

**IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 70 of 2023

SANDHYA RANI JANA AND ANR

VERSUS

ICICI LOMBARD GENERAL INSURANCE CO. LTD. AND ANOTHER.

For Appellants/claimants:

Mr. Ashique Mondal, Adv.

Mr. Shahmeraz Alam, Adv.

For Respondent No. 1/Insurance Co.:

Mr. Saswata Bhattacharyya, Adv.

Last Heard on: November 24, 2025

Judgment on: December 09, 2025

Biswaroop Chowdhury,J:

The appellant before this Court was a claimant in claim under Section 166 of the Motor Vehicles Act, 1988 and is aggrieved by the Judgment and award dated 19.05.2022 passed by Learned Additional District Judge, Fast Track, 3rd Court, Paschim Medinipur in MAC Case No. 34 of 2015.

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

On 23.12.2014 at around 10.30 PM when the deceased was standing on footpath for going to his home from his place of work by foot near Ramjungla Para one motor cycle WB-30K/3073 which was coming with high speed and in rash and negligent manner dashed the deceased as a result of which the deceased sustained injury and died on spot.

The accident took place solely due to rash and negligent driving of the driver of the offending vehicle. Over the incident a complaint was lodged before the Police Authority and case was instituted under Section 279/304A of the Indian Penal Code against the driver of the offending vehicle.

The deceased was a goldsmith and he used to earn Rs. 30,000/- per mensem. The claimant no. 1 is the mother of the deceased, whereas the claimant no. 2 is the father of the deceased. They were dependants upon the income of the deceased who was the only bread earner of the family.

The Respondent no. 2 who was opposite party vehicle owner although filed written statement but did not contest the case. Respondent no. 1 Insurance Company filed written statement and contested the case. ISSUES were framed and evidence was adduced. Upon considering the evidence and upon hearing the Learned Advocates for the parties Learned Trial Judge was pleased to dispose the claim case by observing and directing as follows:-

Hence it is ORDERED that the instant case being MACC No. 34 of 2015 be and same is hereby allowed on contest against the opposite party no. 2 and ex-parte against the OPPOSITE Party no. 1 but without cost.

The opposite party no. 2 (ICICI Lombard General Insurance Co Ltd) which indemnified the opposite party no. 1 is hereby directed to pay the total compensation amount of Rs. 15,05,000/- (Rupees fifteen lakhs five thousand) only together with interest @ 6% per annum from the date of filing of the claim application till full liquidation by issuing one A/C payee cheque in the name of the claimant no. 1 Sandhyarani Jana u/s 166 of the Motor Vehicles Act 1988 within two (02) months from the date of this, order failing which the claimant no. 1 shall be at liberty to put the order in execution.

The appellant/ claimant being aggrieved by and dissatisfied with the order passed by the Learned Trial Judge has come up with the instant application.

The grounds of challenge in the instant application is that the Learned Tribunal erred in assessing the monthly income of the victim as Rs. 10,000/- per month and not considering the three consecutive years of income tax submitted, and that the Learned Tribunal ought to have considered the annual income of Rs. 3,18,470/- on the basis of income tax return for AY 2014-2015.

Heard Learned Advocate for the appellant and Learned Advocate for the Respondent no. 1. Perused the evidence adduced.

Learned Advocate for the appellant submits that the Learned Trial Judge erred in not considering the income from the income tax return filed by the claimants/appellants and considering the income as Rs. 10,000/- per month. Learned Advocate further submits that the income tax return was submitted during life time of the victim and not after his death and thus there

is no scope to inflate the income. Learned Advocate also submits that the Learned Trial Judge erred in insisting Bank Passbooks to be produced in spite of filing copies of income tax return and examination of Income Tax Officer. Learned Advocate relies upon the following decision Learned Co-ordinate Bench of this Hon'ble Court

Surendar Kaur Singh vs. United India Insurance Company Limited and Another FMA 358 of 2021.

Learned Advocate for the Respondent No. 1 Insurance Company submits that the Learned Trial Judge rightly insisted on Bank Passbooks and there is no error in the judgment and award passed by the Learned Trial Court.

Before proceeding to decide the material in issue it is to be remembered that while considering motor accidents claim the income of a victim who is a salaried person can be ascertained from the salary slip of the victim upon examining his employer. But in case of self employed person the income can be ascertained from his own declaration made before the Income Tax Authority. When returns are filed before the Income Tax Authority necessary particulars of business accounts and copies of Bank Statements are furnished and upon considering the necessary particulars along with declaration the authority decides whether to accept the said return or to seek more particulars. Once Income Tax Return is accepted by the Income Tax Authority it becomes authentic document with regard to the income of the victim. Whether Income Tax Return is accepted by the Authority can be ascertained upon considering the evidence of the officials of Income Tax Authority which is done in this case.

When Income Tax Return is not filed it becomes necessary for claimants to furnish Bank Passbooks, and business accounts to corroborate the case of income of the victim but when Income Tax Return is filed and officers of Income Tax Department is examined to verify the same there is no ground to disbelieve the Income Tax Return. This is not a case where the Income Tax Return is filed after instituting the claim case thus there is no question of inflating the income. When the income of a person is assessed by a competent authority it is not necessary for the Court adjudicating motor accident claims to ask for further particulars and sit in review of the assessment already made by such authority when such return is filed during life time of victim and not after instituting the claims case.

In the case of **Surendar Kaur Singh** (supra) this Hon'ble Court observed as follows:-

“It will be profitable to refer to Kalpanaraj's Case (supra) where the only available documentary evidence on record of the monthly income of the deceased was the income tax return filed by him with the Income Tax Department and the Hon'ble Supreme Court in such circumstances held that the High Court was correct to determine the monthly income on the basis of income tax return. Further the Hon'ble Supreme Court in Malarvizhi's Case (supra) endorsed the finding of the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is statutory document on which reliance may be placed to determine the annual income of the deceased. In Indiro Devi's Case (supra) the Hon'ble Supreme Court while dealing

with contradiction between the income disclosed in the income tax return and the salary certificate held that in such situation it does not mean that income of the deceased as stated in the income tax return should be totally ignored and it affirmed the finding of the High Court of taking account of the income of the deceased disclosed in the income tax return. The Hon'ble Supreme Court in Sangita Arya's Case (supra) also took account of the income disclosed in the income tax return filed prior to the death of the deceased. Bearing in mind the aforesaid observations of the Hon'ble court, it goes without saying that the income tax return being a statutory document is to be relied for determining the income of the deceased even though it is the only available documentary evidence in support of the income of the deceased. The income of the deceased disclosed in the income tax return for assessment year 2012-2013 has not been discredited by any cogent evidence. I find substance in the submissions of learned advocate for appellant-claimant relying on Anita Sharma's Case (supra) that the standard of proof in claim cases is one of preponderance of probabilities and not of proving a case beyond reasonable doubt rather to analyse whether the claimant's version is more likely than not true. Accordingly, the income of the deceased-victim disclosed in the income tax return for the assessment year 2012-2013 should be taken into consideration. Thus the annual income of the deceased-victim should be gross income of Rs. 2,01,550/- less tax paid of Rs. 2,310/- which comes to Rs. 1,99,240/-."

In the case of **Malarvizhi vs. United India Insurance** reported in 2020(1) TAC 328 (SC) Hon'ble Court observed as follows:

“10 The Tribunal proceeded to determine the agricultural income arising from 36.76 acres of land on the basis of two judgments of the High Court. The Tribunal arrived at two different figures by applying the decisions and proceeded to determine the agricultural income on an average of the two amounts. The Tribunal superimposed a possible value of income from agricultural land despite a clear indication in the income tax returns of the income from agricultural land. The method adopted by the Tribunal is not sustainable in law. On the other hand, the High Court has proceeded on the basis of the income reflected in the income tax returns for the assessment year 1997-1998. The relevant portion of the return reads:

*“Income from House property – Rs. 1,920
Business profit (other than 14.b) - Rs. 1,21,071
Net Agricultural income – Rs. 88,140”*

The tax return indicates an annual income of Rs 2,11,131 in the relevant assessment year. Mr Jayanth Muth Raj, learned Senior Counsel appearing on behalf of the appellant contended that other documents were marked which reflected the income of the deceased. 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. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased.”

In the facts and circumstances, the judgment and award passed by the Learned Trial Judge by considering the income of the victim cannot be sustained and the same should be set aside. Thus, on the basis of last income tax return for the assessment year 2014-2015 which reflects annual income to be Rs. 3,18,470/- the same should be taken into consideration. 40% future prospect comes to Rs. 1,27,388/-. Future prospect being added total income comes to Rs. 4,45,858/-. 1/2 should be deducted on account of personal expenses. Thus, annual dependency loss comes to Rs. 2,22,929/-. As the victim was 27 years old multiplier of 17 should be applied. Thus, total dependency loss comes to Rs. 37,89,793/-. Further to the dependency loss Rs. 30,000/- should be added on account of loss of estate and funeral expenses, and Rs. 80,000/- as filial consortium. Thus by arithmetical calculation total compensation comes to Rs. 38,99,793/- . However, in the opinion of this Court Rs. 39 lacs is just and reasonable compensation.

Hence this appeal is allowed in part. The judgment and award dated 19.05.2022 passed by Learned Learned Additional District Judge, Fast Track, 3rd Court, Sadar Paschim Medinipur is modified to the extent that the appellants are entitled to Rs. 39,00,000/- compensation from Respondent no. 1 ICICCI LOMBARD GENERAL INSURANCE CO LTD. the respondent no. 1 shall deposit before the Registrar General, High Court, Calcutta Rs. 39 lacs along with interest @ 6% per annum from the date of filing the claim case till today. In the event amount awarded by the Learned Trial Court is already paid balance amount shall be deposited. Such deposit shall be made within 8 weeks

from date. The deposit may be withdrawn by the claimant/appellants upon compliance of all necessary formalities.

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.)