In The High Court At Calcutta
Civil Appellate Jurisdiction
Appellate Side

Present:-

The Hon'ble Justice Ananya Bandyopadhyay

F.M.A. No. 807 of 2023

Mithu Rani Mandal & Ors.
Versus
Oriental Insurance Co. Ltd. & Anr.

Mr. Ashique Mondal
...for the Appellants/claimants.

Mr. Anjan Chakraborty
...for the Respondent No.1/insurance company.

Heard on: January 3, 2025.

Judgment on: January 3, 2025.

Ananya Bandyopadhyay, J:- Both the Learned Advocates representing the appellants/claimants and the respondent No.1/insurance company are present.

The instant appeal had been filed against the judgment and award dated 3rd August, 2022 passed by the learned Additional District & Sessions Judge, M.A.C. Tribunal Fast Track 3rd Court, Paschim Medinipur in M.A.C. Case No. 634 of 2021.

An application under Section 166 of the Motor Vehicles Act had been filed by the appellants/claimants due to the death of the victim in an accident which occurred on 26th October, 2019 at 4.30 a.m. when the victim was hit on the Kharagpur Kolkata Metal Road (NH-06 road) by a motor car bearing Registration No. WB-36C-5926 being driven rashly and negligently. The victim was initially admitted at Midnapore Medical Collage and Hospital and thereafter shifted to S.S.K.M. Hospital, Kolkata where he succumbed to his injuries.

The Learned Tribunal disposed of the issues framed on appreciation of both oral and documentary evidence and awarded through the impugned judgment a sum of Rs. 8,51,400/- as compensation in favour of the appellants/claimants.

Heard the rival contentions of the learned advocates for the appellants/claimants as well as respondent No.1/insurance company.

The Learned Advocate representing the appellants/claimants submitted that the Learned Tribunal did not consider the document marked as Exhibit 10 i.e. last income tax return filed in the year 2018-19 prior to the death of the victim on 31st October, 2019.

Since the occurrence of the accident, the involvement of the offending vehicle, driving licence, the route permit, the insurance policy, etc. and other ancillary issues have not been disputed by the Learned Advocate representing the respondent No.1/insurance Company. However, the Learned Advocate representing the respondent No.1/insurance company further submitted that the learned Tribunal has rightly assessed the monthly income of the victim since the deceased earned to Rs.6000/- per month in absence of substantial proof of his avocation as a florist.

In ***Anjali v. Lokendra Rathod***[1], the Hon'ble Supreme Court held the following:-

> ***9.*** *The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009-2010) of the deceased, which reflects the deceased's annual income to be Rs. 1,18,261/-, approx. Rs. 9,855/- per month. This Court in Malarvizhi (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (Supra), this Court has laid as under:*
> *"10. …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*

[1] 2022 SCC OnLine SC 1683

which reliance may be placed to determine the annual income of the deceased."

10. *Hence, this Court is of the opinion that the deceased's annual income be fixed at Rs. 1,18,261/-, approx. Rs. 9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010.*

The following was held in ***K. Ramya v. National Insurance Co. Ltd***.[2] by the Hon'ble Supreme Court:-

14. *In contrast, the High Court set aside the same on the ground that the income earned was out of capital assets and cannot be said to have been earned out of personal skills of the deceased. It consequently went on to determine the income of the Deceased on a notional basis as per his educational qualification. Unfortunately, such an approach, in our opinion, is erroneous in view of the decisions of this court in Amrit Bhanu Shali v. National Insurance Co. Ltd.[10] and Kalpanaraj v. Tamil Nadu State Transport Corpn.[11] wherein this court has held that documents such as income tax returns and audit reports are reliable evidence to determine the income of the deceased. Hence, we are obliged to modify the compensation, especially when neither any additional evidence has been produced to showcase that the income of the Deceased was contrary to the amount mentioned in the audit reports nor it is the stand taken by the Insurance Company that the said reports inflated the income.*

In view of the aforesaid observation of the Hon'ble Supreme Court the income of the deceased should be considered on the basis of the last income tax return which reflected the annual income of the victim.

Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr3 and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.4, the impugned award of Rs. 8,51,400/- is modified as follows:-

[2]2022 SCC OnLine SC 1338
1 2017(4)TAC 673(S.C)
[4] (2009) 6 SC 121

Annual Income	Rs. 2,47,000/-
Personal Expenses (1/3rd)	Rs. 82,333/-
	Rs. 1,64,667/-
Future Prospects (10%)	Rs. 16,467/-
	Rs. 1,81,134/-
Multiplier to be “13”	X 13
	Rs. 23,54,742/-
Non pecuniary damages	Rs. 70,000/-
Escalation from 2017-2024 On 70,000/-	Rs. 16,500/-
Less Award	Rs. 14,000/-
	Rs. 24,38,742/-
	Rs. 8,51,400/-
Entitlement	Rs. 15,87,342/-

The Learned Advocate for the appellants/claimants submitted the appellants/claimants have withdrawn a sum of Rs.8,51,400/-. The appellants/claimants are entitled to a sum of Rs.15,87,342/- along with 6% interest per annum to be paid from the date of filing of the application under Section 166 of the Motor Vehicles Act till the date of its realization.

The Learned Advocate for the respondent No.1/insurance company is to deposit the balance sum of Rs. 15,87,342/- along with 6 % per cent interest per annum from the date of filing of the claim application before the office of the Learned Registrar General, High Court Calcutta within a period of four weeks from the passing of this order.

The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disbursed the same to the present appellants/claimants in equal proportion as mentioned in the award passed by the learned Additional District & Sessions Judge, M.A.C. Tribunal Fast Track 3rd Court, Paschim Medinipur in M.A.C. Case No. 634 of 2021 on proof of proper identification of the appellants/claimants subject to payment of *ad valorem* Court’s fees.

The instant appeal is disposed of accordingly.

Copy of the order be sent to the Department as well as concerned tribunal for information.

c.m.

(Ananya Bandyopadhyay, J.)