IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 402 of 2024

Nibadita Dey

VERSUS

M/s. New India Assurance Co. Ltd. & Anr.

For the Appellant: Mr. Sima Ghosh, Adv.

For the Respondent: Mr. Gopa Das Mukherjee, Adv.

Last Heard on: November 12, 2026

Judgment on: November 20, 2026

Biswaroop Chowdhury, J:

The appellants before this Court were claimants in a case under Section 166 of the Motor Vehicles Act 1988 and are aggrieved by the Judgment and Award dated 31st July 2022 passed by Learned Additional District Judge Fast Track 3rd Court Berhampore Murshidabad in MAC Case No-145 of 2022.

The case of the claimants/appellants before the Learned Trial Judge may be summed up thus:-

On 12-11-2021 at about 17.45 hrs the victim Jadunandan Dey was proceeding to his house on foot. While he reached at Gokarna Pacca road in front of bearing No. WB-58BD/3554 (Motor cycle) coming in a rash and negligent manner with excessive high speed dashed the said victim. As a result the said victim fell down on the road side and sustained several blood injuries over his body. Then and there a few assembled people of the locality shifted the said victim into the Gokarna BPHC for his primary treatment. From there the said victim was referred into the Murshidabad Medical College and Hospital for his better treatment. There after the said victim was further referred into the S.S.K.M. Hospital at Kolkata for his proper treatment. But there he died on 05-01-2022.

Pursuant to the filing of the case notice was issued to the opposite parties. Opposite party vehicle owner did not contest the case. Opposite party Insurance Company contested the case by filing written statements. ISSUES were framed and evidence was adduced Learned Trial Judge upon considering the evidence and upon hearing the Learned Advocates was pleased to dispose of the claim case by observing and directing as follows:-

'Hence it is ORDERED that the MACC No. 145 of 2022 be and the same is allowed on contest against the OP No. 2/The New India Assurance Co. Ltd. and ex-parte against the OP. No. 1 (owner of vehicle) but without costs.

The claimants/petitioners do get an award of Rs. 49,37,720/- (Rupees Forty-nine Lacs Thirty seven Thousand and seven Hundred Twenty only) as

compensation alongwith interest @6% per annum from the date of filing this case i.e. on 28-03-2022 till realization of the award.

The OP No-2 i.e. The New India Assurance Co. Ltd. being the insurer is directed to pay the awarded amount by issuing two Account Payee cheques out of which claimant No-1 namely Nibedita Dey will be awarded Rs. 30,37,720/- (Rupees Thirty Lacs Thirty Seven Thousand seven Hundred and Twenty only) and the claimant No-2 namely Anima Bala Dey @ Anima Dey will be awarded Rs. 19,00,000/- (Rupees Nineteen Lacs only) along with interest as stated within 90 days hereof failing which claimant will be at liberty to put this order into execution with further interest @9% per annum from the date of order till the date of realization.'

The appellants/claimants being aggrieved by the Judgment and Award passed by the Learned Trial Judge have come up with this instant appeal.

Heard Learned Advocate for the appellant and Learned Advocate for the respondent. Perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in considering the average of the last three years income while computing compensation. Learned Advocate further submits that the learned Trial Judge ought to have considered the annual income of the last year while determining compensation. Learned Advocate also submits that compensation awarded should be enhanced.

Learned Advocate for the respondent/Insurance Company submits that the victim was not a salaried person and thus the Learned Trial Judge rightly proceeded on the basis of average income of only last year.

Learned Advocate also submits that compensation awarded should not be enhanced. Learned Advocate relies upon the following judicial decisions:-

Rashmirekha Tripathy VS The Branch Manager. (Legal Claims) Sriram General Insurance.

2026 INSC. 661.

Nidhi Bhargova VS National Insurance Co. Ltd. and ors.

Special Leave Petition (civil)

No-10664 of 2019)

Before proceeding to decide the material in issue it is to be remembered that the compensation awarded should be just and reasonable.

In the case of Reshmirekha Tripathy VS The Branch Manager (Legal Claims) Shriram General Insurance (supra) the Hon'ble Supreme Court observed as follows:-

17. In the considered view of this Court there can be no hard and fast formula for computing the annual income of a deceased person/claimant. ITRs being a statutory document are an important reference point when it comes to

assessing one's income for the purpose of compensation under the Motor Vehicles Act.

18. We find force in the submission put forth by Mr. J. R. Medha learned Senior Counsel. There must be a bifurcation made between salaried individuals and self employed individuals when it comes to assessment of annual income. In our view for salaried individuals only the ITR of the previous year will be sufficient for showcasing the annual income from salary. The reason for considering only the preceding year is that the financial impact of promotions is significant and may be reflected in the ITR for only that year. A situation may also arise whereby the deceased/claimant might not have completed a year in the promoted position before the accident or might not have filed ITR for such period. In such cases the Court concerned shall take reference to the promotion letter and other corroboratory financial statements.

19. When it comes to self employed/individuals carrying out their own business, in our view the average of the income specified in the ITRs of up to the previous three years is to be taken as a reference point for assessment of annual income from their business. There may also be a scenario where only one or two ITRs have been filed. Given such scenarios and the fluctuation of income in these professions, surrounding circumstances are also to be taken into consideration. These would include.

a) The nature of the business (including geographical location category etc.)

b) Growth pattern of the business and impact of death on the business.

c) Potential growth of business (for instance certain businesses are capital intensive at the outset and are profitable at scale/in the future).

d) Negative income (certain businesses may require losses in the initial years, which may not reflect the true financial standing) and,

e) Any other relevant factor relating to the business.'

In the case of Nidhi Bhargava and ors VS National Insurance Company Ltd. and ors (supra) the Hon'ble Supreme Court observed as follows:-

'13. The Income Tax Return is a legally admissible document on which the income assessment of the deceased could be made. This Court in Malarirzhi VS United India Insurance Co. Ltd. (2020) 4 SCC. 228 affirmed that the determination of income must proceed on the basis of Income Tax Return(s) when available being a statutory document. In S.Vishnu Ganga V Oriental Insurance Company Limited, 2025 Scc Online SC. 182 we opined;

'11. It is no longer res-integra that Income Tax Returns are reliable evidence to assess the income of a deceased, reference whereof can be made to Amrit Bhanu Shali V National Insurance Co. Ltd. (2012) 11 SCC 738 (Para-17) Kalpanaraj V Tamil Nadu State Transport Corporation (2015) 2 SCC 764 [Para-7] and ₵ Ramya (supra) Para-14 of 2022 SCC Online 1388. (emphasis supplied).

14. In Malarvizhi (supra) the Madras High Court relied upon the Returns 'for Assessment Year 1997-1998, and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased therein.

15. The High Court interfered and reduced the compensation as awarded by the Tribunal only on the ground that Return for the Assessment year 2008-2009 had to be excluded from consideration. It is not in dispute that the deceased was a businessman. The relevance of the Income Tax Returns stems in the context of the Act for the period which it relates to i.e. the Financial Year concerned and not on the date on which it is filed with the Income Tax Department. When faced with Returns for different years it would be upto the Tribunal concerned to adopt either the average income therefrom or choose an Assessment Year to rely upon. There is good reason to leave judicial discretion on the Tribunal to adopt one of the afore-noted two courses of action, bearing in nature the social purpose and object behind the Act, which is a beneficial legislation. It is quite unfortunate that the High Court in the present case has dealt with the matter in such a casual and superficial way where the rightful claim of the appellants under a welfare legislation has been drastically reduced without any cogent reason on a very tenuous ground which we find to be totally unjustified. As pointed out in Shivaleela V Divisional Manager United India, Insurance Co. Ltd. 2025. SCC Online S.C. 563;

13. In K. Ramya V National Insurance Co. Ltd. 2022 SCC Online S.C. 1338 after taking note of, inter alia Ningamma V United India Insurance Co.

Ltd. (2009) 13 SCC 710 the Court held that the '....Motor Vehicles Act of 1988 is a beneficial and welfare legislation that seeks to provide compensation as per the contemporaneous position of an individual which is essentially forward-looking unlike tortuous liability which is chiefly concerned with making up for the post and re-instating a claimant to his original position, the compensation under the Act is concerned with providing stability and continuity in peoples lives in the future.....'2 (underlined in original).'

As Income Tax Return is an authenticated document to consider the income and determine the compensation, in case of income tax return filed for three years Courts should usually consider the nature of business and the trend of income of the last three years or more. In the instant case the claimants have disclosed income tax return filed for the last three years prior to death of victim and the income shows increasing trend. Considering the nature of business of the victim being a contractor and the increasing trend in the three years it would be reasonable to consider the annual income of the last year of the victim prior to his death which is Rs. 4,98,590/-. In the event annual income is Rs. 4,98,590/- monthly income comes to Rs. 41,549/- Future prospect of 25% added total monthly income comes to Rs. 51,936/- 1/3rd being deducted for personal expenses net monthly income comes to Rs. 34,624/-. The monthly income being multiplied by 12 annual dependency loss comes to Rs. 4,15,488/-. As the victim was 49 years of age the multiplier of 13 should be applied. Thus total compensation comes to Rs. 54,01,344/-. Further the Appellants are entitled to Rs. 70,000/- on account of Loss of consortium,

Loss of Estate and funeral expenses. Thus total compensation comes to Rs. 54,71,344/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 54 lakh is just and reasonable.

Hence this Appeal FMA-402 of 2024 stands disposed, the Judgment and Award dated 31st July 2023 passed by Learned Additional District Judge Fast Track 3rd Court Berhampore Murshidabad in MAC Case No-145 of 2022 stands modified to the extent that the claimants/Appellants are entitled to compensation of Rs. 54 lakhs. The Respondent New India Assurance Company Ltd. shall deposit before Registrar General High Court Calcutta Rs. 54 lakh alongwith interest @6% per annum from date of filing claim case till today. Such deposit shall be made within 8 weeks from the date of communication of this Order. In the event compensation awarded by the Learned Trial Court is paid or deposited, balance deposit be made. The appellants will be entitled to withdraw the compensation upon compliance of necessary formalities, and payment of deficit Court fees.

TCR be returned.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)