IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Biswaroop Chowdhury

F.M.A. 1022 of 2009

Smt. Swapna Bhattacharjee & Anr.

VERSUS

The New India Assurance Company Ltd. & Anr.

For the appellant/claimants: Mr. Krishanu Banik, Adv.
Mr. Tathagata Banik, Adv.

For the respondent/Insurance Co.: Ms. Gopa Das Mukherjee, Adv.

Last Heard on: January 01, 2026

Judgment on: February 18, 2026

Biswaroop Chowdhury,J:

The appellants before this Court were claimants in a case under Section 166 of the Motor Vehicles Act 1988 and is aggrieved by the Judgment and Award dated 31-05-2007 passed by Learned Additional District Judge Fast Track 1st Court Barasat North 24 Parganas in MAC Case No. 64 of 2006.

The case of the appellants/claimants before the Learned Trial Court may be summed up thus:

On 19/1/2006 at about 19.15 hours the offending vehicle bearing No-WB-25A/3991 (Bus) which was proceeding along Jessore Road towards Barasat side, with a terrific high speed in a most rash and negligent manner endangering human life and safety to others without blowing any horn thereby disobeying and violating all traffic rules and regulations and when the said offending vehicle came near Sarat Colony Paupara under Airport Police Station, suddenly the driver of the said offending vehicle lost its control due to reckless driving and directly dashed road diversion as a result of which the victim Biswanath Bhattacharjee one of the passengers of the said bus, got severe injuries on his person and the victim was removed to R.G. Kar Medical College and Hospital and then he was shifted to S.S.K.M. hospital where he expired on 20/01/2006.

Most rash and negligent driving on the part of the driver of the said offending vehicle bearing No. WB-25A/3991 (Bus) was sole cause of the pathetic accident Airport Police Station started a criminal case against the driver vide case no-10 dated 19/01/2006 u/s-279/338/427 IPC and added Section 304A IPC.

The victim was a person of sound health with active habits and the only earning member of his family, so the members of his family are helpless and are suffering from acute financial crises. All the hopes and expectation of the applicants about the victim, Biswanath Bhattacharjee have nipped in the bud as such the appellants have suffered great financial loss mental pain and agony loss of love and affection due to premature and pathetic accidental death of the victim.

Pursuant to filing of the case notice was issued upon the opposite parties. Opposite party/respondent no-1. New India Assurance Company Limited contested the case by filing written statement. Respondent no-2 vehicle owner did not contest the case.

By Judgment and Award dated 31-05-2007 Learned Trial Court was pleased to dispose of the claim case by observing and directing as follows:

'Hence it is ORDERED that this case be and the same is allowed on contest but without costs against the OP. No. 2 and ex-parte without costs against OP. No. 1. The petitioners do get an award of Rs. 4,72,908/- and out of the said amount the petitioner No. 1 will get Rs. 3,38,954/- (Rupees two lakhs thirty eight thousand nine hundred fifty four) only along with interest thereon @ 9% per annum on and from the date of filing of the case i.e. 10-03-2006 till realization of the entire amount.

The O.P. No-2 is directed to issue Account Payee cheques accordingly in favour of the petitioners within two months from this date of order and in default the petitioners will be at liberty to put the awards into execution as per Law.'

The appellants/claimants being aggrieved by the Judgment and Award passed by the Learned Trial Court has come up, with the instant appeal.

Heard Learned Advocate for the appellants/claimants and Learned Advocate for the respondent no-1/Insurance Company. Perused the materials on record.

Learned Advocate for the appellants submits that the Learned Trial Judge erred in considering the income of the victim to be Rs. 8,022/- per month. Learned Advocate further submits that the monthly income after deducting tax comes to Rs. 11,030/- and the Learned Judge ought to have proceeded on the basis of monthly income of Rs. 11,030/- per month Learned Advocate also submits that the compensation awarded is meager and it should be enhanced.

Learned Advocate relies upon the following Judicial decision.

National Insurance Company Ltd. VS Indira Srivastava and ors.

Reported in AIR-2008. S.C. 845.

Learned Advocate for the respondent no-1 Insurance Company submits that the Learned Trial Judge rightly proceeded on the basis of monthly income and no interference be made.

As the dispute in the instant case relates to consideration of monthly income on the basis of net monthly income arrived at after deducting GPF, profession Tax and Group Insurance it is necessary to consider as to whether the Learned Trial Judge rightly proceeded on the basis of net income which is arrived at after deducting GPF, Profession Tax, and Group Insurance from

Gross Monthly Income. In order to get answer to this question it would be reasonable to consider some Authorities on this.

In the case of National Insurance Company Ltd. VS Indira Srivastava and ors (supra) the Hon'ble Supreme Court observed as follows:

8. 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 monetory terms.

9. 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 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"

10. 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.

11. 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.

12. 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.

13. 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 dependancy 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 dependancy 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."

Considering the judicial decisions this Court is of the view that in computing compensation on the basis of monthly income so much of income which remains after deducting profession tax and Income Tax should be taken into consideration for computing compensation of Motor Accident Claim Cases.

In the instant case Learned Trial Judge deducted profession Tax, GPF and Group Insurance from Gross monthly income but it is only profession tax which ought to have been deducted. It is the profession tax which goes to the Government Authority and the GPF and Group Insurance deducted from salary is paid back to the employee concerned at the time of super-annuation.

Thus the monthly income which comes after deduction of profession tax is Rs. 11,030/-. It would be reasonable to proceed on the basis of monthly income of Rs. 11,000/-.

In the event monthly income is Rs. 11,000/- yearly income comes to Rs. 1,32,000/- 15% future Prospect is Rs. 19,800/- Future prospect added to yearly income it comes to Rs. 1,51,800/- 1/3rd is deducted on account of personal expenditure, and the annul dependency loss comes to Rs. 1,01,200/-. The annul dependency loss should be multiplied by 9 and the total dependency loss comes to Rs. 9,10,800/-. By adding general damages of Rs. 70,000/- total compensation which comes by arithmetical calculator is Rs. 9,80,000/-. However this Court is of the view that Rs. 9,00,000/- is just and reasonable compensation.

Hence this Appeal FMA No-1002 of 2009 stands disposed. The Judgment and Award dated 31/05/2007 passed by Learned Additional District Judge Fast Track 1st Court Barasat North 24 Parganas in MAC Case No-64 of 2006 stands modified to the extent that the appellants are entitled to Rs. 9,00,000/- from the respondent no-1 Insurance Company along with interest @6% p.a. from the date of filing of claim case till today. Hence the respondent no-1 shall deposit Ra. 900,000/- (Rupees nine lakhs) along with interest @6% p.a. from the date of filing of claim case till today before the Registrar General High Court Calcutta within 8 weeks from the date of communication of this order. In the event amount awarded by the Learned Trial Court is paid balance amount shall be deposited.

The appellants will be entitled to withdraw the awarded amount deposited along with accrued interest if any upon compliance of necessary formalities.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)