IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 98 OF 2023

Reliance General Insurance Co. Ltd.
Chintamani Avenue, 4th Floor,
Opp. Western Express Highway
Next to Virwani Industrial Estate, Near Oberoi
Tower, Goregaon (E), Mumbai – 400 063 .... Appellant

Versus

1. Babita @ Babitakumari Arun Sharma
   Aged about 27 years, widow of the deceased
2. Anshika Arun Sharma
   Aged about 7 months
   Minor daughter of the deceased (Through the mother and next friend- Babita Arun Sharma)
3. Ashok Anupal Sharma
   Aged about 60 years- Father of the deceased
4. Pramila Ashok Sharma
   Aged about – 54 years, Mother of the deceased (deleted)
5. Amit Ashok Sharma
   Aged about 31 years
   Brother of the deceased
   All residing at Flat No. 403, A-Wing,
   Panchvati Dham, Shiv Vallabh Road, Ashokvan,
   Dahisar (East), Mumbai – 400 068 .... Org. Claimants
6. Vishwanath M. Vishwakarma
   Laxmi Complex R-63, Kalher Village,
   Tal. Bhiwandi, Thane – 421 308 .... Respondent

………

Ms. Shalini Shankar, Advocate for the Appellant.
Mr. T.J.Mendon, Advocate for Respondents

CORAM : SHIVKUMAR DIGE, J.
DATE : 6th DECEMBER, 2023

JUDGMENT :

1. The issues involved in this appeal are income of deceased is considered on higher side and at the time of accident deceased was not wearing helmet.

2. It is the contention of learned counsel for the appellant that Tribunal has considered monthly income of deceased @Rs.34,630/- per month without any evidence on record which is on higher side. Learned counsel further submitted that deceased was not wearing helmet at the time of accident. There was contributory negligence of the deceased in the said accident but this fact is not considered by the Tribunal and awarded compensation which is erroneous, hence requested to allow the appeal.

3. It is the contention of learned counsel for the claimant/respondent Nos. 1 to 5 that deceased was working as a Account Manager in Global Direct Company. He was earning Rs.40,000/- per month. After deducting TDS and professional tax the Tribunal has considered Rs.34,630/- per month as a salary of deceased which is proper. Learned counsel further submitted that the issue regarding wearing helmet of the deceased is taken for the first time before this Court and it was not taken before the Tribunal. He submitted that the consortium amount was paid only to the first claimant and not to the other claimants.

It be awarded.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”). To prove the income of deceased claimants have examined claimant No.3, he has stated that deceased was working with Global Direct Company as a Branch Manager at Thane and was earning salary of Rs.40,000/-p.m. A letter issued by Global Direct Company is at Exhibit-33. To support the evidence of the claimant, they have examined AW-2 Bhavik Shah (Exhibit-32), Account Manager in Global Direct Company, he has stated that deceased was not salaried employee of their company and they were paying him commission for the service provided by him. To prove the bank account statements of the deceased, the claimants have examined Madhukar Warkhande (AW-3) at Exhibit-38. This witness has stated about Saving Account of the deceased. Considering the evidence on record after deducting TDS amount and professional tax amount the Tribunal has considered monthly income of deceased at Rs.34,630/-. I do not find any infirmity in it.

5. In respect of issue of deceased was not wearing helmet at the time of accident, this plea was not taken before the Tribunal and no evidence was produced before the Tribunal by the appellant. Hence I do not see merit in it. The Tribunal has awarded Rs.40,000/- as consortium amount. There are five claimants. As per the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram***[1] each claimant is entitled for Rs.44,000/- as consortium amount. Claimant No.5 is brother of deceased so he is not entitled for the consortium amount. Rest of the three claimants are entitled for consortium amount.

It comes to Rs.44,000/- X 3 = Rs.1,32,000/-.

6. Considering the above reasons, I pass following order:

(i) The appeal is dismissed. No order as to costs.

(ii) The claimants are entitled for Rs.1,32,000/- at 7.5% interest per annum from 1st November, 2017 till realisation of the amount.

(iii) Respondent-Insurance Company is directed to deposit enhanced amount along with interest within four weeks.

(iv) The claimants are permitted to withdraw deposited amount along with accrued interest thereon.

(v) The statutory amount along with accrued interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per rule.

7. The appeal is disposed off.

(SHIVKUMAR DIGE, J.)

1 2018 ACJ 2782 (SC)