

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 134 OF 2019

Shriram General Insurance)
 Company Ltd.)
 Office No:106, Road No.:22,)
 Lodha Suprums-2, Wagale Estate,)
 Near Passport Office,)
 Thane-West, 400 604,)
 Maharashtra)
 Through Legal Manager Mr.) Original Opposite
 Party No.1 Satpalsingh Rajput) ...Appellants

Versus

1. Smt. Usha Santosh Borade)
 Age: 36 years, Occupation : Nil) (Org. Petitioner No.1)
2. Miss Pallavi Santosh Borade)
 Age: 17 years, Occupation : Education) (Org. Petitioner No.2)
3. Master Vaibhav Santosh Borade)
 Age: 15 years, Occupation : Education)
 Petitioner No.2 & 3 are minor)
 Through their Legal Guardian, Mother)
 i.e.Petitioner No.:1) (Org. Petitioner No.3)
4. Smt. Padmini Maruti Borade)
 Age: 64 years, Occupation : Nil)
 All R/at Bagade Vasti)
 Uruli Kanchan, Tal. Haveli)
 District. Pune.) (Original Applicants)
5. Mr. Bharat Gulabrao Bamane)
 Age : Adult, Occupation : Tempo)
 Owner, Add : at Post Katake Wadi,)
 Wagholi, Tal. Haveli, Dist.Pune) (Org. Opposite Party)

.....Respondents

Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocates for the Appellant.

Mr. Devendranath S. Joshi, Advocate for the Respondent Nos.1 to 4.

CORAM : S. G. DIGE, J.

DATE : 7th DECEMBER, 2022.

JUDGMENT :

1. Being aggrieved and dissatisfied with the judgment and order passed by the Motor Accident Tribunal, Pune, the appellant-insurance company (original respondent No.1) preferred this appeal.

2. Brief facts of the case are as under :

On 28th May, 2014 at about 8.30 pm, the deceased - Santosh Borade was driving the motorcycle along with his wife - respondent No.1 (original claimant) -Usha as pillion rider. They were returning to their residence at Koregaon Road. At the relevant time, a tempo bearing registration No. MH-12-JF-3646 (for short "the offending tempo) came from the opposite direction in high speed and gave dash to the motorcycle. The deceased and respondent No.1 both were injured in the said accident. The deceased died in the hospital while undergoing treatment. The police registered

offence against the driver of the tempo.

Respondent Nos. 1 to 4 (for short "the claimants") filed claim petition for getting compensation before the Motor Accident Claim Tribunal, Pune (for short "the Tribunal"). The Tribunal has awarded compensation. Against the said judgment and order, this appeal.

3. It is the contention of learned counsel for the appellant - insurance company that the Tribunal has considered the income of the deceased on higher side. The deceased was not in permanent employment, in spite of that, his income is considered as Rs.12,000/- per month and, on that basis, compensation is awarded, which is exorbitant. No evidence was produced to prove the income of the deceased but without considering this fact, the Tribunal has awarded compensation. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for the claimants that the deceased was earning Rs.18,000/- per month. The evidence was produced before the Tribunal showing the income of deceased as Rs.18,000/- per month but the said evidence was not

considered by the Tribunal and considered only Rs.12,000/- as monthly income of the deceased, which is on lower side. The claimants have not challenged the order of the Tribunal as they are from the agricultural family, they are not in a position to pursue the matter as there is no other male member in their family, the deceased was Karta of their family.

5. I have heard learned counsel for both the parties, perused the judgment and order passed by the Tribunal. The issue involved in this appeal is that the income of the deceased is considered on higher side.

6. In the claim petition, the claimants have claimed that the deceased used to earn Rs.18,000/- per month. Claimant No.1 has deposed that her husband used to get Rs.18,000/- per month. Claimant No.1 has stated that her husband used to do two jobs i.e. collection of milk from various agriculturalist and delivering it to Katraj Dairy, Pune. The deceased used to do this job, twice in a day from 5.00 am to 11.00 am and 4.00 pm to 8.00 pm. To prove the income of the deceased, the claimant examined employer - Daulat Gholap. On the basis of evidence of these two witnesses, the Tribunal has considered the salary of deceased at Rs.12,000/-

per month. The Tribunal, while considering this salary, considered Rs.400/- wages for a day as the deceased was semi-skilled worker. It has come on record that deceased was doing two types of jobs i.e 5.00 am to 11.00 am and 4.00 pm to 8.00 pm. So he was working for 9 hours in a day. On that basis, the income of Rs.12,000/- per month considered by the Tribunal is proper. On the basis of it, calculations are made and compensation is awarded. I do not find any infirmity in it. Hence, I pass the following order :

1. The appeal is dismissed. No order as to cost.
 2. The Respondent Nos.1 to 4(claimants) are permitted to withdraw the entire award amount deposited by the appellant along with accrued interest thereon, if not, withdrawn earlier.
 3. The statutory amount deposited by the appellant, if any, be transferred to the Tribunal. The parties are at liberty to withdraw it along with accrued interest thereon as per the Rule.
8. Pending interim applications, if any, stand disposed of.

(S. G. DIGE, J.)