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

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

FMA 3 of 2024

Bina Begum @ Bina Begam & Ors.
Vs.
Goutam Mitra & Anr.

For the Appellants	:	Mr. Uday Sankar Sarkar
For the Respondent/Insurance Co.	:	Mr. Bipul Ranjan Bhattacharjee
Heard on	:	20.08.2024
Judgment on	:	23.08.2024

<u>Ajoy Kumar Mukherjee, J.</u>

1. Being aggrieved by and dissatisfied with the judgment and order dated 9th February, 2023 passed by the Tribunal below in MAC case No. 115 of 2021 the appellants have preferred the instant appeal for enhancement of the compensation amount interalia on the following grounds:-

(i) That learned Tribunal below has wrongly calculated the monthly income of the victim by deducting GPF, GSLI, house rent and medical allowances from the gross salary, which is not permissible. Since the victim had no taxable income so he had to pay only the professional tax.

(ii) The Tribunal below has failed to apply the correct multiplier and therefore, has erred in arriving at the proper amount of just compensation.

2. Learned counsel appearing on behalf of the respondent insurance company submitted that the tribunal below was quite justified in awarding the compensation amount by applying correct multiplier and as such the order impugned does not call for interference by this court.

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

4. From exhibit 12 it is very much apparent that the victims gross income for the month of August 2020 which is the month immediate before the occurrence, was Rs. 38,916/-

Payslip of the victim marked exhibit-12 reflects following picture.

Earning	Deduction
Pay-34,300/- D.A.-0 House rent Allowance-4116/- Medical Allowance-500/-	General Provident Fund-11,000/- Professional Tax-150/- GSLI-40/-
Total Gross Income-Rs. 38,916/-	Total Net Income-Rs. 11,190/-

5. The moot question therefore comes for consideration in the present context is whether all the amounts like contribution to P.F. and GSLI are to be deducted while computing monthly income of the victim for the purpose of assessment of compensation.

6. Income. i.e. what comes in, can be used to denote what a person receives. Tax paid by an employee person goes to the government under specific head and there is no return. Whereas contribution in general provident fund and like funds are the amounts paid under specific heads and the contributions are always repayable to an employee at the end of service. In fact such contributions made by a salaried person are their savings in the form of deferred payments on contractual basis. Now if the contributions made by the employee which are otherwise savings from the salary are deducted from his gross income for the purpose of assessment of compensation, then the claimants of compensation would loss considerable portion of the income. Accordingly Tribunal below ought to have make deduction of professional tax only (which is not repayable by the employer, from the gross salary of victim), while determining the monthly income of the victim for the purpose of computation of compensation amount.

7. Accordingly the monthly income of the victim after deducting Rs. 150/- paid towards professional tax comes down to Rs.38,766/- and his annual income comes down to Rs.4,65,192/-.

8. In the aforesaid view of the matter, I find it necessary to modify the award in terms of following calculation:-

Annual Income (38766x12)	Rs.4,65,192/-
$1/3^{rd}$ amount deducted for personal expenses	Rs.1,55,064/-
	Rs.3,10,128x9/-
Apply multiplier 9 in terms of Sarla Verma's judgment reported in AIR	

2009 SC 3104 and keeping in mind victim died at the age of 58 years	Rs. 27,91,152/-
15% further prospect to be added in terms of Pranay Shetty's judgment reported in 2017 ACJ 2700	Rs. 4,18,673/-
	Rs.32,09,825/-
Add Rs. 70,000/- towards general damages in terms of Pranay Shetty's judgment (supra)	Rs. 70,000/-
Total compensation	Rs.32,79,825/-
Claimants already received	Rs.20,00,068/-
Arrear compensation	Rs. 12,79,757/-

9. Accordingly the appellants/claimants are entitled to get Rs. 12,79,757/- along with 6% interest from the date of filing of the application towards enhanced compensation amount. The United India Insurance company Ltd. is directed to pay the enhanced compensation amount of Rs. 12,79,757/- along with interest to the claimants in the mode and manner as directed by the tribunal below within the period of 60 days from this date failing which appellants/claimants will at liberty to execute the decree as per law.

10. FMA 3 of 2024 is accordingly disposed of.

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.)