In the High Court at Calcutta

In The Circuit Bench at Jalpaiguri
Appellate Side

Present:
The Hon'ble Justice Biswaroop Chowdhury

FMA 22 of 2024
Rukmani Devi Agarwal
Vs.
The New India Assurance Co. Ltd. & Anr.

For the Petitioner : Mr. Subir Banerjee, Adv.
: Mr. Abhijit Raha, Adv.
: Mr. Joy Prakash Roy, Adv.
: Ms. Arunima Ghosh, Adv.

For the Insurance Company : Mr. Rishin Chakraborty, Adv.

Heard On : **24.03.2026**

Judgment On : **27.03.2026**

Biswaroop Chowdhury, J.

The Appellant before this Court was a claimant in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 25-08-2023 passed by Learned Additional District Judge 3rd Special Court Jalpaiguri in MAC case No. 184 of 2022.

The case of the appellant/claimant before the Learned Trial Court may be summed up thus:

On 10-03-2022 at about 12.30hrs the victim Neemchand Agarwal @ Nemchand Agarwal (since deceased) was going towards Medical College side from Milanpally side by a scooty being No-WB-74BJ-5653 at that time one vehicle being No. WB-73G-8894 was coming with high speed rash and negligent manner dashed him from back on pucca road nar 'UTSODHARA' P.S. NJP District-Jalpaiguri. As a result he sustained grievous injuries on his person and immediately shifted him to the NBMC and Hospital, but the attending doctor declared him dead.

An autopsy was done by the Doctor of NBMC and Hospital vide Matigara P.S. u/d case No. 276/22 dt. 11.03.2022 over the dead body.

The accident occurred due to rash and negligent driving on the part of the driver of the offending vehicle No-WB-73F-8894 (Tanker).

The deceased was the only bread earner of his family and due to his sudden demise the petitioner has been suffering much loss pain and shock and it will continue for a long period and there is loss of future earning consortium and love and affection.

Pursuant to the filing of the case notice was issued to the opposite parties, vehicle owner and Insurance Company. Opposite Party vehicle owner contested the case by filing within statement denying all allegation.

ISSUES were framed and evidence was adduced. By Judgment and Award dated 25-08-2023 the Learned Trial Judge was pleased to dispose the claim case by observing and directing as follows:-

'Hence it is ORDERED that the claim application under Section 166 of the MV Act dated 12-04-2022 is allowed on contest without any cost.

The petitioner is thus entitled to get Rs. 19,83,023/- (Rupees Nineteen Lakh Eighty three Thousand Twenty Three) only towards compensation from the OP No-2 for the road traffic accidental death of victim Neemchand Agarwal @ Nemchand Agarwal.

The O.P. No. 2/The New India Assurance Company Limited is directed to issue one A/C. payee cheque of Rs. 19,83,023/- (Rupees Nineteen Lakh Eighty Three Thousand Twenty Three) only in the name of petitioner Rukmani Devi Agarwal.

The OP No. 2 is directed to issue the cheque within a period of thirty (30) days from this date. In default of payment of the compensation amount within the stipulated period as stated above the petitioner would be at liberty to execute the same as per law and further the same would carry an interest at the rate of 6% per annum from the date of filing of the claim application i.e. 12-04-2022 till realization of the amount.'

The appellant/claimant being aggrieved by the Judgment and Award passed by the Learned Trial Judge has come up with the instant appeal.

Heard Learned Advocate for the appellant and Learned Advocate for respondent no-1 Insurance Company perused the evidence adduced and materials on record.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in proceeding on the basis of average monthly income of three years instead of last annual income. Learned Advocate further submits that the Learned Trial Judge erred in not awarding interest from the date of filing of claim case. Learned Advocate also submits that the compensation amount should be enhanced.

Learned Advocate for the respondent no-1 Insurance Company disputes the submission made by Learned Advocate for the Appellant. It is submitted by the Learned Advocate for the Insurance Company that Xerox copy of the Income Tax Return is not admissible in evidence thus there is no error on the part of Learned Trial Judge to proceed on the basis of average income of three years. Learned Advocate relies upon the following Judicial decision:

Shipra Brahma and others. VS New India Assurance Co. Ltd. and anr.

Reported in 2023 ACJ 1173.

New India Assurance Co. Ltd. VS Sonigra Juhi Uttamchand

MANU/SC/0014/2025.

Before proceeding to decide on the issue it is necessary to consider the Judicial decisions relied upon.

In the case of New India Assurance Co. Ltd. VS Sonigra Juhi Uttamchand (supra) where the tribunal refused to admit Xerox copy of Income Tax Return the Hon'ble Supreme Court observed as follows:

'The fact is that, the Appellant had produced only the xerox copies of the Income Tax Returns of her parents, pertaining to the financial years 2003 to 2007. Indisputably, the Tribunal as also the High Court did not take them as admissible evidence and make assessment on their basis. At the same time without placing reliance on the xerox copies of the Income Tax Returns, the Tribunal fixed the monthly income of her father as Rs.12,000/- and that of her mother as Rs.8,000/-. The impugned judgment would reveal that the monthly income thus fixed in the case of the parents were slightly enhanced by the High Court and it in the case her of father was re-fixed as Rs. 18,000/- and in case of her mother as Rs. 9,000/-. As held by this Court in Sarla Verma's case (supra), in the matter of assessment of compensation, hypothetical considerations would be involved, but nevertheless such assessments should be objective. As noticed hereinbefore, the accident had occurred in the year 2007, and the father of the appellant, who claimed to had been running a jewellery shop, was aged only 48 years at the time of the accident. In the case of the mother of the appellant, she was aged only 38 years at the time of the accident and she was also not a mere housewife and claimed to had been running a jewellery shop. The Tribunal could not be said to have committed any mistake in not accepting the xerox copies of the tax returns and virtually adopted guess work relying on the attending circumstances to fix the monthly income of the parents of the appellant for

calculation purpose. But finding that the monthly income so assessed was slightly on the lower side and taking into account various parameters, the High Court enhanced the monthly income in their cases, respectively as Rs.18,000/- and Rs. 9,000/-. Taking note of the year of the accident and the age of the deceased parents of the appellant, we do not think that the monthly income so re- fixed by the High Court is without jurisdiction or highly excessive. The said approach cannot be said to be legally improper or incorrect warranting an interference. Monthly income could be fixed taking into account the tax returns only if the details of payment of tax are appropriately brought into evidence so as to enable the Tribunal/Court to calculate the income in accordance with law.'

In the case of Shipra Bramha and others (supra) Learned co-ordinate Bench of this Court observed as follows:

'22. Perusal of the case records shows that the claimants filed income tax returns in original for the financial years 2007-08 and 2008-09. But they filed a photocopy of the income tax return for the assessment year 2009-10. In such factual aspect and in view of the decision of the Division Bench of this court in FMA No. 108 of 2006 (Minara Begum V. National Insurance Co. Ltd.). I hold that the Learned Tribunal rightly refused admit the photocopy of the income tax return for the year 2009-10 in evidence sums its proper proof.'

The distinction between the cases relied upon by the Respondent no-1 Insurance Company and the present case is that in the cases relied upon the Learned Tribunal refused to admit the photo copy of the income tax return and mark it as exhibit. However in the instant case no objection was raised by the Insurance Company when the said photo Copy of the Income Tax Return was admitted by the Learned Trial Court and marked exhibit. At the stage of appeal the Insurance Company cannot raise dispute as to the genuineness of the copy of the Income Tax return when no appeal is filed by the Insurance Company against the Award of the Learned Trial Court/Tribunal.

As the Motor Accident claim legislation is a beneficial legislation and the Claim Tribunal is not fully a Civil Court but a Quasi Judicial body not bound by strict rules of evidence but by the principles of natural justice where a copy of income tax return if marked exhibit with or without objection and Income Tax Authority not examined, learned Judge of Tribunal has discretion to obtain a report from Income Tax Authority about its genuineness or even direct the Insurance Company to enquire and verify from Income Tax Authority about the authenticity of the document and file report. In the event Learned Judge of Tribunal does not suspect genuineness he may proceed on the copy of Income Tax Return.

In all cases it is not possible for the family of victims to trace out original Income Tax Return of victim thus if a copy is filed Learned Tribunals may direct enquiry by Insurance Company if it thinks fit with regard to authenticity of copy of return that is filed. As it is observed in different judicial pronouncements that presiding officer of Claim Tribunal is not merely an umpire the Tribunals should conduct necessary enquiry in the interest of justice, or direct Insurance Company to conduct enquiry regarding copy of Income Tax Return filed, if it thinks fit.

Insurance Companies conduct enquiries after there is report of accident and there is involvement of vehicle insured, different aspects are enquired into and it is the function of Insurance Companies to see that genuine claims are honoured and frivolous claims are rejected and the object of the statute is fulfilled. Thus necessary enquiries should be made by Insurance Companies about copy of Income Tax Return filed to expedite the matter and to see genuine claims are honoured. In the instant case as there was no objection on the part of Insurance Company, in exhibiting photo copy of Income Tax Return, learned Judge cannot be said to have erred in proceeding with the matter, on the basis of photo copy of Income Tax Return.

Now the point for considerations is whether the Learned Trial Court rightly considered the average income of three years. In this regard it is necessary to consider the decision of the Hon'ble Supreme Court in the case of Shashikali VS Gangalok Shmamma, reported in 2015(9) SCC. 150.

The Hon'ble Supreme Court in the said case observed as follows:-

'The deceased was aged 45 years and was doing transport business. Though the claimants have filed income tax returns for two assessment years 2005-06 and 2006-07, as per the income tax returns for the year 2006-07, the income of the assessee was Rs.2,02,911/-. Tribunal did not take the income of the deceased for the assessment year 2006-07 on the ground that only xerox

copy was filed and the claimants have failed to examine income-tax authorities to prove the same. Instead of taking the income of the deceased as per the assessment year 2006-07, the High Court has chosen to calculate the average of the income for two assessment years 2005-06 and 2006-07. Considering the age of the deceased and the nature of business he was doing, in my considered view, the High Court was not justified in so taking the average of income of the two assessment years. The deceased was aged 45 years and doing business. Admittedly, he was also owning agricultural lands. Even though agricultural income was not shown in the income tax return, it emerges from the evidence that the deceased was also doing agricultural work.'

Thus upon considering the decision of the Hon'ble Supreme Court in the case of Shashikala VS Gangalokshmma this Court is of the view that compensation ought to be ascertained on the basis of last annual income of the victim i.e. Rs. 4,50,000/-.

In the event Rs. 4,50,000/- is considered as annual income upon deducting personal expenses of 1/3rd yearly compensation comes to Rs. 300,000/-. The multiplier of 7 should be applied and total dependency loss comes Rs. 21.00,000/-. Further the appellant is entitled to Rs. 70,000/- on account of consortium, loss of estate and funeral expenses. Thus total compensation comes to Rs. 21,70,000/- by arithmetical calculation. However this Court is of the view that compensation of Rs. 21,00,000/-, is just and reasonable.

Hence this appeal FMA 22/2024 stands disposed. The Judgment and Award dated 25-08-2023 passed by Learned Additional District Judge 3rd (Special) Court Jalpaiguri in MAC Case No-184 of 2022 stands modified to the extent that appellant is entitled to compensation of Rs. 21,00,000/- from the respondent no-1 New India Assurance Company Ltd. along with interest @6% per annum from date of filing claim case till today. The appellant Insurance Company shall within 8 weeks from the date of Communication of te Order deposit the compensation amount along with interest before Registrar High Court Calcutta Circuit Bench at Jalpaiguri. In the event compensation awarded by trial Court is paid balance amount be deposited.

Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Biswaroop Chowdhury, J.)