Prospects	:Rs.1,20,347/-
	:Rs.12,15,825/-
4. Less:1/3rd deduction towards Personal Expenses	:Rs.4,05,275/-
	:Rs.8,10,550/-
5. Multiplier 9 (Rs.8,10,550/- X 9)	:Rs.72,94,950/-
6. Add: General Damages	:Rs.70,000/-
	:Rs. 73,71,950/-
Less: Tribunal Awarded	:Rs. 62,76,000/-
	:Rs.10,95,950/-

After calculation the award comes to Rs. 73,71,950/-. The learned tribunal has already awarded a sum of Rs.62,76,000/-. The balance award comes to Rs.10,95,950/-. 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 i.e. from 18.08.2016 through the office of the learned Registrar General, High Court, Calcutta within six weeks. On such deposit the claimants are at liberty to receive the balance amount equally together with interest as well as the amount the Insurance Company has already deposited together with accrued interest, 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 163 of 2023** alongwith **COT 5 of 2023** is disposed of.

Mr. Alam, learned advocate appearing on behalf of the Insurance Company submits that he shall hand over the copy of the Challan for the satisfaction of this Court.

Accordingly, the matter is fixed on Monday i.e. on 19th February, 2024 under the heading **"To Be Mentioned".**

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.)