IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 556 OF 2023

1. Anant Suresh Gadhave)
   Age-25 years, Occu _ Panshop)

2. Santosh Suresh Gadhave)
   Age 23 years, Occu – Education)

   Both R/o. Velapur, Tal. Malshiras)
   District Solapur)….**Appellants**

Versus

1. Samadhan Shadhu Kamble)
   Age 45 years, Occu: Truck Owner,)
   R/o. Simra Pargoan, Tal. Majalgaon)
   District – Beed.)

2. United India Insurance Co. Ltd.)
   Satara Branch)….**Respondents**

Mr. Sangramsingh Yadav for the Appellants.
Mr. Amol Gatne for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th DECEMBER, 2023.

<u>JUDGMENT. :</u>

1. By this appeal the Appellants are seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellants that, the Tribunal has wrongly considered yearly income of deceased at Rs.75,000/- per year, when Income Tax Returns regarding income of the deceased were filed on record. The average income of all Income Tax Returns comes to Rs.1,31,000/- yearly. The witnesses were examined to prove the income of deceased. The hotel business which deceased was running is closed after death of deceased but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered age of deceased on the basis of age mentioned on inquest panchnama. The date of birth of deceased shown on Income Tax Returns is 9th November, 1962 which comes below 50 years at the time of accident but, Tribunal has considered age of deceased at 55 years which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondent/Insurance Company that one income tax return was

filed after death of deceased. In which income of the deceased is shown on higher side and the said Income Tax Return cannot be considered as it is filed after death of deceased. Learned counsel further submitted that no proof was produced before the Tribunal regarding date of birth of the deceased. Hence, the age considered by the Tribunal is proper and no interference is required in it. Learned counsel relied on ***V. Subbu Lakshmi and Ors. vs. S Lakshmi and Anr. (2008) 4 SCC 224 and National Insurance Company Limited vs. Rupali Kailas Mamode 2019(3) Mh.L.J. 645***. Learned counsel further submitted that the Tribunal has rightly considered the yearly income of deceased. It has come on record that after the death of deceased the shop and establishment licence of hotel was not cancelled.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short “the Tribunal”). To prove the income of deceased the Claimants have examined PW 1 Santosh Gadhave, son of deceased. He has stated that his father was doing hotel business at Velapur, Tal. Malshiras District-Solapur and he was getting income of

Rs.2,50,000/-. His yearly income for year 2011–2012 was Rs.2,50,000/-. In cross-examination suggestions was given by learned counsel for the Insurance Company to this witness that after the death of deceased hotel is running to which this witness has denied and said that hotel business is closed. This witness admitted that food and drug licence of said hotel is not cancelled. The Claimants have examined PW-2 Nitin Kudale Chartered Accountant, it is at Exhibit 34. He has stated that he used to file Income Tax Returns of deceased and he had filed Income Tax Returns of deceased for the year 2009–2010 to 2011-2013, these are at Exhibit 35 to 38. In cross-examination this witness admitted that in 2008–2009, the income of deceased from hotel was Rs.97,420 and in 2009-2010 it was Rs.1,06,161/- and in 2010–2011 it was Rs.1,35,520/- and in 2011-2012 it was Rs.1,85,230/-. From the evidence of these witnesses, it shows that deceased was doing hotel business and he was getting income from it and every year his income has increased. The Tribunal while calculating the income of deceased has considered yearly income of deceased at Rs.75,000/- per year which is erroneous. In my view when, it has come on record that deceased was earning more than Rs.1,00,000/- yearly income from the hotel business and it was increased yearly. Then yearly income of deceased considered by the Tribunal is not proper. It is settled law that average income has to be considered while calculating income.

5. Considering the average income, the income tax return for year 2008-2012 it comes to Rs.1,31,000/- and I am considering this income as yearly income of the deceased.

6. It is contention of learned counsel for the Respondent/Insurance Company that income for the year 2011-2012 of deceased cannot be considered because income tax returns of that year was filed after the death of deceased.

7. In my view, the date of accident is 18th March, 2012 and the year of income is considered from 1st April, 2011 to 31st March, 2012, so it can be considered because there is difference of only 13 day's of filing income tax return. The Tribunal should have considered the average income of all the four years which comes to Rs.1,31,000/-. I have gone through the case laws cited by learned counsel for the Respondent/Insurance Company the facts of cited

case and case at hand are different hence not applicable. In respect of the age of the deceased the income tax returns shows date of birth of deceased as 9th November, 1962. The Tribunal has considered the age mentioned on inquest panchanama which is not proper. As per the date of birth mentioned in income tax returns the age of deceased, at the time of accident was 49 years 3 months. Hence, I am considering this age of deceased.

8. Considering the above reasons, the claimants are entitled for following compensation.

CHART

Average annual income	Rs.	Rs.1,31,084/-
Add 25% future prospects	Rs.	Rs.32,771/-
Total Income	Rs.	Rs.1,63,855
Less 1/3 deductions for self expenditure of deceased	Rs.	-Rs.54,618/-
Total Income	Rs.	Rs.1,09,236/-
Rs.1,09,236/- X 13 (Multiplier as deceased of age 49 years 3 months)	Rs.	Rs.14,20,068/-
Parental Consortium	Rs.	Rs.96,000/-
Applicant No.1 and 2 each	Rs.	Rs.40,000/-
Funeral Expenses	Rs.	Rs.15,000/- 20% rise as per Rs.3000 =Rs.18,000/-
Loss of estate	Rs.	Rs.15,000/- 20% rise as per Rs.3000/- =Rs.18,000/-

Total compensation to be awarded	Rs.	Rs.15,52,068/-

The claimants are entitled for an enhanced amount of Rs.15,52,068/-

9. In view of above, I pass following order.

ORDER

i. Appeal is allowed.

ii. The appellant/claimants are entitled for enhanced amount of Rs. 15.52.068 @ 7.5 % per annum from the date of filing claim petition till realisation of amount. The appellant/claimant are entitled interest @7.5 % on consortium amount from 1 November 2017 till realisation of the amount. The Respondent/insurance company shall deposit the enhanced amount within six weeks along with interest.

iii. Respondents/Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

iv. Statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

(SHIVKUMAR DIGE, J.)