IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CIVIL APPELLATE JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

FMAT 9 of 2021

Hira Routh & Ors.
Vs.
The New India Assurance C. Limited & Anr.

For the Appellants	:	Mr. Subir Banerjee Mr. Abhijit Raha
For the Insurance Co. Ltd.	:	Mr. Rishin Chakraborty
Heard on	:	16.08.2024
Judgment on	:	23.08.2024

Ajoy Kumar Mukherjee, J.

1. This appeal preferred against judgment and award dated 03.09.2018 passed by Motor Accident Claim Tribunal, Mal, Jalpaiguri in MAC Case No. 263 of 2017. By the order impugned Tribunal below on the basis of net income of the victim has assessed the compensation amount and thereby awarded compensation of Rs. 14,53,000/- to the claimants.

2. Being aggrieved by the said award of compensation petitioner herein contended that the Tribunal was not justified in assessing the income of the deceased as Rs. 12,030/- but he ought to have held that the income of the deceased was Rs. 16790/- after deducting Rs. 130/- only which was paid towards professional tax. Learned tribunal below did not consider that the claimant have produced all the relevant documents including salary slip of the deceased which clearly indicates that the gross income of the deceased was Rs. 16920/- per month. The tribunal below further committed mistake in deducting $1/3^{rd}$ on account of the personal expenses of the deceased without considering that deceased had to maintain a family of six persons including himself and for which the deduction ought to have $1/4^{th}$ of the total income instead of $1/3^{rd}$. The order impugned was further challenged on the ground that the tribunal ought to have allowed Rs. 70,000/- as general damages and he should have allowed future prospect to the claimants/ appellants for pre mature death of the victim at the rate 30% upon the total assessed compensation in view of the settled principle of law, as at the time of accident the victim was aged about 42 years having engaged in a permanent job. The other ground of preferring the appeal is that the tribunal should have allowed the claim application by awarding interest at the rate of 12% per annum instead of 6% per annum from the date of filling of the claim application. Accordingly the claimants have sought for enhancement of the compensation amount.

3. Mr. Chakraborty on behalf of New India Insurance Co. Ltd. has contended that the assessment made by the tribunal below is quit justified and it does not call for any interference by this court.

4. I have considered submissions made by both the parties.

5. It is not in dispute in the present case that the victims gross income per month is Rs.16,920/- out of which he used to pay Rs. 130/- towards professional tax. Ideally the amount paid by way of professional tax is to be deducted from the gross income for the purpose of calculation of the monthly income of the victim and others are "income" within the object of the said provision and as such the monthly income of the victim should have been assessed Rs. 16,790/-. Accordingly his annual income should have been assessed by the tribunal below as Rs. 2,01,480/-. Since the accused died at the age of 42 years future prospect should have been assessed at the rate of 30% of the said amount which is Rs. 60,444/-. Accordingly total amount income comes down to Rs. 2,61,924/-. Since victim's family comprising of six members amount of 1/4th should have been deduced from the said income and after such deduction the amount comes down to Rs. 1,96,443/- and after applying multiplier of 14 with the said amount, it comes down to Rs. 27,50, 202/-. In addition to that the petitioners is entitled to get general damage of Rs. 70,000/-.

6. In such view of the matter the total amount of compensation the petitioner is entitled to get is Rs. 28,20,202/-. The Tribunal below has already awarded an amount of Rs. 14, 53,100/- in such view of the matter the opposite party/insurance company is directed to pay the enhanced amount of Rs. 13,67,102/- along with 6% simple interest per annum from the date of filing of the application till the date of payment, within one month from the date of this order, in default the claimants will be at liberty to execute the award as per law.

7. **FMAT 9 of 2021** is accordingly disposed off.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(AJOY KUMAR MUKHERJEE, J.)