

15.12.2023
SL No.23
Court No. 551
Ali

**IN THE HIGH COURT AT CALUTTA
Civil Appellate Jurisdiction**

F.M.A. 815 of 2023

**Bandana Patra & Ors.
Vs.
Magma HDI General Insurance Co. Ltd. & Anr.**

Mr. Jayanta Banerjee,
Ms. Ruxmini Basu Roy,
Mr. Arghya Bhattacharya
.....for the appellants-claimants.

Ms. Gopa Das Mukherjee
.....for the respondent No. 1-insurance Co.

The instant appeal has been preferred against the judgment and award dated 2nd August, 2022 passed by the learned Judge, Motor Accident Claims Tribunal, Paschim Medinipur, in MAC Case No. 458 of 2016.

The brief facts of the case is that the present appellants being the claimants preferred an application before the learned tribunal under Section 166 of the M.V. Act for getting compensation on the ground that their predecessor died in a road traffic accident due to rash and negligent driving of the driver of the offending vehicle duly insured under the policy of the insurance company.

The claim case was contested by the insurance company.

After hearing the parties the learned tribunal has awarded a sum of Rs.10,05,000/-interest @ 6%

per annum from the date of filing of the claim application in favour of the claimants.

Being aggrieved by and dissatisfied with the award the present appeal has been preferred by the claimants for enhancement.

The only ground of enhancement is that the learned tribunal has fixed the monthly income of the deceased Rs. 6,000/- per month. It is the submission of the learned advocate for the claimants that the deceased had a medicine shop, namely, M/S New Damodor Homoeo Hall and his yearly income was 2,77,237/-. To prove the yearly income the person from Income Tax Department was called for and deposed as Pw-3, who brought some documents which were filed by the deceased with the department. These are the IT Return which was marked as Exhibit-10. The Exhibit-10 would reveal that it was the income of the deceased for the assessment years 2015-2016 it was declared that his income was Rs2,74,551/- from the said business. The learned tribunal has disregarded the fact only ground that the singly year Income Tax Return cannot be construed to be sacrosanct for assessed the income of the deceased.

Learned advocate for the appellant submits that by virtue of decision of the Hon'ble Supreme Court passed in **Smt. Anjali and Other Versus Lokendra Rathod and Other** reported in **2023 (1)**

T.A.C. 92 (S.C). The Income Tax Return is a statutory document which can be relied for assessed the income of the deceased in a claim case. Let the paragraph 9 be set out as follows:

“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 Rs1,18,261/-, approx. Rs. 9,855/- per month. This Court in Malarvizhi & Ors. (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 which reliance may be placed to determine the annual income of the deceased.

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

He argued that the observation of the learned tribunal regarding the assessment of income of the deceased to Rs. 6,000/- per month is very

meagre amount. In this case of the deceased income from business has to be considered according to the Income Tax Return by virtue of the decision of the Hon'ble Supreme Court passed in **Smt. Anjali and Other.**

Learned advocate appearing on behalf of the insurance company raised strong objection and submits that the learned tribunal has correctly assessed the income of the deceased. Only singly year Income Tax statement was filed before the learned tribunal to consider the income of the deceased. It would be revealed from the document that the business was running since the year 2008, so it is quite unjustified to place reliance upon the single year Income Tax Return for assessment of the Income. She further argued that the claimants could not produce any document to show that at the time of accident the deceased was engaged in such business. The document which was exhibited before the learned tribunal as Exhibit-13 would show that the licence for the Homeopathy business was valid from 01.10.2008 to 13.09.2013. The deceased suffered an accident on 15.01.2016 so at that time, admittedly, there were no documents to prove the income of the deceased. She further argued that the document was not properly clarified before the learned tribunal accordingly, the learned tribunal

failed to place reliance upon the said Income Tax Return.

Heard the learned advocate perused the observation of the Hon'ble Supreme Court in **Smt. Anjali and Other**. It is true that the Income Tax Return is a statutory document on which the reliance can be placed for assessing the compensation. However, it is also the correct submission of the learned advocate for the insurance company that why the single year Income Tax Return has been placed before the learned tribunal. However, the answer cannot be found at present. The just and proper compensation of the case can be very well found on the basis of the income of the deceased according to the Income Tax Return. I further perused that the PW-3 was summoned from the tribunal to produce some documents. Accordingly, he got some documents from his office and produces the same. The document contained the letter of authorization and the Income Tax Return of the deceased for the Assessment Years 2015-2016. He also produces the receipt register which shall evident submission of Income Tax Return for the Assessment Years 2015-2016.

Considering the receipt register it appears that the Income Tax Return was submitted on 10.09.2015 i.e. prior to the date of accident. The

income from the business was stated in the Income Tax Return to be Rs. 2,74,511/- and the income from other sources stated Rs.2,726/-, the total income shown to be Rs. 2,77,237/-. In assessing the compensation the claimant has already pressed the occupation of the deceased to be a Medicine Shop. The name of the Medicine shop was mentioned as M/S New Damodor Homoeo Hall. The trade licence issued by the Keshpur Gram Panchayat on 8th February, 2016 stated to be in the name of the deceased Prakash Patra but the name of the shop was Damodor Homoeo Hall. However, the receipt was taken to Rs. 200/- for the year 2015-2016. The name of the Hall was stated otherwise. However, considering the evidence of PW-1 that New licence of is standing in her favour under name and style of Damodor Homoeo Hall.

Considering the entire aspect, I am of the view that the learned tribunal has committed error for not considering the income of the deceased by virtue of the Income Tax Return. The claimant has not shown any other source of income of the deceased. Accordingly, the income of the deceased appearing in the Income Tax Return from the business is Rs.2,74,511/-. So, in this case the income of the deceased is justifiably calculated to be Rs.2,74,500/- per annum. On that score the

observation of the learned tribunal regarding the compensation need be modified.

Accordingly, the just and proper compensation of this case assessed as hereunder:-

Calculation of compensation

| | |
|--|------------------------|
| 1. Annual Income | Rs.2,74,500/- |
| 2. Add: Future Prospects @ 25%..... | <u>Rs.68,500/-</u> |
| | Rs. 3,43,125/- |
| 4. Less: deduction 1/3rd..... | <u>Rs.1,14,375/-</u> |
| | Rs. 2,28,750/- |
| 5. Multiplier 14 | <u>X 14</u> |
| | Rs. 32,02,500/- |
| 6. Add: General Damages..... | <u>Rs.70,000/-</u> |
| | Rs.32,72,500/- |
| 6. Less: Tribunal already awarded..... | <u>Rs. 10,05,000/-</u> |
| Compensation | Rs.22,67,000/- |

After calculation the award comes to Rs. 32,72,500/-. The learned tribunal has already awarded a sum of Rs.10,05,000/-. The balance award comes to Rs. 22,67,500/-. The insurance company is directed to pay the balance compensation alongwith interest @ 6% per annum from the date of filing of the claim application within six weeks from the date of passing of this order through the office of the learned Registrar General, High Court Calcutta. On such deposit the claimants are entitled to get the said award according to the prevalent Rules subject to ascertainment of payment of requisite Court Fees.

The instant FMA 815 of 2023 is disposed of.

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.)