

Court No. - 37

Case :- FIRST APPEAL FROM ORDER No. - 598 of 2020

Appellant :- Smt. Rekha Mishra And 4 Others

Respondent :- Ram Kumar And 2 Others

Counsel for Appellant :- Hanuman Prasad Dube, Vipul Dube

Counsel for Respondent :- Radheyshyam, Pradeep Kumar
Sinha

Hon'ble Dr. Kaushal Jayendra Thaker, J.

1. Heard Sri Dube, learned counsel for the appellants and Sri P.K. Sinha, Advocate, assisted by Sri Ojha, learned counsel for the respondent-Insurance Company.

2. This appeal is preferred by the original claimants against the award and decree dated 23.11.2019 passed by Motor Accident Claim Tribunal/Additional District Judge, Court No.3, Jhansi in Motor Accident Claims Petition No. 29 of 2018.

3. Brief facts giving rise to this appeal are that on 6.11.2017 Jai Prakash Mishra on motorcycle bearing Registration No. U.P. 93 AE 9142 was going to Mijhauna via Daboha. Said motorcycle was being driven by his elder brother Virendra Kumar Mishra carefully and slowly at left side. When the motorcycle reached in front of village Gora at Daboha Bhandar Road at about 1.35 pm, a Scorpio bearing Registration No. MP 09 V 6431 was coming rashly and negligently from front looking to which Virendra Kumar Mishra stopped motorcycle on kachcha pavement of his left hand despite that said Scorpio dashed hardly motorcycle on account of which Virendra Kumar Mishra and Jai Prakash Mishra succumbed to injuries on the spot.

4. There is no dispute as far as assessment of quantum, compensation and liability, the accident having taken place, the deceased having succumbed to the injuries received in the accident. That the deceased was a salaried person is also not in dispute. The only issue that arises for consideration is whether the Tribunal itself could have assumed and deducted income tax from the compensation awardable to the heirs of the deceased.

5. On 17.3.2020, I had passed the detailed order as follows:-

"Admit.

A copy of memo of appeal be given to Sri Radhey Shyam, Advocate who normally appears for National Insurance Company Limited to seek

instructions from it and assist the Court as the matter can be disposed of at the first hearing.

The matter is covered by the judgment of the Gujarat High Court as well as Section 194A(3)(IX) of Income Tax Act. The amount of income tax slab can be deducted from the income of the deceased who was a salaried person, but adhoc Rs.10,00,000/- and more amount by way of calculation of income tax could not have been deducted from the compensation to be awarded. The said is without any sanctity of law.

Normally in the claimant's appeal, I do not pass any interim order but in this case the deduction of Rs.1064543/- as proposed income tax could not have been ordered to be deducted. The order of deduction of Rs.1108165/- as proposed income tax is against the mandate of law. The reason being income tax liability of concerned claimant to pay tax on interest or the compensation awarded to them shall arise if such interest or income is accrued in concerned financial year together with other income of the respective claimants in that financial year. The judgment of the Apex Court in Ramabai Versus Commissioner of Income Tax, (1990) 181 ITR page 400 will come to the aid of the appellants. Similar is the decision of Gujarat High Court in Civil Application (For Order) No.10031 of 2006: First Appeal No.1392 of 2006 (Hansaguri Prafulchandra Ladhani and others Versus Oriental Insurance Company Limited) decided on 4.10.2006 reported in 2007 (2) GLR 1484 which will also be applicable to the facts of this case.

The Insurance Company if has not yet deposited the amount shall deposit the decretal amount with interest along with the deducted amount of Rs.1108165/-. The second aspect which will have to be looked into would be whether the Tribunal should add prospective income after deduction of the personal expenses or it should be before in the light of the judgment of Supreme Court in Civil Appeal No. 1999 of 2020 (Nirmala Kothari Versus United India Insurance Company Limited) decided on 4.3.2020.

List on 31.3.2020 for final disposal.

Meanwhile, the learned Judge be apprised by the Registrar General of this order through the District Judge, Jhansi so that such mistake is not committed in other matters as this would be his opinion in matter which involve high stake.

Notice to the owner is not necessary as the liability is fastened on the insurance company."

6. The matter has been listed today thereafter on urgency note filed by Sri Dube. The matter can be disposed off on short point.

7. The presence of the owner is not necessary.

8. The appellants' only prayer is that the Insurance Company could not also have deducted the amount of income tax which has been deducted by the Tribunal on its own.

9. Sri Dube, learned counsel for the appellants submitted that in

the case of **Hansaguri Parafulchandra Ladhani and others Vs. The Oriental Insurance Company Ltd. and others, 2007 ACJ 1897**, which has been again reiterated and followed by the Bombay High Court in **New India Assurance Company Ltd Vs. Hussain Babulal Shaikh and others, 2017 (1) TAC 400 (Bom.)** and by this Court in **First Appeal From Order No.2935 of 2005, Smt. Balesh Kumari and others Vs. Sahbat Khan and another**, dated 25.11.2020, practice of the deduction of TDS by Insurance Company was deprecated. In this case, the Tribunal itself has deducted the amount of income tax, i.e., reason for this appeal which could not have been done.

10. Sri Dube further submits that education cess could not have been deducted, which is vehemently objected by Sri P.K. Sinha, assisted by Sri Ojha making submission that amount has accrued in the year 2019 immediately after the claim petition was filed and, therefore, the deduction by the Tribunal cannot be found fault with and has requested the Court to dismiss the appeal.

11. The Tribunal, after assessing the compensation, did not assign any reason as to under what provision, it had assumed itself to be an Authority which could deduct what can be said to be tax on the entire compensation. Calculation of income tax could not have been done for the reason that income tax is on the income which accrues ever year. If the Tribunal was of the view that income of the deceased was without deduction of any tax then it could have done it from the gross salary of Rs.27187/- rather the Tribunal deducted Rs.2200/- which was amount of Provident Fund which he would have received on his retirement. Amount of Rs.2000/- was further deducted on the loan which he had taken and had the Tribunal gone by the basics also as the salary of the deceased was Rs.27,187/- per year, annual salary after deductions under the Income Tax Act would not beyond the slab of Rs.2,50,000/- per year had he been survived. Income tax is to be chargeable in the year in which it is received. Thus, there is a mistake which is apparent on the face of the record. The assessee claimant cannot be now forced to claim refund.

12. Provision of Section 194A read with sub section 3 (ix) of the Income Tax Act lays down several guidelines for deduction of tax and source in payment of amount, which is awarded. Amount could not be subjected to deduction of income tax. The reason being that Section 194A (3) (ix) will not permit even the Insurance Company to deduct the same at par. The procedure has already been laid down wayback in the year 2007 by the High Court of Gujrat in the case of Hansaguri (**supra**), which has been followed by High Court of Bombay in a recent

Judgment rendered in the case of New India Assurance Company Ltd Vs. Hussain Babulal Shaikh and others (**supra**), which has been followed by the undersigned in the case of Smt. Balesh Kumari (**supra**).

13. When the Income Tax Act and the decisions referred hereinabove do not permit the Insurance Company to deduct TDS, could the Tribunal deduct what is known as tax on the compensation. With utmost respect, the answer is same cannot be. Tax has to be levied each yer. Compensation is awarded in lump sum which has to be spread over as it was an aggregate amount. Income even if we consider apart from the interest, it has to be spread over relevant financial year from the period when the amount would accrue. The claimants normally are not given the entire amount and are subjected to deposit the amount. The amount awarded by the Tribunal cannot be subjected to tax on the flat rate as decided by the Tribunal. The legislation being a social welfare legislation and in fact there is no conflict between the social welfare legislation and tax legislation even if there is conflict the social welfare legislation would prevail as it would subserve larger public interest. A reference to a Division Bench Judgement of Himachal Pradesh which quashed the circular issued by the Income Tax Department has been considered by the Bombay High Court in the Judgment referred hereinabove (**supra**) on which also this Court places reliance.

14. Further the learned Judge has lost sight of the fact that the deceased left behind him five legal representatives when he passed away. The amount has to be distributed amongst all the five of them and it cannot be that the income tax would be payable on the total sum amount awarded. Even if we look at the order, amounts are bifurcated which goes to show that the amounts are again kept in fixed deposits. In that view of the matter, the amount of compensation will have to be divided between the persons who got money and this amount has to be spread over to the coming years. It is not one time income to them. It is compensation spread over as per the system prevailing. The amount cannot, therefore, be held to be income in one particular year, namely, 2019 when the award came to be passed even if we consider that the period during which the matter remained pending before the Tribunal, the amount has to be bifurcated amongst the legal heirs. Thereafter, the Income Tax Department will have to consider the slabs as they are applicable. As per decision of the Apex Court in **Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121**, the contribution to the family known as multiplicand multiplied by the multiplier which is for the several imponderables in life and economic factors and is based on the application of multiplier

with reference to the age of the deceased which has been identified by the Apex Court. It is not the year that the income has to be considered. Hence, the exercise undertaken by the learned Tribunal is prima facie not tenable and is deprecated. Award passed by the Tribunal in its operative portion would read as follows:-

15. Rs.41,45,000/-+70,000/-+30,000/- each to the minor children Prachi and Sparsh, who were 14 and 17 years of age at the time of accident, hence, the award would be Rs.42,75,000/- with 7.5% rate of interest in view of the latest decision of the Apex Court in **National Insurance Co. Ltd. Vs. Mannat Johal and Others, 2019 (2) T.A.C. 705 (S.C.)**, wherein the Apex Court has held as under:-

"13. The aforesaid features equally apply to the contentions urged on behalf of the claimants as regards the rate of interest. The Tribunal had awarded interest at the rate of 12% p.a. but the same had been too high a rate in comparison to what is ordinarily envisaged in these matters. The High Court, after making a substantial enhancement in the award amount, modified the interest component at a reasonable rate of 7.5% p.a. and we find no reason to allow the interest in this matter at any rate higher than that allowed by High Court."

16. As far as the other part is concerned, the Judgment is maintained. Fresh decree will be drawn by the Tribunal on receipt of the order of this Court. The Insurance Company, if has not deposited the amount as of yet despite the order dated 23.11.2019, shall immediately deposit the entire amount. It goes without saying that no TDS shall be deducted in view of **New India Assurance Co. Ltd. Vs. Hussain Babulal Shaikh and others, 2017 (1) TAC 400 (Bom.)**.

17. As far as other aspects are concerned, lis is settled between the parties.

18. A copy of this order be placed before the Registrar General so that it may be circulated to the concerned Tribunal and other Tribunals in the State so that such mistake which is apparent on the face of the record be not committed in future.

19. Appeal is partly allowed.

Order Date :- 8.12.2020
Ram Murti