IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

FMA 552 of 2014

(FMAT 1647 of 2008)

Smt. Jayanti Das & Anr.

Vs.

National Insurance Co. Ltd. & Anr.

For the Appellants/ Claimants	:	Mr. Niranjan Maity.
For the Respondent No.1/ Insurance company	:	Mr. Guddu Singh.
For the Respondent No.2/ Owner	:	None.
Hearing concluded on	:	30.09.2024
Judgment on	:	30.09.2024

Shampa Dutt (Paul), J.:

1. The present claim appeal has been preferred by Claimants/Appellants against the judgment and award dated 29.08.2008 passed by the learned Judge, Motor Accident Claims Tribunal, Additional District Judge, Alipore, Dist. South 24 Parganas, in M.A.C.C. No. 45 of 2007, **under Section 166 of the Motor Vehicles Act, 1988.**

2. **FACTS :**

> *"……On 20.04.2007 while the victim Joydeb Das was returning home by a by-cycle following the extreme left side of Biren Roy Road, (West) near Kathepole the driver of offending vehicle No. WB-03A-5743 was coming from opposite direction rashly and negligently and thereby dashed against the said cyclist Joydeb Das and his by-cycle by going to the wrong side of the said road and as a result he died almost on the spot.*
>
> *The deceased at the time of his death aged about 54 years and was in service which East India Pharmaceuticals Works Limited, 119, Biren Roy Road West, Sarsuna, Kolkata-61 and earned Rs.10,000/- per month as salary. It is further stated in the petition that over the said accident Thakurpukur P.S. case No. 115 dated 21.04.2007 under Sections 279/304A/427 I.P.C. was started against the driver of the said offending vehicle.*
>
> *M/s D.K. Transport, 36/32, Bose Para Road, P.S. Thakurpukur, Kolkata-8, is the owner of the said offending vehicle bearing No. WB-03A-5743 (Matador) and National Insurance Company Limited is the Insurer of the said offending vehicle………"*

3. O.P. No. 1/ Owner in spite of receipt of summons did not appear and the case was taken up ex parte against him while the O.P. No. 2/National Insurance Co. Ltd. appeared and contested the claim application by filing written statement.

4. In their written statement the Insurance Company denied all the material allegations and stated that the case is not maintainable bad for non-joinder and mis-joinder of parties and prayed that the application be dismissed with costs against the O.Ps.

5. The claimants examined **three witnesses** and proved relevant documents. The O.Ps. did not examine any witness but cross-examined the Claimant's witnesses.

6. Being aggrieved the claimants/appellants have preferred the present appeal on the ground:-

That the learned Tribunal did not apply the correct multiplier nor was the actual income considered by the learned Tribunal and, as such, the appellant has not been granted 'just compensation' in the present case.

7. On conclusion of hearing the learned Tribunal granted compensation as follows:-

*"………**<u>M.A.C.C. No. 45 of 2007</u>***

<u>Dated: 29.08.2008</u>

Now as regards the quantum of compensation there is a specific case that the victim was working at East India Pharmaceuticals Works Limited. The Law Officer of the said company deposed in this case and he produced relevant documents to show that the victim Joydev Das was working in the said company. He has shown that in the company the date of birth of Joydev Das was recorded as 04.07.1951. He has further produced some pay slip and the said pay slip shows that in the month of March, 2007, the pay of the deceased was Rs.5199/- which was net pay. The income is after deduction of P.F. Loan, interest on P.F. loan, advance professional tax which the petitioner is to pay as the liability is Rs.5199/- which is taken as Rs.5200/- for benefit of calculation. The total yearly income comes to Rs.62,400/- of the 1/3rd is to be deducted as the expenses which the victim would have *incurred towards maintaining himself had he been alive. So, the total income for consideration of compensation comes to Rs.41,600/-. The age group which the petitioner belongs was 55 to 60 years and the multiplier will be '8' and the total compensation comes to Rs.3,32,800/- along with this the petitioners are also entitled to Rs.9500/- for funeral expenses, loss of consortium and loss of estate. Therefore, the total compensation to Rs.3,42,300/- (Rupees Three Lacs Forty Two Thousand and Three hundred). The petitioner is also entitled to interest @ 6% from the date of filing of this claim application of the total amount Rs.2,00,000/- (Rupees Two lack) is to be given to the petitioner/wife viz., Jayanti Das, the wife of the deceased Joydev Das and this rest amount will be given to Debjani Mal, daughter of the deceased Joydev Das…..*

Sd/-
Judge,
MACC Tribunal, Alipore,
Additional District Judge,
10th Court, Alipore……..”

8. Considering the materials including the evidence on record, it appears that:-

a) The deceased's date of birth as recorded with the company where he was working is 04.07.1951. As the accident occurred on 20.04.2007, the deceased/victim was aged about **55 years** at the time of his death. As such, **multiplier of 11** will be applicable. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121)***

b) The **pay slip** of the deceased (copies of the pay slips are at **page 43 to 45)** shows that the last drawn gross salary of the deceased was **Rs. 11, 338.74** and from the deductions made, an amount of Rs. 110 paid towards professional tax is to be deducted while deciding the claim application.

c) ***In National Insurance Company Ltd. Vs Indira Srivastava & Ors., 2008 (2) SCC 763, decided on 12 December, 2007,*** **the Supreme Court held as follows:-**

> *"**9. The term 'income'** has different connotations for different purposes. A court of law, having regard to the change in societal conditions must consider the question not only having regard to pay packet the employee carries home at the end of the month **but also other perks which are beneficial to the members of the entire family.** Loss caused to the family on a death of a near and dear one can hardly be compensated on monetary terms.*
>
> ***19.** The amounts, therefore, which were required to be paid to the deceased by his employer by way of perks, should be included for computation of his monthly income as that would have been added to his monthly income by way of contribution to the family as contradistinguished to the ones which were for his benefit. We may, however, hasten to add that from the said amount of income, the statutory amount of tax payable thereupon must be deducted.*
>
> ***21.** If the dictionary meaning of the word 'income' is taken to its logical conclusion, it should include those benefits, either in terms of money or otherwise, which are taken into consideration for the purpose of payment of income-tax or profession tax although some elements thereof may or may not be taxable or would have been otherwise taxable but for the exemption conferred thereupon under the statute.*
>
> ***24.** Yet again in **New India Assurance Co. Ltd. v. Charlie & Anr [(2005) 10 SCC 720],** the same view was reiterated. However, therein although the words 'net income' has been used but the same itself would ordinarily mean gross income minus the statutory deductions. We must also notice that the said decision has been followed in **New India Assurance Co. Ltd. v. Kalpana (Smt.) & Ors. [(2007) 3 SCC 538]."***

d) Accordingly, referring to Para 9 of the Judgment in ***National Insurance Company Ltd Vs Indira Srivastava & Ors.***

***(Supra)*, the** sum of **Rs.1940** received as overtime will not be deducted, the said amount being beneficial to the entire family. Only the Professional Tax of **Rs.110** will be deducted from the gross salary which then comes to **Rs. 11278/- per month.**

e) **Future prospects** will be **15%** of established income, as the deceased was a permanent employee. ***(National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., (2017) 16 SCC 680)***

f) The number of claimants being two **(2)**, **1/3rd** is the deduction towards personal expenses of the deceased. ***(Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr. (Supra)).***

g) General damages of **Rs. 70,000**/- under the conventional heads of Loss of estate: **Rs.15,000**, Loss of consortium: **Rs.40,000**, Funeral expenses: **Rs.15,000 to be added**. ***(National Insurance Company Ltd. Vs Pranay Sethi & Ors.,(Supra)).*** General damages to be enhanced at the rate of 10% every three years. So 10% every three year since 2017 on 70,000/- will be Rs. 84,000/-. (Being 20%).

9. In view of such fact, the *'just compensation'* in the present case will be as follows :-

Monthly Income	*Rs. 11278/-*
Annual Income (11278 x 12)	*Rs. 1, 35, 336/-*
*Less : **1/3rd** towards personal and living expenses*	*Rs. 45,112/-*
	Rs. 90,224/-
*Add : Future prospects @ **15%** of the annual income of the deceased*	***Rs.13,533.6/-***
	Rs. 1, 03, 757.6/-
Multiplier x 11 (1, 03, 757.6 x 11)	***Rs. 11, 41, 333.6/-***

Add: General damages Loss of estate: Rs.15,000/- Loss of consortium: Rs.40,000/- Funeral expenses: Rs.15,000/. (Rs. 70,000 + 20% = Rs. 84,000)	***Rs. 84,000/-***
Total amount:-	***Rs. 12, 25, 333.6/-***
Total amount (Round Off):-	***Rs. 12, 25, 334/-***

10. The appeal is of the year 2008. Requisites for notice upon the respondent were put in only in the year 2014. **Thus the following judgments are relied upon:-**

i. ***Kajal Vs. Jagdish Chand & Ors., AIR 2020 SC 776.***

ii. ***Kohinur Begum And Ors. vs New India Assurance Co. Ltd. And Anr., AIR 2008 CAL 84.***

iii. ***Sri Lakshmana Gowda B.N. vs The Oriental Insurance Co. Ltd., CIVIL APPEAL NO. 4255 OF 2023 @ (SPECIAL LEAVE PETITION (CIVIL) NO.13736 OF 2019).***

11. The Claimants/Appellants have received an amount of compensation of **Rs. 3,42,300/-** together with interest in terms of order of the learned Tribunal. The claimants are now entitled to the **balance amount of compensation of Rs. 8, 83, 034/- together with interest at the rate of 6% per annum from the date of filing of the claim application 2014 and from 2018 till deposit.**

12. Taking into consideration the amount already received by the Claimants/Appellants, the Respondent No. 1/Insurance Company shall deposit the balance amount, along with the interest, with the learned Registrar General, High Court, Calcutta, within a period of six weeks, who shall release the amount in favour of the claimants in equal proportion, **after payment** of the amount for loss of the consortium to the Appellant/wife, upon satisfaction of their identity and payment of *ad-valore*m Court fees, if not already paid**.**

13. The appeal being FMA 552 of 2014/ FMAT 1647 of 2008 stands disposed of. The impugned judgment and award of the learned Tribunal under appeal is modified to the above extent.

14. All connected applications, if any, stand disposed of.

15. Interim order, if any, stands vacated.

16. Copy of this Judgment be sent to the Learned Tribunal, along with the trial court records, if received.

17. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)