IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 872 OF 2013

ALONG WITH

CROSS OBJECTION STAMP NO.9714 OF 2021
IN
FIRST APPEAL NO. 872 OF 2013

The New India Assurance Co. Ltd.	)	
Division Office, L.I.C. Building	)	
Opposite to Collector Office, Satara.	)	...Appellant
Versus		
1. Bharati Vikas Kalambe,	)	
Age 27 years, Occ: Household.	)	
2. Vaishnoi Vilas Kalambe	)	
Age 8 years, Occ. Education.	)	
3. Bhavik Vilas Kalambe,	)	
Age 6 years, Occ. Education	)	
Applicant Nos.2 and 3 minors	)	
Through their guardian mother -	)	
Applicant No.1 as a GAL.	)	
4. Laxmi Dattatraya Kalambe,	)	
Age 65 years, Occ:- Nil,	)	
R/o. Dandeghar, P.O. Pachagani,	)	
Tal. Mahableshwar, Dist. Satara.	)	
5. Vinodkumar Meghji Tanna	)	
Aged 36 years, Occ. Business	)	
R/o. 872 Dharmapuri, Tal. Wai,	)	
District : Satara.	)	...Respondents

Mr. S. M. Dange, Advocate for the Appellant.
Mr. Sangramsingh Yadav along with Ms. Harvinder Kaur Rogi, Advocate for Respondent No.1

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th MARCH 2023.

Oral Judgment :

1. The issue involved in this appeal is exorbitant and excessive compensation awarded by Motor Accident Claims Tribunal (for short "the Tribunal").

2. The claimants have also filed cross-objection for enhancement of compensation. I am deciding the appeal and cross-objection by this common judgment.

3. It is contention of learned counsel for the appellant that Tribunal has considered yearly income of deceased on higher side without any evidence. Learned counsel further submits that the Tribunal should have considered the average yearly income of the deceased for last three years but the Tribunal has not done so. Learned counsel further submits that the accident

occurred due to sole negligence of the deceased but this fact is not considered by the Tribunal and the Tribunal has held that the accident had occurred due to sole negligence of the driver of the offending vehicle, which is improper. Hence, requested to allow the appeal.

4. In support of his submissions, learned counsel for the appellant has relied upon the decision of the Hon'ble Apex Court in ***ICICI Lombard General Insurance Company Limited versus Ajay Kumar Mohanty and anr. (2018) 3 SCC 686.***

5. It is contention of learned counsel for respondent No.1 that the FIR was lodged against the driver of the offending vehicle. No witness was examined by the appellant to prove the negligence of the deceased. Hence, negligence of driver of the offending vehicle considered by the Tribunal is proper. Learned counsel further submits that Tribunal has considered yearly income of deceased on lower side and has awarded consortium amount on lower side.

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

7. It has come in the evidence of claimant No.1 that deceased was doing business and was a tax-payer. His income for the year 2009-2010 was Rs.1,64,562/-. The deceased was paying monthly instalment of Rs.6,000/- each to Lawyers Cooperative Sanstha and Jai Bhavani Sanstha. The said statements are at Exhibits “30” and “31”. He was also paying pigmy amounting to Rs.700/- per day in various pathasanstha and cooperative banks. The said statements and passbook are at Exhibits “28”, “32” to “37”. He was having agricultural income and was getting income of Rs.30,000/- to Rs.40,000/-. The deceased was getting net income of Rs.20,000/- to Rs.30,000/- per month after deducting all expenses. To support the evidence of this witness, claimants examined PW2-Smt. Inamdar -Income Tax Officer at Exhibit “42”. She has stated that the income of the deceased for year 2008-2009 was Rs.1,22,599/- and paid income tax of Rs.440/-. For the Assessment Year-2009, the income of deceased was Rs.1,64,562/- and paid income tax of Rs.1535/-. The Income Tax Returns are at Exhibits “44” and “45”. So the total income of deceased for the year 2008-2009 was Rs.1,22,599/-, Rs.1,64,562/- for the year 2009-2010. As the last income of deceased was Rs.1,64,562/-, the Tribunal has considered the yearly income of deceased at Rs.1,63,027/-. The

claimants have produced the Income Tax Returns of two years, in my view, it is settled principle of law that if there are Income Tax Returns of two or three years, the average income of these years should be taken. In case of salary income, the last drawn salary has to be considered while considering the monthly income of deceased. In the present case, the Tribunal has considered last year's income as income of deceased, it should be average of two years' income. Hence, I am considering the average income which would be Rs.1,45,000/- per annum as rounded up figure. The Tribunal has considered 50% future prospects. As the deceased was self-employed, I am considering 40% towards future prospects. Thus, the claimants are entitled for 40% future prospects, which comes to Rs.58,000/-, so total comes to Rs.2,03,000/-. The 1/4th amount deducted for personal expenses comes to Rs.50,750/-, if it is deducted from Rs.2,03,000/-, it comes to Rs.1,52,250/- At the time of accident, deceased was 37 year old, hence, the proper multiplier is 16. If the amount of Rs.1,52,250/- is multiplied by 16(multiplier), it comes to Rs.24,36,000/-. Each claimant is entitled for Rs.44,000/- as consortium. There are four claimants, so the consortium amount comes to Rs.1,76,000/-. The claimants are entitled for funeral expenses of Rs.16,500/- and Rs.16,500/- for loss of estate. The total compensation comes to Rs.26,45,000/-. The Tribunal has awarded an amount of Rs.24,17,000/-. If this amount is deducted from the amount considered by this Court, it comes to Rs.2,28,000/-. The claimants are entitled for this enhanced amount.

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

1. The appeal is partly allowed.

2. The cross-objection is partly allowed.

3. The claimants are entitled for enhanced amount of Rs.2,28,000/- @ 7.5% interest per annum from date of filing claim petition till realisation of the amount.

4. The appellants are directed to deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

5. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

6. Statutory amount, if any, be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.

Both the appeal and cross-objection are disposed of.

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

(SHIVKUMAR DIGE, J.)