IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2077 OF 2011

1. Nilima Vilas Ladage Aged 43 yrs., Occ. Household 2. Vishal Vilas Ladage Aged 23 yrs., Occ. Education 3. Mayuri Vilas Ladage Aged 20 yrs., Occ.Education 4. Manoj Vilas Ladage Aged 18 yrs., Occ. Education 5. Prayagbai Mallikarjun Ladage Aged 85 Yrs. Occ. Nil. All R/o. Vadshinge, Tal. Madha., Dist. Solapur	….Appellants [Original Claimants]

Versus

1. Sabane Transport Pvt. Ltd. 484-B, Mitra Mandal Colony, Parvati, Pune-9. 2. The New India Assurance Co. Ltd. Hutatma Complex, Park Chowk, Solapur	….Respondents [Original Respondents]

WITH
FIRST APPEAL NO. 2192 OF 2011

The New India Assurance Co. Ltd. Pune Branch, through Mumbai Regional Office-I, New India Bhavan, 2nd Floor, 34/38, Bank Street, Fort, Mumbai-400 023	….Appellant [Original opponent No.2]

Versus

1. Nilima Vilas Ladage
   Aged 43 yrs., Occ. Household
2. Vishal Vilas Ladage
   Aged 23 yrs., Occ. Education
3. Mayuri Vilas Ladage

Aged 20 yrs., Occ.Education
4. Manoj Vilas Ladage
Aged 18 yrs., Occ. Education
5. Prayagbai Mallikarjun Ladage
Aged 85 Yrs. Occ. Nil.
All R/o. Vadshinge, Tal. Madha., Dist. Solapur
6. Sabane Transport Pvt. Ltd.
484, B, Mitra Mandal Colony, Parvati, Pune-9. ….Respondents

…………

Mr. R.S.Alange, Advocate for the Appellants in FA/2077/2011 and for Respondent Nos. 1 to 5 in FA/2192/2011.
Mr. Sandeep S. Jinsiwale, Advocate for Appellants in FA/2192/2011 and for Respondent No.2 in FA/2077/2011.

…………

CORAM : SHIVKUMAR DIGE, J.
DATE : 12th DECEMBER, 2023

<u>JUDGMENT :</u>

1. Both these appeals are against the same Judgment and Order passed by the Motor Accident Claims Tribunal, Solapur (for short "**the Tribunal**"), hence I am deciding it by this common Judgment.

2. It is the contention of learned counsel for the appellant-Insurance Company that the Tribunal has considered monthly income of deceased at Rs.15,000/- per month without any proof on record which is on higher side. Learned counsel further submitted that at the time of accident the driver of offending vehicle was not holding effective and valid driving licence but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the original claimant that applicant was doing various businesses. He had completed the technical course of weldor and he was earning Rs.14 to 15 lakhs per annum but the Tribunal has considered his income on lower side which needs to be enhanced. He further submitted that the appellants have produced evidence in that regard, appellants have examined 13 witnesses to prove the income of the deceased. Learned counsel further submitted that the Tribunal has not awarded future prospects and the amount awarded under the head of consortium is on lower side, hence requested to allow the appeal and dismiss the appeal filed by the Insurance Company.

4. I have heard both the learned counsel. Perused the impugned Judgment and Order of the Tribunal. It is the claimant's case that deceased was cultivating agricultural land he was doing various businesses and he was earning Rs.14,00,000/- to 15,00,000/- per year. To prove the income of deceased the claimants examined PW-1 wife of deceased. She has stated that the deceased was agriculturist he was also dealing in milk business, business of hiring jaggery crusher, oil engine, agricultural equipment, tanker, road roller etc. and was also keeping hens and goats. The annual income of deceased was Rs.14,00,000/- to 15,00,000/. To prove the income of deceased the claimant's have examined PW-2 to PW-13. While dealing with the issue of income of deceased the Tribunal has observed that deceased was not paying income tax. In absence of it, it is difficult to digest that annual income of deceased was Rs.14,00,000/- to 15,00,000/. having regard to various activities of deceased it can be concluded that annual income of deceased was Rs.1,50,000/- to Rs.1,80,000/- and on that basis the Tribunal has considered Rs.15,000/- per month as income of deceased. I do not find any infirmity in it. Appellant/Insurance Company has not examined witness to prove that driver of offending vehicle was not holding effective and valid driving licence at the time of accident, hence I do not see merit in it. The Tribunal has not awarded future prospectus to the claimants. As per the view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi*** [1], claimants are entitled for 25% for future prospectus. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***,[2] each claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for funeral expenses, Rs.18,000/- for loss of estate.

5. Considering the above calculations, claimants are entitled for following calculations:

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

Particulars	Rs.	Entitlement
Monthly Income	Rs.	15,000.00
Annual Income	Rs.	18,000.00
Add 25% future prospects	Rs.	45,000.00
Total	Rs.	2,25,000.00
1/4th deduction	Rs.	56,250.00
Total	Rs.	**1,68,750.00**
Multiplier Rs. 16,8750 X 14	Rs.	23,62,500.00
Consortium (Rs.48,000/- X 5 claimants)	**Rs.**	2,40,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	**26,38,500.00**
Less compensation awarded by the Tribunal	Rs.	16,87,000.00
Total enhanced amount	Rs.	**9,51,500.00**

The claimants are entitled for enhanced compensation of Rs.9,51,000/-.

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

i. The Appeal No. 2192 of 2011 is dismissed.

ii. The Appeal No. 2077 of 2011 is partly allowed.

iii. The claimants are entitled for enhanced compensation of Rs.9,51,500/- @ 7.5% from the date of filing claim petition till realisation of amount. Out of this amount Rs.2,76,000/- is consortium amount. Claimants are entitled for interest @7.5% on this amount from 1st

November, 2007 till realisation of amount.

iv. The respondent /Insurance Company shall deposit enhanced amount along with interest within six weeks.

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

vi. Statutory amount in Appeal No. 2192 of 2011 be transferred to Motor Accident Claim Tribunal, Solapur. Parties are at liberty to withdraw it as per rule.

7. All pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2023.12.29 10:39:41 +0530