IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
(Civil Appellate Jurisdiction)
APPELLATE SIDE

PRESENT:

THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

FMAT (MV) 34 of 2022

Sachi @ Sachi Jha & Anr.
Vs.
United India Insurance Co. Ltd. & Ors.

For the Appellants	:	Mr. Gobinda Saha Mr. Tamal Kumar Sen Ms. Prianka Dey Mr. Milan Ch. Laskar
For the Opposite Party No.1	:	Mr. Bipul Ranjan Bhattacharjee
For the Insurance Company	:	Mr. Indradip Das
Heard on	:	10.07.2024
Judgment on	:	23.07.2024

Ajoy Kumar Mukherjee , J.:

1. The appellant claimant has approached before this Court seeking further enhancement of compensation for the death of Mahesh Jha who succumbed to his injury due to a motor accident, which occurred on 20th September, 2011.

2. The case placed before the Motor Accident Claim Tribunal by the claimants is that deceased Mahesh Jha, aged about 53 years, who was a Group D staff under Govt. of West Bengal, having monthly income of Rs.16,860/-, met a motor accident caused by the offending vehicle bearing registration no. WB 63-3116 (Truck) on 20th September, 2011. One police case being Kotwali P.S. Case No. 607/2011 was started under Section 279/338/304 IPC, which ultimately culminated into a charge-sheet. The claimants approached the Motor Accident Claim Tribunal with a prayer for compensation amounting to Rs.14,92,340/. Tribunal below after hearing the parties was pleased to award compensation of Rs. 13,09,977/- along with 6% simple interest.

3. Being dissatisfied with the said awarded amount, the claimants herein raised mainly two issues –

i) the learned Tribunal did not properly assess the future prospect and

ii) learned Tribunal was wrong in deducting from monthly income, the amount contributed to provident fund, provident fund loan amount and the contributions made to L.I.C and G.S.L.I and thereby was not justified in computing the monthly income of the deceased.

4. The case of accident and the death of the victim is not in dispute in the present case. Now let me consider the substance about the grounds of appeal as set out in the Memorandum of Appeal. From the impugned judgment it appears that the Tribunal below has taken into account the net income of the deceased. The salary certificate as issued by the Headmaster of the school, where the victim was an employee, goes to show that the victim's gross salary at the time of his death was Rs.16,860/- per month and after deduction of provident fund, provident fund loan installment, contributions to L.I.C, G.S.L.I and the professional tax, the net income comes down to Rs.12,272/-. Learned counsel appearing on behalf of the appellant strenuously argued that only the amount paid towards professional tax amounting to Rs. 130/- is liable to be deducted from the gross income for the purpose of computation of victim's monthly income, because except professional tax the others are part of his total monthly income and there is no reason for deducting the said amount. I find substance in the petitioner's aforesaid contention and accordingly after deducting professional tax paid by the victim the monthly income of the victim is to be assessed at Rs.16,730/- and annual income is to be assessed as Rs.2,00,760/-.

5. The second point agitated by the claimants is that the Court below while passed the judgment was pleased to rely upon the judgment of ***Pranay Shetty & Ors.*** reported in **2017 (4) PSC 673 (SC)** regarding the multiplier to be applied in the present case but he failed to consider that in the same judgment the Court held that for the purpose of calculation of future prospect, deceased if engaged in a permanent job and was between the age group of 50 to 60 years, an addition of 15% of the actual salary to the income of the deceased towards future prospect is to be made. This aspect of the said judgment was not duly taken care of by the Tribunal.

6. However, during hearing learned counsel appearing on behalf of the opposite party/insurance company argued that the victim was not a permanent Govt. employee. It appears from the judgment of the Tribunal that no such issue was raised before the Tribunal and in the absence of pleading no issue was framed to that extent. From the defence side one Baneswar Dey Sarkar deposed as PW 1 and another witness Dipak Kumar Sharma had adduced on behalf of opposite party no. 4 as DW 2 and I find that no such issue was raised either in the examination-in-chief or in the cross-examination that the victim was not a permanent employee. On the contrary, the exhibited documents filed on behalf of the petitioners namely, exhibit 12,13 and also the acquaintance Registrar, does not suggest that the victim was a temporary staff or a casual staff on contractual basis.

7. In Pranay Shetty (supra) judgment it has been clearly laid down in paragraph 60 as a thumb rule that there should be an addition of 15%, in the income if the deceased is between the age of 50 to 60 years and when he is in a permanent job because there is always an enhancement due to one reason or the other. Since in the present context there is nothing to show that the deceased victim was not in a permanent job, I find that the Tribunal below was not justified in awarding 10% of the income as future prospect.

8. In such view of the matter if 15% of the income is added with the monthly income of the deceased it comes down to Rs.2,30,874/-. After deduction of 1/3 amount on account of personal living expenses, it comes down to Rs.1,53,916/- and applying multiplier 11 (as the victim was aged 53 years) the compensation amount comes down to Rs.16,93,076/-. The Tribunal also awarded Rs.70,000/- towards general damage as decided in the Pranay Shetty judgment. The claimants have also filed and proved documents regarding medical expenditure incurred due to accident which is Rs 53,660/- and as such the total compensation amount which the petitioners are entitled to get is Rs.18,16,780/-. The Tribunal by its judgment dated 30th May, 2022 has awarded a sum of Rs. 13,09,977/- along with simple interest at the rate of 6% per annum from the date of filing of the case till full realization of the compensation amount. The insurance company has already paid the said amount.

9. It is argued that the claimants are entitled to get 9% interest upon the entire compensation amount from the date of the claim application. I find that the Tribunal below awarded simple interest at the rate of 6% per annum upon the compensation amount from the date of filing of the application. In the absence of any impropriety in the said finding I am not inclined to interfere about the rate of interest as decided by the Tribunal.

10. Therefore, taking into consideration the fact that the Tribunal below was not justified in calculating the monthly income of the deceased and also considering the fact that the Tribunal below without coming into finding that the victim was not a permanent employee had calculated the future prospect at the rate of 10%, which is not in conformity with the direction made by the Apex Court in ***Pranay Shetty's case,*** I find that total compensation amount to be awarded to the present case is Rs. 18,16,780/- and the amount of Rs. 13,9,977/- which has already been awarded, if deducted, the appellants would be entitled to the enhanced compensation of Rs. 5,06,759/-, which shall be paid with interest at the rate of 6% per annum from the date of filing of claim petition till the date of actual payment.

11. The enhanced compensation amount of Rs. 5,06,759/- shall be paid by the respondent no. 4, Bajaj Alianz General Insurance Company Limited by issuing A/C payee cheque in the name of petitioners in equal amount, along with interest as stated above, within a period of 8 (eight) weeks from the date of communication of this order. However, as directed by the Tribunal below the respondent no. 4 will be at liberty to pay and recover the same from the owner and driver of the offending vehicle.

12. The Miscellaneous Appeal No. **FMAT (MV) 34 of 2022** is accordingly disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Ajoy Kumar Mukherjee, J.)