

Motor Vehicles Act, 1988 S. 166- - Compensation - ITRs filed after death relied -
Although there appears to be some spurt in the income for 2009-10 (filed after the death) , this spurt has been explained by no less than three witnesses whose testimony has withstood the cross- examination - Deceased was an IIT, Bombay Engineer engaged in a highly specialized business venture - The evidence on record supports the claimants' case about the expansion of business and the consequently increased earnings for the years 2009-10 - Therefore, this is not a case where reliance is being placed only on the Income Tax Returns filed after the death but on other evidence that has withstood the onslaught of cross- examination explaining not only the integrity of deceased's income but also the reasons for such spurt

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HIGH COURT OF BOMBAY AT GOA

M.S. Sonak, J.

New India Assurance Co. Ltd.

Versus

Vrinda Jayant Pai Vernekar & Others

First Appeal No. 35 of 2016

24.06.2022

For the Appellant: Amey Kakodkar, Advocate , For the Respondents: R1 & R2, R.G. Ramani, Senior Advocate with P. Kakodkar, Advocate.

JUDGMENT

1. Heard learned Counsel for the parties.
2. This appeal challenges the judgment and award dated 19.01.2016 in Claim Petition No.61/2011, awarding the respondents compensation of 63,25,000/- together with interest at the rate of 9% p.a. from the date of filing of the petition till the realization of the awarded amount.

3. The claimants are the widow and son of late Jayant Pai Vernekar (Jayant), who died in a vehicular accident on 28.09.2010. Jayant was traveling to Karwar in his vehicle bearing registration no.GA-07-C-2931 when a passenger bus bearing registration no.KA-01-C-8142 came from the opposite direction in a rash and negligent manner and dashed Jayant's vehicle. Jayant died on the spot. All this is established by clear and cogent evidence on record and, therefore, Mr. Kakodkar, quite correctly, did not even argue on the issue of rashness and negligence or the liability of the Insurance Company to pay compensation.

4. However, Mr. Kakodkar submitted that the Tribunal erred in relying on the Income Tax Returns for the year 2009-10 that were admittedly filed after the demise of Jayant and had indicated his income as Rs.7.39 lakhs, even though the Tribunal has taken this figure at Rs.8.45 lakhs. Mr. Kakodkar, relying on *V. Subbulakshmi v. Lakshmi (2008-2)150 PLR 270 (SC) Oriental Insurance Company Ltd., Lalitpur v. Ramilaben, w/o. Jayantilal Patel (2017 (2) Mh.L.J. 822)* and *Sutinder Pal Singh Arora v. Ashok Kumar Jain . (2003 SCC OnLine MP 640)* submitted that Income Tax Returns filed after the death in a vehicular accident ought to be excluded from consideration for determining the deceased's income.

5. Mr. Kakodkar submitted that in the previous two years, the income in the Income Tax Returns was hardly Rs.3 to 3.5 lakhs per annum. However, for 2009-2010, a sudden spurt in the income was declared at Rs.7.39 lakhs. Mr. Kakodkar submits that this spurt was only to secure higher compensation than the claimants would have otherwise been entitled to. Therefore, he submits that the Tribunal erred in basing its determination on the Income Tax Returns filed after the death of Jayant in the vehicular accident.

6. On the other hand, Mr. Ramani learned Senior Counsel for the claimants submitted that there was no absolute bar to the consideration of Income Tax Returns filed after the death in a vehicular accident. He submitted that, in this case, there was cogent evidence explaining the so-called spurt in income. He pointed out that Jayant was an engineer from an Indian Institute of Technology, Mumbai, and was the Proprietor of JVP Building Systems, having a highly specialized business of construction diagnostic services. He pointed out that in the year before his death in a vehicular accident, Jayant had made investments in expanding his business by purchasing sophisticated plants and equipment.

7. Mr. Ramani submitted that in this case, the Chartered Accountant and the Auditor were examined on behalf of the claimants, and they have deposed to the integrity of the returns. He pointed out that these two crucial expert witnesses were not appropriately cross-examined and, therefore, now the Appellant should not be permitted to raise such grounds and dispute Jayant's income. Mr. Ramani relies on *New India India Assurance Co. Ltd. v. Mrs. Jigna Dinesh Bhatt & Ors. (2012 0 Supreme (Bom) 1175)*, *The New India Assurance Co. Ltd. v. Smt. Nandini Prabhakar Desai & Ors. (2017 SCC OnLine Bom 4)*, *Malarvizhi v. United India Insurance Company Ltd. & Anr. (2020 4 SCC 228)* and *Geeta v. Dinesh Chander . (2015 SCC OnLine Del 7269)* in support of his contentions.

8. The rival contentions now fall for my determination.

9. To appreciate the challenge in this appeal, at the outset, reference is required to be

made to the evidence of claimant no.2 Pranav (AW1), son of Jayant, the Chartered Accountant Sandip Bhandare (AW3), and Nandkishor Shiolkar (AW5), the Auditor. Pranav (AW1) has deposed that his father Jayant was 53 years old at the time of his demise. Jayant was an engineer from the Indian Institute of Technology, Mumbai, and a Proprietor of JVP Building Systems, a highly specialized construction diagnostic service business. He deposed that his father's proprietary firm was providing consultancy and on-site concrete testing through Non-Destructive Testing (NDT), Quality control & repairs/rehabilitation consultancy services. Moreover, he deposed that Jayant was also dealing in shares and mutual funds.

10. Pranav (AW1) deposed that for over the last one and a half years before his demise, Jayant had invested around Rs.20.00 lakhs in buying diagnostic equipment like an infrared camera, corrosion analyzer, ultrasonographic equipment, etc. He also deposed that his father Jayant was the only earning member in the family. He also deposed about his studying at the Goa Institute of Management at the time of the demise of his father Jayant and how he had to incur heavy expenses for completing the studies.

11. The most crucial part of Pranav's evidence is not only the qualification of Jayant and the nature of his exclusive business but the fact that Jayant had, throughout one and a half years, before this untimely demise, made a capital investment of Rs.20.00 lakhs to buy various diagnostic equipment for expansion of his business.

12. Sandip Bhandare (AW3), the Chartered Accountant of Jayant, and his Proprietary concern has also deposed in this matter. He stated that for the financial year 2009-10, he filed Income Tax Returns of Jayant, declaring his business income at Rs.8,45,128/- He deposed that for the previous financial years 2007-08 and 2008-09, he filed Income Tax Returns of Jayant's concern declaring total income of Rs.6,42,027/- and Rs.4,08,496/- respectively. If these returns are perused, Jayant's income from the business comes to Rs.2.86 lakhs for the financial year 2007-08 and Rs.2.42 lakhs for the financial year 2008-09.

13. AW3 also deposed that while filing the Income Tax Returns for the said financial years, Jayant and his wife availed of the benefits under Section 5A of the Income Tax Act. Accordingly, their income was split, and 50% of the deceased Jayant's income was shown as his spouse Smt. Vrinda Pai Vernekar. AW3 also deposed that he, along with Mr. N.M. Shiolkar & Associates had verified and audited the information provided by the assessees and the explanations given to them and only after that filed the returns.

14. The actual Income Tax Returns, Auditor's reports, Balance Sheets, and Profit and Loss Accounts of Jayant's concerns were produced on record and admitted in evidence. In cross-examination, AW3 denied the suggestions about inflation of Jayant's income for the year 2010. Instead, he explained that the interest and dividend in 2007-08 were much higher as compared to 2009-10 as savings/deposits were withdrawn/utilized for business expansion. This statement in the cross-examination is crucial because it corroborates Pranav's (AW1) evidence about investments for business expansion over a year and a half before Jayant's demise in the vehicular accident.

15. AW3, even in the cross, reiterated that he verified audited accounts for all years along with Mr. N.M. In addition, Shirokhar denied the suggestions that audited accounts for 2009-10 or 2010-11 were deliberately inflated to enable the claimants to secure higher compensation.

16. Nandkishor Shiolkar (AW5) is the auditor who had audited Jayant's concerns accounts, *inter alia*, for the years 2009- 10. He deposed to the report dated 11.10.2010 prepared and submitted by him in identifying his signature on the same (Exhibit 45). In his cross-examination, a general suggestion was put to him about the audited accounts not being correct, which he denied.

17. Mr. Ramani referred to the returns, the auditor's report, the balance sheet, and profit and loss accounts. In addition, he pointed out how, during the year immediately preceding Jayant's demise, several investments were made to expand the business and purchase equipment and plants. He submitted that all this explains the increase in income which in any case was not some abnormal increase.

18. The Tribunal has relied on the certificate Sandip Bhandare (AW3) issued on which he has certified that the income of the concern from business for the financial year 2009-10 was Rs.8,45,128/- . However, Mr. Kakodkar is justified in contending that this figure is contrary to the figure of Rs.7,39,718/- reflected in the Income Tax Returns, the auditor's report, the balance sheet, and the profit and loss account.

19. In my opinion, the figure of Rs.7,39,718/- as reflected in these documents will have to be accepted in preference to the certificate dated 03.01.2011. This is because the certificate was meant only to certify what was contained in the returns, auditor's report, profit and loss account, and balance sheet. Therefore, if there is any discrepancy between the certificate and the later documents, the latter documents ought to prevail.

20. As noted earlier, for financial years 2007-08 and 2008-09, the income from the business was in the range of Rs.3.00 lakhs or thereabouts. However, for the financial year 2009-10, this figure is Rs.7.39 lakhs. However, this spurt has been explained by AW1, AW3, and AW5. Accordingly, their explanation has not been demolished in the cross-examination. Instead, the Chartered Accountant and the Auditor have explained this rise in income quite cogently.

21. In V. Subbulakshmi & Ors. (*supra*) at paragraphs 21 & 22 this is what is observed by the Hon'ble Supreme Court :

"21. The accident took place on 7.5.1997. Income tax returns were filed on 23.6.1997. 22. The Income Tax Returns (Exp. P-14), therefore, have rightly not been relied upon."

22. In Ramilaben (*supra*), the learned Single Judge relying on the observations above in V. Subbulakshmi (*supra*) also excluded from consideration the Income Tax Returns filed after the death in a vehicular accident.

23. In Sutinder Pal (*supra*), the Division Bench of the Madhya Pradesh High Court observed

that the Income Tax Returns filed after the death could not be considered as the possibility of them being filed inflating the income cannot be ruled out.

24. In all three cases, on assessment of the evidence on record, the Courts found it unsafe to rely on returns filed after the death in the vehicular accident. However, the observations do not appear to lay down as an absolute proposition of law that under no circumstances can such returns be considered even though the same is corroborated or backed by the evidence that can be safely relied on. The decisions, in my opinion, suggest that the returns filed after the death have to be evaluated with caution and circumspection because the possibility of parties inflating their income to secure excessive compensation cannot be ruled out.

25. The Division Bench of our Court in Mrs. Jigna Dinesh Bhatt & Ors. (supra) speaking through A.S. Oka, J. (as His Lordship then was) considered and rejected the contention identical to the one now raised by Mr. Kakodkar. The discussion on this issue in paragraph 7 reads as follows:

“7. We have carefully considered the submissions. We have perused the record of the case. We have perused the deposition of the first Respondent. The only dispute is regarding quantum of compensation. The first Respondent -Widow herself is a Doctor. She deposed that after MBBS degree, the deceased obtained MS in General Surgery in 1990-91. Copies of the degree certificates have been placed on record which show that the deceased obtained M.S (General) Degree on 18th January, 1991. The first Respondent deposed that initially the deceased started his own practice in Ruby Hospital at Ghatkopar and thereafter, he was attached to Kurla Nursing Home, Kurla, Rushabh Hospital, Maneck Hospital, Sunny Hospital at Chembur and Surendra Nursing Home at Ghatkopar. The Respondent No.1 was cross-examined by the Advocate for the Appellant. A suggestion was given that in the last income tax return which was filed after the death, the income has been falsely shown. The said suggestion was denied and the first Respondent stated that in the year 1994-95, there was a increase in the income of the deceased. She denied the correctness of the suggestion that the deceased was not attached to six hospitals. She stated that during the financial year 1994-95, the total payment of Rs.67,000/- was received by the deceased as remuneration towards the surgeries performed by him in the aforesaid hospitals. On this aspect, we have perused the letters on record which are at Exhibits – 24, 25, 26, 27 and 28. These letters show that in the financial year 1994-95, the deceased received remuneration by way of fees from R.C. Maneck Polyclinic and Pathology Laboratory, Rushabh Nursing Home, Surendra Nursing Home, etc. Considering the qualifications of the deceased and considering the fact that he was practicing in Mumbai, we are unable to accept the submission that the yearly income of Rs.1,50,000/- shown in the last income tax returns of 1994-95 is exorbitant or is on a higher side. We may also note here that the other income tax returns filed on rec2017

ord show that from the year 1991-92 till 1993-94, there is a steady increase in the yearly income of the deceased from Rs.32,580/- to Rs.50,827/-. Therefore, we find no error in the approach of the learned Judge of taking the income of the deceased at Rs.1,50,000/- at the time of his death.”

26. Similarly, learned Single Judge of this Court in Smt. Nandini Prabhakar Desai & Ors. (supra) considered and rejected a contention similar to the one now raised by Mr. Kakodkar by observing the following at paragraph 13:

“13. I have gone through the evidence of AW2 and AW3 and the documents produced. The Income Tax Returns for the year 1997-98 and 1998-99 (part) are filed after the date of the accident. It is true that Tax Returns filed prior to the death would have greater probative value. However, that does not mean that Tax Returns, if filed subsequent to the date of the accident and death of a person, have to be necessarily discarded. Section 159 of the Income Tax Act provides that after the death of the assessee, his legal representatives are deemed assessees and the legal representatives of the assessee are liable for tax liability. Thus, it is not possible to accept that the tax returns filed after the death of the person, in respect of whom, the compensation is claimed, have to be discarded as a rule. However, the Court will have to be cautious and circumspect while placing reliance on the said Returns. If the income disclosed in the returns along with documentary evidence in the form of account books/ receipts is found to be cogent and acceptable, nothing prevents the Tribunal from placing reliance on the same. The question would depend upon facts and circumstances of each case. In the present case, AW3 has stated that he has issued the Income Tax certificate Exh.30, based on the records produced before him for verification. It has come on record that the deceased had income other than the professional income. However, it is the evidence of AW3 that the income shown in the certificate Exh.30, is the professional income, which is supported by the copies of the Tax Returns produced on record. I have carefully gone through the evidence of AW2 and AW3 and there is nothing on record, which would displace the evidence of these witnesses. Assessment of compensation is hedged with several difficulties. In the exercise of assessment of compensation, a reasonable amount of guess work is necessary, if not inevitable. Considering the overall evidence, I find that the Tribunal was justified in reckoning the income of the deceased at Rs.23,000/- per month, which would translate to Rs.2,76,000/- p.a.”

27. Learned Single Judge of the Delhi High Court, G.P. Mittal, J. (as her Ladyship then was), also rejected such contention after referring to and considering the decision of the Hon’ble Supreme Court in V. Subbulakshmi (supra). Accordingly, the learned Judge held that where there is no reason to suspect or doubt the Income Tax Returns filed after the death, such Income Tax Returns cannot be rejected.

28. In the present case, although there appears to be some spurt in the income for 2009-10, this spurt has been explained by no less than three witnesses. Their testimony has withstood the cross- examination. All this has to be considered in the context of the undeniable position that deceased Jayant was an IIT, Bombay Engineer engaged in a highly specialized business venture. The evidence on record supports the claimants’ case about the expansion of business and the consequently increased earnings for the years 2009-10. Therefore, this is not a case where reliance is being placed only on the Income Tax Returns filed after the death of Jayant but on other evidence that has withstood the onslaught of cross-examination explaining not only the integrity of Jayant’s income but also the reasons for such spurt. For all these reasons, Mr. Kakodkar’s contention will have to be rejected.

29. As noted earlier, Mr. Kakodkar is on a better footing about his without prejudice contention concerning the discrepancy between the certificate issued by the Chartered Accountant Sandip Bhandare and the income reflected in the Income Tax Returns, Auditor's report, profit and loss accounts. Mr. Kakodkar is right in contending that the income in the later documents must prevail over the certificate issued by the Chartered Accountant.

30. Thus, the income of deceased Jayant at the time of his unfortunate demise will have to be taken as Rs.7,39,718/- and not Rs.8,45,128/. To this annual income, an addition to the extent of 10% is due towards future prospects. This takes the annual income to Rs.8,13,689/-.

31. A deduction to the extent of 1/3rd will have to be made towards the amount Jayant would have spent on himself. Upon such deduction, the income for assessing dependency comes to Rs.5,42,459/. Jayant was 53 years old at the time of the accident. The multiplier applicable would thus be 11. The compensation towards dependency would then come to Rs.59,67,049/-.

32. The claimants will be entitled to Rs.40,000/- each towards the consortium. In addition, they will be entitled to Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The compensation amount will then come to Rs.60,77,049/- instead of Rs.63,25,000/- determined by the Tribunal.

33. This appeal is, therefore, partly allowed. The compensation of Rs.63,25,000/- determined by the Tribunal is scaled down to Rs.60,77,077/-. The award of interest is maintained.

34. The parties will be entitled to withdraw the compensation amount deposited by the appellant Insurance Company in this Court proportionately and the interest that shall have accrued on this amount. The parties to exchange their calculations and furnish their bank details to the Registry. The Registry should, after that, transfer the amounts into the parties' bank accounts directly.

35. The appeal is partly allowed. However, there shall be no orders for costs.