Friday, 11th March, 2022

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 09 OF 2013

ROYAL SUNDARAM ALLIANCE
INSURANCE CO. LTD. } APPELLANTS

V/S.

SMT. REKHA BHAGWAN JADHAV
AND ORS. } RESPONDENTS

ALONGWITH
CIVIL APPLICATION NO. 2160 OF 2019

IN

FIRST APPEAL NO. 9 OF 2013

REKHA BHAGWAN JADHAV
AND ORS. } APPLICANTS

<u>IN THE MATTER BETWEEN :</u>

ROYAL SUNDARAM ALLIANCE
INSURANCE CO. LTD AND ORS. } APPELLANTS

V/S.

REKHA BHAGWAN JADHAV
AND ORS. } RESPONDENTS

* * * *

Mr. Rahul Mehta i/by. KMC. LEGAL VENTURE, Advocate for the appellant.

Mr. M.N. Sandhyanshiv, Advocate for the applicant in CAF-2160-2019 and for respondents no.1 to 4 in FA-09-2013.

Coram : Sandeep K. Shinde, J.

Friday, 11th March, 2022.

P.C. :

1) This Appeal under Section 173 of the Motor Vehicles Act, 1988 is preferred by the Insurance Company against the judgment and award dated 15th December, 2011 in Motor Accidents Claim Petition No.11/2011 passed by the Member, Motor Accidents Claim Tribunal, Malegaon.

FACTS OF THE CASE :

2) Deceased, Bhagwan was in employment of M/s. M.B. Sugar and Pharmaceutical Company as, Clerk. He met with a vehicular accident, on 16th November, 2012 while proceeding from Malegaon to Ravalgaon on motorcyle No.MH-41-9745. He was a pillion rider. At the material time, Car No. MH-41-C-7632, dashed the motorcycle from behind. Deceased was seriously injured and he succumbed to injuries in a short time. The learned Member, Claim Tribunal, upon appreciating, the evidence

of, widow of the deceased and the Manager of Employer, concluded the monthly income of the deceased was Rs.8,000/- per month. As a consequence, the respondents were jointly and severally held liable, to pay compensation Rs.11,90,000/-.

3) Point of dispute in this Appeal is, with regard to the 'income' of the deceased.

4) Learned Counsel appearing for the appellant, has taken me through the evidence of deceased-wife and the Manager of M/s. M.B. Sugar & Pharmaceutical Company, (deceased employer).

5) Evidence, convey that besides income from salary, the deceased had income from Grocery store. Tribunal, held, deceased monthly income was Rs.8,000/- i.e. Rs.6,000/- from salary and Rs.2,000/- from the Grocery store. Tribunal, while computing income, relied on the tax return of the deceased which was filed, four months before the accident. However, the tax return at Exhibit-31, did not disclose the income from the Grocery store. Yet, upon appreciating the evidence of deceased-wife, the learned

Member held, deceased was earning Rs.2,000/- per month from Grocery store.

6) Having regard to the facts of the case, in my view, although the tax return was not disclosing the earnings of the deceased from the Grocery shop, yet the fact remains, his family was running the Grocery store and the evidence suggests, that the deceased was attending store, after working hours, which is apparent from his wife's evidence. In that view of the matter, it would be just and proper, to quantify monthly income of the deceased at Rs.7,000/- i.e. Rs.6,000/-the salary income and Rs.1,000/-, the income from the Grocery store. Only to this extent, the impugned Judge and Award, is modified. The Appeal is partly allowed. Thus, appellant is entitled to receive Rs.10,43,000/- with 9% interest thereon as per the calculations, below;

As per Trial Court order	**Modification**
Total Income : 8,000/-	Total Income : 7,000/-
Dependency : 4/5, 8,000÷ 4/5= 1,600/- 8,000-1600= 6,400/- Yearly Income = 6,400 x 12 = 76,800/- Multiplier 76,800 x 15 = 11,55,000	Dependency : 4/5, 7,000÷4/5 + 1,400/- 7,000-1,400 = 5,600/- Yearly Income 5,600 x 12 = 67,200/- Multiplier 67,200 x 15 + 10,08,000

Other head : 11,55,000 + 35,000 ------------------- = 11,90,000/- + 9% Interest per annum from the date of filing of claim petition till realisation of entire awarded amount	Other head : 10,08,000 +35,000 ----------------- =10,43,000 + 9% Interest per annum from the date of filing of claim petition till realisation of entire awarded amount.

7) Pending Appeal, the appellants have deposited part compensation in this Court, which has been invested in the Fixed Deposit. As the Appeal is partly allowed and disposed of, the Registry shall redeem the Fixed Deposits, and transfer the redeemed amount to the Claim Tribunal, Malegaon in M.A.C.P. No. 11/2011; whereafter, respondents-claimants, shall move an application for withdrawal of the compensation. As well, appellant shall be entitled to receive back the amount deposited in excess of Award, passed in this Appeal. Appeal is partly allowed and disposed of. Award be drawn accordingly.

NEETA SHAILESH SAWANT

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Date: 2022.03.28 16:39:52 +0530

(Sandeep K. Shinde, J.)