

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 112 OF 2011**

The Oriental Insurance Co. Ltd.)
Shraddha Shopping Centre,)
S. V. Road, Borivali (West),)
Mumbai - 400 093)
Ins. Policy No. 3059/2005)
Valid From : 23.10.2004 to 22.10.2005)....Appellant
(Orig. Insurer)

Versus

1. Neerada Suraj)
Aged about 32 years, widow of the deceased)
2. Siddharath Suraj)
Aged about 4^{1/2} years, son of the deceased)
Since applicant No.2 being minor through)

his next friend & mother)
All are residing at :)
C-504, 5th Floor, Silver Ovk,)
Opp. Mira Road, Police Station,)
Mira Road, Dist - Thane - 401 107.)
3. Mr. Aalam Abbas Pathan)
R/o Sainath Nagar, Ghodbunder,)
Post - Mira, Dist - Thane)
(Owner of M/Lorry No. MH-04-BG-9780))

4. Mr. P. K. Krishnadas)
Aged : 71 years)
5. Mrs. Daya Krishanadas)
Aged: 64 years)
Deobaug, PO. Cevayur)
Calicut- 673107.) ...Respondents

with
CROSS OBJECTION (ST) NO. 7613 OF 2011
IN
FIRST APPEAL NO. 112 OF 2011

The Oriental Insurance Co. Ltd)
Shraddha Shopping Centre)
S. V. Road, Borivali (West))
Mumbai - 400 093)....Appellant
(Orgi. Opp. Party No.2.)

Versus

1. Smt. Neerada Suraj)
Age: 32 Years)
2. Siddharath Suraj)
Age: 5 years)
Respondent No.2 being minor)
Represented through Natural Guardian)
And next friend Respondent No.1))
C-504, 5th floor, Silver Ovk,)
Opp. Mina Road Police Station)
Mira Bhayandar Dist. Thane-401107.)

3. Mr. Aalam Abbas Pathan)
R/O Sainath Nagar, Ghodbunder)
Post - Mira, Dist - Thane)....Respondents

Mrs. S. S. Dwivedi, Advocate for the Appellant.

Mr. T. J. Mendon, Advocate for the Respondents/Claimants.

CORAM : S. G. DIGE, J.

DATE : 1st MARCH 2023.

Judgment :

1. Being aggrieved and dissatisfied with the judgment and order passed by Motor Accident Claim Tribunal, Mumbai (for short “the Tribunal”) the appellant - Insurance Company preferred this appeal. The claimants have also preferred cross-objection against the impugned judgment and order. I am deciding this appeal and cross-objection by this common judgment.

2. It is the contention of learned counsel for the appellant that the Tribunal has considered income of deceased on higher side without any evidence on record and has awarded exorbitant and excessive compensation. Hence, requested to allow the appeal and dismiss the cross-objection.

3. It is the contention of learned counsel for the claimants that the Tribunal has not awarded future prospects, consortium amount while awarding compensation. Learned counsel further submits that the Tribunal has considered income of the deceased on lower side as the deceased was working with Reliance Logistics and he had filed Income Tax Returns on record which shows that his income was Rs.4,58,598/-. Hence, the income considered by the Tribunal on lower side.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. To prove the income of deceased, PW1-Neerada, widow of deceased has stated that at the time of the accident, the deceased was 33 year old and he was holding the degree of B.SC and Diploma in Marketing. He was working with National networking and MIS in Reliance Industries Ltd. since March 2001 and was drawing salary of Rs.4,58,598/- annually. The claimant has

examined PW2 - Prashant, Senior Manager of Reliance Logistics Pvt. Ltd.. This witness has stated that the deceased was employee of Reliance Logistics Pvt. Ltd and he was working there as a Manager. The salary slip of the deceased is at Exhibit "29". PW3 - Pooja has deposed that the deceased was paying income tax of 40,000/- per annum and professional tax of Rs.2500/- per annum. After deducting income tax of Rs.40,000/- and Professional Tax Rs.2500/-, the Tribunal has considered income of deceased at Rs.4,16,098/-. I do not find any infirmity in it. It is settled principle of law that while considering salary of deceased, professional tax and income tax has to be deducted.

6. The Tribunal has not awarded future prospects as per view of the Hon'ble Apex Court in **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)**. The claimants are entitled for 50% future prospects. The Tribunal has not awarded consortium amount. As per view of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.40,000/- as consortium amount with 10% increase.

7. In view of the above, the claimants are entitled for following compensation:

Annual Income of the deceased	Rs. 4,16,098.00
Future Prospects 50%	Rs. 2,08,049.00

	Rs. 6,24,147.00
1/3rd deduction for personal expenditure	Rs. 2,08,049.00

	Rs. 4,16,098.00

Rs.4,16,098.00 x 16(multiplier)	Rs.66,57,568.00
Consortium Rs.44000/- x 4	Rs. 1,76,000.00
Funeral Expenses	Rs. 16,500.00
Loss of Estate	Rs. 16,500.00

	Rs 68,66,568.00

8. Considering above calculations, the claimants are entitled for Rs.68,66,568/-. The Tribunal has awarded Rs.44,63,384/-. If this amount is deducted from the amount considered by this Court, it comes to Rs.24,03,184/-. The claimants are entitled for this amount.

9. In view of above, I pass following order :

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The cross-objection is allowed.

3. The claimants are entitled for enhanced amount Rs.24,03,184/- @ 7.5% interest from the date of filing claim petition till realisation. Out of this amount, the amount of Rs.2,09,000/- is consortium amount, the claimants are entitled 7.5% interest on this amount from 1st October 2017 till realisation of the amount.
4. Appellant-Insurance Company is directed to deposit enhanced amount along with accrued interest thereon within six weeks from receipt of this order.
5. The claimants are permitted to withdraw this amount and award amount along with accrued interest thereon.
6. Statutory amount along with accrued interest thereon be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.
10. Pending applications, if any, stands dismissed.

(S. G. DIGE, J.)