



2025:DHC:3237



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 04.04.2025

+ **MAC.APP. 905/2014**

IFFCO TOKIO GENERAL INSURANCE CO. LTDAppellant

Through: Ms. Khushi Sachdeva, Advocate for
Mr. Pankaj Seth, Advocate.

versus

SUNITA & ORS

.....Respondents

Through: Dr. L.S. Chaudhary, Dr. Ajay
Chaudhary, Mr. Vikram Singh, Mr.
Bharat Chaudhary & Mr. Anirudh
Sharma, Advocates for R-1 to 3 with
R-1 in person.
Mr. Suraj Pradhan, Advocate for R-4.

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Appeal has been filed on behalf of the Appellant under Section 173 of the Motor Vehicle Act, 1988 [hereinafter referred to as "MV Act"] impugning the award dated 31.07.2014 [hereinafter referred to as "Impugned Award"] passed by the learned Presiding Officer, MACT (SE-01), Saket Courts, New Delhi. By the Impugned Order, compensation in the sum of Rs. 38,21,500/- has been awarded along with interest thereon.

2. The only challenge that is raised by the Appellant before this Court is that in computation of income, the learned Tribunal has taken into consideration the fact that there was rental income mentioned in the Income



Tax Returns filed by the deceased.

2.1. Learned Counsel for the Appellant contends that the Income Tax Return of the deceased for the Assessment Years 2011-12 reveals 'income from house property' at Rs.1,74,220/- and thus, the learned Tribunal could not have awarded the amount as the factor of loss of dependency cannot be calculated on the basis of 'income from house property'.

3. Learned Counsel for the Respondents/Claimants, refutes these contentions. It is submitted that the findings in the Impugned Award do not suffer from any infirmity. Relying on paragraph 8 of the Impugned Award, learned Counsel for the Respondents submits that the deceased was self-employed and owned only one property. However, he was in the business of property dealing and the 'income from house property' which forms part of the Income Tax Returns was actually income from property brokerage. It is further contended that for the Assessment Years 2012-13 and 2013-14 the IT Returns filed reveals the income of the deceased at Rs.1,80,000/- per annum and Rs.1,98,000/- per annum respectively.

3.1 Learned Counsel for the Respondents further avers that the deceased and his family members only owned one property i.e., the house in which they are residing and that the contention raised by the Appellant that there is income from other house properties (tenancy/rental income) is not correct. It is contended that no document has been placed on record by the Appellant in respect of this contention either before the learned Tribunal or before this Court.

4. Learned Counsel for the Respondents further submits that the learned



Tribunal, relying on the fact that the income of the deceased was gradually increasing as reflected by the Income Tax Returns, allowed future prospects based on the judgment of the Supreme Court in ***Rajesh & Ors. v. Rajbir Singh & Ors.***¹ where it was held that actual income of the deceased must be enhanced for purpose of computation of compensation towards his future prospects by 50% where his age was below 40 years in case of self employed persons or persons with fixed wages.

5. The learned Tribunal, in the Impugned Award found that the Appellant (Respondent No. 3 before the learned Tribunal) was not able to point out or give details of the Property from which the deceased was having income (tenancy/rental income) and thus on the basis of the Income Tax Returns placed on record by Respondent Nos. 1 to 5 gave a finding that the income of the deceased was gradually increasing and the same can safely be presumed to be Rs. 1,99,250/- as reflected in the Income Tax Return of the assessment year 2013-14.

6. The evidence that was produced before the learned Tribunal reflects that the Respondent No.1/PW-3/Smt. Sunita in her testimony in the affidavit filed in evidence (Ex. PW-3/1) and cross examination had stated that her deceased husband was engaged in the business of property dealing and tour operator from their residence. Similarly, Respondent No.4/PW-4/ Shri Atar Singh in his testimony in the affidavit filed in evidence (Ex. PW-4/1) had stated that the deceased was doing business of property dealing and tour and travels. The relevant extract of cross examination of PW-3 and PW-4 is

¹ 2013 (6) SCALE 563



reproduced below:

“PW-3, Smt. Sunita wife of Late Shri Trilok Chand, R/o C-99, C-Block, Ganga Vihar, Delhi

....

XXX by Shri Kumar Alok, counsel for R-3/Insurance Company

*it is correct that I had not witnessed the fatal accident of my husband, Shri Trilok Chand. **My deceased husband used to do business of property dealing (brokerage) and tour operator from our residence itself.** He was an income tax payee. I do not have any document regarding the business of my deceased husband. It is incorrect to suggest that my deceased husband was not having any business. It is incorrect to suggest that my deceased husband was not earning Rs.20,000/- per month as claimed in para 2 of my evidence affidavit, Ex.PW-3/1”*

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Evidence by way of Affidavit of PW.4, Sh. Atar Singh S/o late Shri Har Nand, R/o C-99, C-Block, Ganga Vihar, Delhi

*“4. That the deceased before the accident was quite hale & hearty and was of the age of 35 years and was having good physique and was not suffering from any kind of disease **and he was doing the Private Job/Business of property dealing and also doing the business of Tour & Travels and earning Rs.20,000/-, per month.** The deceased was maintaining his family i.e. petitioners his wife, sons and daughter and his parents who are petitioners No. 1 to 5. The petitioner No. 1 is the age of 33 years and the petitioner No. 2 to 3 having the age 11 years, & 9 years, respectively and the age of the deponent petitioner No. 5 are 69 and 65 years respectively and the deceased was spending his income on the maintenance of the petitioners.”*

[Emphasis Supplied]

7. It is settled law that while determining the just compensation payable under Section 166 of the MV Act, the learned Tribunal is not to hold a trial but to conduct an inquiry for determination of such compensation. A strict burden of proof would not be applicable to such an inquiry. The determination of the income shall be made on the basis of the Income Tax



Return(s) where available. The Supreme Court in the case of *Malarvizhi and Ors v. United India Insurance Co. Ltd and Another.*², has held that the determination of income must proceed on the basis of the income tax return, when available, since the income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased. The relevant extract of the *Malarvizhi* case is reproduced below:

“10. The Tribunal proceeded to determine the agricultural income arising from 36.76 ac 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 Assessment Year 1997-1998. The relevant portion of the return reads:

<i>“Income from House property</i>	<i>-----</i>	<i>Rs. 1920</i>
<i>Business profit (other than 14.b)</i>	<i>-----</i>	<i>Rs. 1,21,071</i>
<i>Net Agricultural income</i>	<i>-----</i>	<i>Rs. 88,140”</i>

*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 Assessment Year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased.**”*

[Emphasis Supplied]

² (2020) 4 SCC 228



8. The only issue raised in this matter is that the calculation of factor of loss of dependency cannot be based upon the rental income of the deceased. However, the Appellant has been not been able to prove or place on record any document to support his contention of the deceased having rental/tenancy income.

9. Section 103 of the Evidence Act, 1872 [hereinafter referred to as “Evidence Act”] (Section 107 of the Bharatiya Sakshya Adhinyam, 2023) sets out that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless the law provides that the proof shall lie on any particular person. Section 103 of the Evidence Act is reproduced below:

“ 103. Burden of proof as to particular fact. —The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

[Emphasis Supplied]

9.1 The burden of proof was thus upon the Appellant to prove his contention that the deceased had rental/tenancy income. No document has been placed on record either.

10. In view of the foregoing discussions, this Court finds no infirmity with the Impugned Award passed by the learned Tribunal.

11. The Appeal is accordingly dismissed. Pending Applications, if any, also stand closed. There shall be no order as to costs.

12. The amount lying deposited with the Registrar General, along with interest accrued thereon, shall be released in favour of the



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Claimants/Respondent Nos. 1 to 5, in accordance with the schedule of disbursal as stipulated by the learned Tribunal in the Impugned Award.

13. The statutory amount deposited by the Appellant be released in favour of the Appellant along with interest accrued thereon.

14. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

APRIL 4, 2025/ ha/r

[Click here to check corrigendum, if any](#)