

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

FMA 840 of 2022

**Krishna Mirdha & Ors.
Versus
National Insurance Company Ltd. & Ors.**

For the Appellant : Mr. Ashique Mondal
Mr. Shahmeraz Alam

For the Respondent No.1/ Insurance co. : Mr. M.P. Chakraborty
Ms. Ratnadipa Karmakar

For the Private Respondent No. 3 & 4: Mr. Souvik Das

Heard on : 28.02.2025, 07.04.2025, 16.05.2025
12.06.2025

Judgment on : 16th July, 2025.

Ananya Bandyopadhyay, J:

1. The Learned Advocates representing the respective parties are present in Court.
2. The instant appeal had been filed against the judgment and award dated 26th August, 2021 passed by the learned Judge,

Motor Accident Claims Tribunal, Fast Track 1st Tribunal, Tamruk, Purba Medinipur in M.A.C. Case No. 35 of 2014.

3. An application under Section 166 of the Motor Vehicles Act had been filed by the claimants on account of the death of the victim in an accident which occurred on 16th January, 2014 at about Suadighit bank More within the jurisdiction of Mugberia G.P. No.- VI with the involvement of the offending vehicle being a truck bearing registration No. WB-31/0917 which approaching at exceeding speed rashly and negligently clashed with the victim riding his motor cycle resulting in severe injuries.
4. The Learned Advocate representing the appellants/claimants submitted to have filed the instant appeal exclusively on the ground that the learned tribunal had erroneously deducted a sum of Rs. 8520/- towards early GPF contribution to the extent of Rs. 7200/- More-over, the income tax should have been deducted at the rate of 10% at the relevant point of time corresponding to the assessment year 2014-15 which should have been Rs. 4060/- instead of Rs. 3340/-.
5. The learned Advocate representing the respondent No.1/Insurance Company submitted that the learned tribunal after considering the oral as well as documentary evidence had

rightly assessed the compensation award to be not interfered with.

6. Considered the rival contentions of the Learned Advocates representing the respective parties.
7. Since the occurrence of the accident, the driving license, the Insurance policy, the route permit etc. and other ancillary issues have not been disputed by the learned advocate representing the respondent No.1/insurance company, this Court restricts itself only to consider the point agitated by both the parties. The Learned Advocate representing the appellants/claimants submitted that the monthly income of the victim was Rs. 24,327/- as per the salary certificate marked as Ext.9. The yearly income of the victim, therefore, was Rs. 2,91,924/-.

In view of the observation of the Hon'ble Supreme Court in National Insurance Co. Ltd. Vs. Indira Srivastava & Ors.¹ As held in Paragraphs 10, 11, 12, 13 and 14 are quoted below

10. Section 168 of the Act uses the word 'just compensation' which, in our opinion, should be assigned a broad meaning. We cannot, in determining the issue involved in the matter, lose sight of the fact that the private sector companies in place of introducing a pension scheme takes recourse to payment of contributory Provident Fund, Gratuity and other perks to attract the people who are efficient and hard working. Different offers made to an officer by the employer, same may be either for the benefit of the employee himself or for the benefit of the entire family. If some facilities are being provided whereby the

¹ (2008) 2 Supreme Court Cases 763

entire family stands to benefit, the same, in our opinion, must be held to be relevant for the purpose of computation of total income on the basis whereof the amount of compensation payable for the death of the kith and kin of the applicants is required to be determined. For the aforementioned purpose, we may notice the elements of pay, paid to the deceased :

"BASIC : 63,400.00

CONVEYANCE ALLOWANCE : 12,000.00

RENT CO LEASE : 49,200.00

BONUS (35% OF BASIC) : 21,840.00

TOTAL : 1,45,440.00

In addition to above, his other entitlements were :

Con. to PF 10% Basic Rs. 6,240/- (p.a.)

LTA reimbursement Rs. 7,000/- (p.a.)

Medical reimbursement Rs. 6,000/- (p.a.)

Superannuation 15% of Basic Rs. 9,360/- (p.a.)

Gratuity Cont. 5.34% of Basic Rs. 3,332/- (p.a.)

Medical Policy-self & Family @ Rs.55,000/- (p.a.)

Education Scholarship @ Rs.500 Rs.12,000/- (p.a.)

Payable to his two children Directly"

11. There are three basic features in the aforementioned statement which require our consideration :

- 1. Reimbursement of rent would be equivalent to HRA;**
- 2. Bonus is payable as a part of salary; and**
- 3. Contribution to the Provident Fund.**

12. We may furthermore notice that apart therefrom, superannuation benefits, contributions towards gratuity, insurance of medical policy for self and family and education scholarship were beneficial to the members of the family.

13. We have, however, no doubt in mind that medical reimbursement which provides for a slab and which keeping in view the terminology used, would mean reimbursement for medical expenses on production of medical bills and, thus, the same would not come within the purview of the aforementioned category.

14. The question came for consideration before a learned Single Judge of the Madras High Court in The Manager, National Insurance Co. Ltd. v. Padmavathy & Ors. [CMA No.114 of 2006 decided on 29.1.2007], wherein it was held :

"Income tax, Professional tax which are deducted from the salaried person goes to the coffers of the government under specific head and there is no return. Whereas, the General Provident Fund, Special Provident Fund, L.I.C.,

Contribution are amounts paid specific heads and the contribution is always repayable to an employee at the time of voluntary retirement, death or for any other reason. Such contribution made by the salaried person are deferred payments and they are savings. The Supreme Court as well as various High Courts have held that the compensation payable under the Motor Vehicles Act is statutory and that the deferred payments made to the employee are contractual. Courts have held that there cannot be any deductions in the statutory compensation, if the Legal Representatives are entitled to lumpsum payment under the contractual liability. If the contributions made by the employee which are otherwise savings from the salary are deducted from the gross income and only the net income is taken for computing the dependency compensation, then the Legal Representatives of the victim would lose considerable portion of the income. In view of the settled proposition of law, I am of the view, the Tribunal can make only statutory deductions such as Income tax and professional tax and any other contribution, which is not repayable by the employer, from the salary of the deceased person while determining the monthly income for computing the dependency compensation. Any contribution made by the employee during his life time, form part of the salary and they should be included in the monthly income, while computing the dependency compensation."

In view of the observation of the Hon'ble Supreme Court in National Helen C. Rebello (Mrs.) & Ors. Vs. Maharashtra State Road Transport Corporation & Anr.² As held in Paragraphs 35, 36 and 37 are quoted below:

35. Broadly, we may examine the receipt of the provident fund which is a deferred payment out of the contribution made by an employee during the tenure of his service. Such employee or his heirs are entitled to receive this amount irrespective of the accidental death. This amount is secured, is certain to be received, while the amount under the Motor Vehicles Act is uncertain and is receivable only on the happening of the event viz., accident which may not take place at all. Similarly., family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No co-relation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on

² (2008) 2 Supreme Court Cases 763

account of the contract with the insurer, for which insured contributes in the form of premium. It is receivable even by the insured, if he lives till maturity after paying all the premiums, in the case of death insurer indemnifies to pay the sum to the heirs, again in terms of the contracts for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on insured's death. Death is only a step or contingency in terms of the contract, to receive the amount. Similarly any case, bank balance, shares, fixed deposits, etc. though are all a pecuniary advantage receivable by the heirs on account of one's death but all these have no co-relation with the amount receivable under a statute occasioned only on account of accidental death. How could such an amount come within the periphery of the Motor Vehicles Act to be termed as 'pecuniary advantage' liable for deduction. When we seek the principle of loss and gain, it has to be on similar and same plane having nexus inter so between them and not to which, there is no semblance of any co-relation. The insured (deceased) contributes his own money for which he receives the amount has no co-relation to the compensation computed as against torfeasor for his negligence on account of accident. As aforesaid, the amount receivable as compensation under the Act is on account of the injury of death without making any contribution towards it then how can fruits of an amount received through contributions of the insured be deducted out of the amount receivable under the Motor Vehicles Act. The amount under this Act, he receives without any contribution. As we have said the compensation payable under the Motor Vehicles Act is statutory while the amount received under the life insurance policy is contractual.

36. As we have observed the whole scheme of the Act, in relation of the payment of compensation to the claimant, is beneficial legislation, the intention of the legislature is made more clear by the change of language from what was in Fatal Accidents Act, 1855 and what is brought under Section 110-B of 1939 Act. This is also visible through the provision of Section 168(1) under the Motor Vehicles Act, 1988 and Section 92-A of 1939 Act which fixes the liability on the owner of the vehicle even on no fault. It provides where the death or permanent disablement of any person has resulted from an accident spite of no fault of the owner of the vehicle, an amount of compensation fixed therein is payable to claimant by such owner of the vehicle. Section 92-B ensures that the claim for compensation under Section 92-A is addition to any other right to claim compensation respect whereof under any other provision of this Act

or of any other law for the time being in force. This clearly indicates the intention of the legislature which is conferring larger benefit to the claimant. Interpretation of such beneficial legislation is also well settled. Whenever there be two possible interpretations in such statute then the one which sub serves the object of legislation, viz., benefit to the subject should be accepted. In the present case, two interpretations have given of this statute, evidenced by two distinct sets of decisions of the various high courts. We have no hesitation to conclude that the set of decisions, which applied the principle of no deduction of the life insurance amount should be accepted and the other set, which interpreted to deduct, is to be rejected. For all these consideration we have no hesitation to hold that such High Courts were wrong in deducting the amount paid or payable under the life insurance by giving restricted meaning to the provisions of the Motor Vehicles Act basing mostly on the language of English statutes and not taking into consideration the changed language and intends of the legislature under various provisions of the Motor Vehicles Act, 1939.

37. Accordingly, we set aside the impugned judgment dated 9th September, 1985 and restore the judgment of the tribunal dated 29 September, 1980 and hold that the amount received by the claimant on the life insurance of the deceased is not deductible from the compensation computed under the Motor Vehicles Act. The concerned respondent shall make the payment accordingly, if not already paid in terms thereof’.

38. In view of the aforesaid observation the amount of Rs. 600/- contributed towards GPF to the tune of Rs. 7200/- at an annual basis should not have been deducted from the annual salary of the victim to the tune of Rs. 2,91,924/-. It was further submitted that for the financial year 2014-15 the income tax deduction was to the extent of 10% over and above Rs. 2,50,000/-. Therefore, the income of the victim after deduction of P. Tax would be $(2,91,924 - 1,320/-) = 2,90,604/-$. From this amount Rs. 2,50,000/- should be

deducted since such amount was exempted from income tax at the relevant point of time. Hence the taxable income of the victim will be Rs. 2,90,604- 2,50,000= 40,604/-. 10% of Rs. 40,604/- comes to Rs. 4,060/-.

39. Considering the observations of the Hon'ble Apex Court in National insurance company Ltd. Vs. Pranay Shetty & Anr³ and Sarala Verma & Ors. Vs. Delhi Transport Corporation & Anr.⁴ The impugned award of Rs. 36,19,845/- is modified as follows:

Monthly Income	Rs. 24,327/-
Annual Income(Rs. 24,327x 12)	Rs. 2,91,924/-
Less P. Tax & Other	Rs. 1,320/-
	Rs. 2,90,604/-
Less Income Tax	Rs. 4060/-
	Rs. 2,86,544/-
1/4 th Deduction	Rs. 71,636/-
Personal Expenses	Rs. 2,14,908/-
Add Future Prospect (30%)	Rs. 64,472/-
	Rs. 2,79,380/-
Multiplier to be "13"	X 13
	Rs. 36,31,940/-
Add Non Pecuniary Damages	Rs. 84,000/-
Entitlement	Rs. 37,15,940/-

1. The appellants/claimants are entitled to a sum of Rs. 37,15,940/- along with interest at the rate of 6% per annum to be paid from the date of filing of the claim application i.e.

22.05.2014 till the date of final realization. In view of the observation of the **Hon'ble Supreme Court in Parminder Singh Vs. Honey Goyal & Ors.**⁵ the appellants/claimants are to provide the details of Bank Accounts held in the name of the appellants/claimants at the office of the learned Registrar General, High Court at Calcutta for disbursal of the compensation amount.

40. The Learned Advocate for the respondent No.1/insurance company is to deposit the entire awarded amount of Rs. 37,15,940/- along with interest as aforesaid before the office of the learned Registrar General, High Court Calcutta within two months from the date of passing of this order.

41. The office of the Registrar General, High Court, Calcutta shall encash the said cheque and thereafter disburse the same directly to the bank accounts of the claimants/appellants and respondent No.3. The respondent No.4 being the father of the victim could not prove that he was solely dependent on the income of the victim. More-over, the father of the victim being retired person had been drawing monthly pension and the amount of compensation should be equally distributed amongst the appellants and respondent No.3 being the mother of the deceased victim in M.A.C. Case

⁵ 2025 INSC 361

No. 35 of 2014 on proof of proper identification of the appellants/claimants and respondent No.3 subject to payment of ad valorem Court's fees.

42. The instant appeal is disposed of accordingly.
43. The pending applications if any stands disposed of.
44. The TCR be sent down to the concerned tribunal forthwith.
45. Copy of the order be sent to the Department as well as the concerned tribunal as expeditiously as possible.

(Ananya Bandyopadhyay, J.)

c.m. AR. Ct.