IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.694 of 2023

Reliance General Insurance Company Limited Legal Department, 4th Floor, Chintamani Avenue, Near Virwani Industrial Estate, Western Express Highway, Goregaon (E), Mumbai-400 063.	]	….Appellant (Original Opponent No.1)
Versus		
1. Minakshi Nilesh Khamkar Age-35 years, Occ : Housewife	]	
2. Swapnali Nilesh Khamkar Age : 18 years, Occ : Education	]	
3. Akash Nilesh Khamkar Age-18 years, Occ : Education	]	
4. Ramesh Ramchandra Khamkar Age : 71 years, Occ : Education	]	
5. Vimal Ramesh Khamkar Age-64 years, Occ : Household All R/at Samarth Nagar, Umbraj Taluka, Karad, District-Satara	]	….(Respondent Nos.1 to 5 Original Applicants)
6. Mahesh Hanmant RADDI Age-35 Years Occ : Business, R/at E-42, Kupwad, MIDC, Sangli, Taluka-Miraj, District-Sangli.	]	….Respondents (Original Respondent No.2)

Ms.Kalpana R. Trivedi, Advocate for the Appellant.
Ms.Sejal Todkar i/b Mr.Ashwinkumar R. Kapadnis, Advocate for Respondent Nos.1 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th DECEMBER, 2023.

SHUBHADA SHANKAR KADAM Digitally signed by SHUBHADA SHANKAR KADAM Date: 2024.01.01 15:27:50 +0530

ORAL JUDGMENT :

1. The issue involved in this appeal is the income of the deceased is considered on higher side.

2. It is the contention of learned counsel for the appellant-Insurance Company that deceased was running auto rikshaw and was doing tailoring business, in spite of that, the Tribunal has considered his monthly income at Rs.10,000/- which is on higher side. Learned counsel further submitted that no evidence was produced on record to prove the income of deceased but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for respondent Nos.1 to 5/claimants that deceased owned auto rikshaw, he was driving autorikshaw and getting income from it as well as he was doing tailoring work. A witness was examined to prove that deceased was doing tailoring work. Deceased was earning Rs.20,000/- from both businesses but the Tribunal has considered Rs.10,000/- only as monthly income of deceased. As claimants did not want to prolong the matter, they have not challenged the income considered by the Tribunal. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Karad, (for short "the Tribunal").

5. To prove the income of deceased, claimant No.1 – Minakshi Khamkar examined herself at ‘Exhibit-22’. She has stated that deceased was driving autorikshaw and he was doing tailoring business at Umbraj and there were two employees in his shop. She further stated that deceased was earning Rs.20,000/- per month. Nothing elicited in the cross-examination of this witness. In support of her evidence, the claimants examined witness-Lata Kambale. She has stated that she was the Sarpanch of Village – Umbraj from 2015, she further stated that in property No.383/3, the deceased was running tailoring business from 1997. The claimants produced notebook which shows the measurement of clothes of the customers of deceased. The claimants have produced RCTC book of auto rikshaw bearing No. MH-11/Y 7137 registered in the name of deceased. Considering the evidence on record that deceased was the owner of auto rikshaw, he was driving auto rikshaw and running tailoring shop, the Tribunal has considered monthly income of deceased at Rs.10,000/-. I do not find infirmity in it.

The Tribunal has awarded consortium amount to claimant No.1 only. As per the view of 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.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. The consortium for remaining four claimants, comes to Rs.1,92,000/- . The claimants are entitled for this amount.

6. In view of above, I pass the following order :

O R D E R

1. The appeal is dismissed. No order as to cost.
2. Respondent Nos.1 to 5/claimants are entitled for enhanced compensation of Rs. 1,92,000/- @ 7.5% interest per annum from from 1st November 2017 till realisation of the amount.
3. The appellant – Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from receipt of this order.
4. Respondent Nos.1 to 5/claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.
5. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)