**IN THE HIGH COURT AT CALCUTTA**
**CIRCUIT BENCH AT JALPAIGURI**
**(CIVIL APPELLATE JURISDICTION)**

PRESENT:

**THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE**

**FMAT (MV) 53 of 2023**

**Renudevi Agarwal & anr.**
**Vs.**
**The New India Assurance Company Limited & Ors.**

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|---|---|---|
| For the Appellants | : | Mr. Gobinda Saha,<br>Mr. Tamal Kr. Sen<br>Mr. Milan Ch. Laskar<br>Ms. Priyanka Dey<br>Mr. Sanghai Chowdhury |
| For the Insurance Co. Ltd. | : | Mr. Rishin Chakraborty |
| Heard on | : | 19.08.2023 |
| Judgment on | : | 23.08.2024 |

**Ajoy Kumar Mukherjee, J.**

**1.** The present appeal has been preferred by the appellants being aggrieved by the judgment and award dated 2nd June, 2023 passed by learned MAC Tribunal 3rd Court, Jalpaiguri in MAC Case No. 221 of 2010 under section 166 of MV Act.

**2.** By the judgment impugned, learned Tribunal below awarded compensation of Rs. 34,36,720/- against New India Assurance Company

Limited for the accidental death of Niraj Kumar Agarwal, the predecessor of the claimants.

**3.** The brief background of the said claim application is that on 01.04.2010 at about 2.p.m. aforesaid deceased Niraj Kumar agarwal along with another person were approaching toward Siliguri by a vehicle. And at that time the offending bus, bearing registration no. WB 71-7101- dashed the vehicle of the victim and as a result both the victim and the pillion rider died on the spot.

**4.** During trial three witnesses were examined by the claimant and the documents were marked as exhibit 1 to 7 which includes Income Tax return of the deceased. Learned Tribunal at the end of the trial held *interalia* that the claimants are entitled to Rs. 34,36,720/- as compensation amount for the accidental death of Niraj Kumar Agarwal.

**5.** Being aggrieved by that order the claimants/petitioners preferred this appeal seeking enhancement of the compensation amount on the following grounds:-

**(i)** The Tribunal below was wrong in assessing the income of the victim deceased as Rs. 2,67,200/- instead and in place of Rs.4,26,407/-while passing the impugned award under appeal as he was wrong in assessing the income of the victim on the basis of income tax return for the assessment year of 2008-2009 and not on the basis of the last two income tax return for the assessment year 2009-2010 and 2010-2011 which were marked as exhibit without any objection.

**(ii)** Learned tribunal below did not consider the general damages of Rs. 36,000/- following the judgment passed in National ***Insurance co. ltd, Vs. Pranay Shetty*** reported on **2017 ACJ 2700.**

**(iii)** Interest at the rate of 6% per annum ought to have been awarded by the tribunal below from the date of filing the claim application i.e. on an from 09.08.2010

**6.** The learned counsel for the petitioner in support of his contention regarding victims annual income has relied upon following judgments:-

**(i)** 2019 ACJ 683 Oriental Insurance Company Ltd. VS. Sima Sarkar.

**(ii)** 2015 ACJ 1239 (SC) Shashikala And others Vs. Gangalakshmamma and another.

**(iii)** 2021 ACJ 2683 Rukmani Jethani and others Vs. Gopal Singh and others (SC).

**7.** Per contra it has been argued on behalf of the respondents insurance company represented by Mr. Chakraborty that PW-3 in his evidence as categorically admitted that he had brought the copy of the return from their system for the assessment year 2008-2009 but the assessment for the year 2009-2010 is missing. However the documents relating to victim's Income Tax return submitted by the said witness are marked as exhibit 8 collectively and considering the same the award of compensation is quite justified and this court should not increase the quantum of compensation and that the claimants have already received Rs. 34,36,720/- and therefore, no further compensation can be awarded in the present appeal. He further submits that there were no latches on the part of the insurance company and that is why the Tribunal below did not award any interest on awarded amount. He further submits that the judgments cited by the appellants are not applicable in the facts and circumstances of the present appeal. Learned counsel for the respondents relying upon a judgment of the supreme Court passed in **Babi Giri Vs. National Insurance company ltd**. reported in **2023 ACJ 343** contended that the mother appellants of the deceased is not entitled to the amount payable on account of consortium.

**Decision**

**8.** Having considered submissions made by both the parties, it appears that witness Akhil Chandra Roy on behalf of the petitioners have stated that he has brought the copy of return from their system for the assessment year 2008-2009 and 2010-2011 but the assessment of the year 2009-2010 is missing and he has filed the relevant documents relating to return duly certified by income tax officer, Jalpaiguri which are marked as exhibit-8 collectively. Now on perusal of the said return it appears that during the year 2008-2009 victims gross total annual income was Rs. 2,67,200/- and he paid income tax of Rs. 16,479/- accordingly his annual income for the said year was Rs. 2,50,721/- . Similarly, for the year 2009-2010 victims gross total income was Rs. 3,44,294/- out of which he paid tax of Rs. 16,278/- accordingly his annual income for the said assessment was Rs. 3,28,216/-. However, it appears that in the assessment year 2010-2011 victims income has been shown as Rs. 7,00026/- and income tax paid for the said year is Rs. 92,323/- and accordingly his annual income stands for the said years is about 6,07,703/-. It has not been explained anywhere as to how the income of the victim increased more than double within a year. Moreover, I find from the said return that the said self assessment tax of Rs. 92,323/- for the assessment year 2010-2011 was paid on 04.06.2010 whereas the accident took place on 01.04.2010. Accordingly there is reason to believe that such assessment of income and payment of self assessment tax does not reflect true income of victim, for the assessment year 2010-2011. However, since the income tax return for the assessment year 2008-2009 and 2009-2010 has been marked as exhibit collectively without objection(Tax return of 2009-2010 filed by victim's witness), the tribunal below ought to have taken average of the income of said two years. The income for the year 2008-2009 as I have stated above is Rs. 2,50,721/- and income for the assessment year 2009-2010 is Rs. 3,28,016/- the average annual income for the said two years will be 2,89368/-

**9.** In this context the judgment relied by the claimants are factually distinguishable as discussed above and since there was no abnormal variation in the income for the said two years.

**10.** Having considered the aforesaid facts and circumstances of the case the amount of compensation shall be computed as follows:-

Annual Income-2,89,368/-

Future prospect at the rate of 40% of the of the annual income of the victim- 1,15,747/-

Accordingly total income comes down to Rs.4,05115/-

Half of the amount is to be deducted for personal expenses which is amounting to Rs. 2,02,558/-

Accordingly the amount comes down to Rs.2,02,557/-

**11.** Now if we apply multiplier 18 with that amount, the amount comes down to Rs.36,46,026/-. In addition to that the petitioner is entitled to get general damage of Rs. 36000/- and as such the total compensation amount Rs.36,82026/-. The insurance company has already paid Rs.34,36720/-.

**12.** In such view of the matter the claimants are entitled to get excess amount of Rs. 2,45,306/- along with 6% simple interest from the date of filing of the present application till actual payment is made to claimant.

**13.** New Indian assurance company is directed to issue account payee cheque in favour of the claimants in the mode and manner as directed by the Tribunal within a period of one month from the date of the order, in default the claimants will be at liberty to execute the order as per law.

**14.** **FMAT (MV) 53 of 2023** is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

**(AJOY KUMAR MUKHERJEE, J.)**