

(2024) 10 BOM CK 0007

Bombay High Court

Case No: First Appeal (st) No.5568 of 2015 With Interim Application No.12532 of 2024 With
Interim Application No.1204 of 2015

United India Insurance Company
Limited

APPELLANT

Vs

Shri Basavraj Virupasapa Jalsakare
And Others

RESPONDENT

Date of Decision: Oct. 25, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 279, 304A
- Motor Vehicle Act, 1988 - Section 184

Hon'ble Judges: S.M. Modak, J

Bench: Single Bench

Advocate: T.J. Mendon, Rahul Mehta, KMC Legal Venture

Final Decision: Dismissed

Judgement

S.M. Modak, J

1. The only issue argued before me on behalf of the appellants is whether the Tribunal was justified in assessing the income of the deceased at Rs.1,15,640/- per annum. The deceased Rajkumar was earning income from two sources:-

(i) is working in Trimurti Engineering Contractors as a Cashier (getting 4,500/- per month by way of salary) and

(ii) also working as a supervisor in Water Supply.

It is not clarified what was income from 2nd source. However, the income-tax return for the assessment year 2010-11 was tendered in evidence through Tax Consultant

Mangesh Nene. The deceased died due to vehicular accident that took place on 16 October 2010. He was riding pillion on motor cycle. The tanker driven by Respondent No.5 and insured with the present appellant ramped into the motor cycle. Deceased succumbed to the injuries. There was FIR registered against tanker driver with Roha Police Station under Sections 279,304-A of IPC and under Section 184 of the Motor Vehicle Act.

2. The claimants are respondent Nos.1 to 5. Respondent Nos.1 and 2 are parents and Respondent Nos.3 and 4 are minor brother and sister of the deceased.

3. The owner of the tanker filed the written-statement, so also the insurer. The negligence of the driver of the tanker was denied. There was a plea of the contributory negligence of the motor cycle driver. There was a companion petition. The rashness and negligence of the tanker driver was held. The father of the deceased gave evidence on the point of salary. Two witnesses were examined:-

Dhondiram Nimbole	to prove the salary from Trimurti Engineering Contractors. It was Rs.4,500/- per month.
Mangesh Nene	He is a Tax Consultant. Income-tax return for the assessment year 2010-11 was proved through him.

4. The income-tax return is not shown to me from the record. It is submitted with consensus that it is not there. The discussion in the judgment is considered. The income from both the sources is 1,15,640/-. Mr.Mehta for the appellant made following submissions:-

(i) Only the return for assessment year 2010-11 was produced and return for three years are not produced and the average could have been considered.

(ii) The financial year for the return on record is 2009-10 whereas the accident took place on 16 October 2010.

(iii) It means income-tax return for the financial year 2009-10 which covers the date of accident.

5. According to Mr. Mendon income-tax return is a public document and even the Tribunal can consider return for one year as a basis. Even though the return for the financial year 2010-11 is not submitted still the income-tax return for the earlier year when the deceased was alive was submitted. He supported the judgment.

6. It is true if the income-tax return for more than one year could have been submitted, it could have certainly helped the Tribunal in ascertaining whether the income has increased or not. Merely because it is not submitted, it does not mean that income cannot be assessed. Ultimately the Tribunal has to determine the income on the basis of available record. I do not find any error on the part of the Tribunal in determining the income only on the basis of one return. I am not accepting the contention raised by Mr. Mehta for the Insurance Company. The Tribunal has done the calculation of quantum of compensation in Paragraph No.13 of the impugned judgment. The professional tax is rightly deducted. Future prospects to the tune of 50% is properly considered. Deceased was a bachelor. His family consists of four persons. So 2/3rd dependency is properly considered. The age was 24 years. 18 multiplier is correct. Other benefits are also properly considered. The compensation arrived at Rs.20,68,720/- is proper. The brother and sister were not given share. Compensation is awarded only to parents and rightly so no interference is warranted. Hence, the order:-

(i) The appeal is dismissed.

(ii) Amount of security deposit be transferred to the Tribunal for disbursal as per the law.

(iii) Parties to bear their costs.