IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 533 OF 2008
WITH
CROSS OBJECTION (ST) NO.11056 OF 2008

The United India Insurance Co.Ltd.)
Stadium House, 5th Floor,)
Mumbai-400020) ...Appellant
(Ori. Respondent)

Versus

1. Smt.Alimunisha Ahmed Ali Khan)
(Widow of the deceased))

2. Shri. Wasim Ahmed Ali Khan)
Son of deceased)

3. Ms. Tabassum Ahmed Ali Khan)
Daughter of the deceased)

4. Ms.Shama Ahmed Ali Khan)
Daughter of the deceased)

5. Ms.Shahin Ahmed Ali Khan,)
Son of the deceased)

6. Master Sohail Ahmed Ali Khan)
Minor son of the deceased)

7. Ms.Tehsim Ahmed Ali Khan,)
Minor daughter of the deceased)

8. Master Rehan Ahmed Ali Khan,)
Minor son of the deceased)
Respondent Nos. 5 to 9 minors)
though their mother)
and next friend-Respondent No.1)

9. Master Mohammed Ahmed Ali Khan,)
   Minor son of the deceased)
   Respondent Nos. 5 to 9 minors)
   through their mother)
   and next friend-Respondent No.1)

   All Indian Inhabitants and)
   residing at Flat No.26,)
   E Line, Room NO.4,)
   Shivaji Nagar, Govandi)
   Mumbai-400043.

10. Shri.B.Nandakumar)
    N.4/521, 90th Street,)
    Muthamil Nagar, Chennai 600011) ...Respondents

(Respondent No.1 to 9 are Original Applicants and Respondent No.10 is Orig. Opposite Party)

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Mr. Shubham Misar i/b. Mr. H.G. Misar for the Appellant.
Mr. Amrin Khan i/b. Mr. A.M. Gokhale for the Respondents and Cross Objectionist.

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CORAM : SHIVKUMAR DIGE, J.

DATED : 30th MARCH, 2023

<u>JUDGMENT</u> :

1. The Appellant-Insurance Company has preferred Appeal. The claimants have also filed cross objection against the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'The Tribunal') as appeal and cross objection are against the same judgment, I am deciding it by common judgment.

2. It is contention of the learned counsel for the Appellant-Insurance Company that the Tribunal has considered the age of deceased at 45 years old. No proof produced on record without any proof Tribunal has considered this age, which is not proper and on that basis wrong multiplier is applied.

3. The learned counsel further submits that the accident occurred due to contributory negligence of the deceased, but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

4. The learned counsel for the Respondents-Claimants submits that the Tribunal has not awarded future prospects and consortium amount, while awarding compensation. The learned counsel further submits that in the claim petition, the claimants have mentioned the age of deceased as 45 years which is proper. The deceased was a pillion rider hence, the issue of contributory negligence does not arise. Hence requested to dismiss the Appeal and allow the cross objection.

5. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal. While dealing with the issue in respect of age of deceased in paragraph No.10 of the judgment, the Tribunal has observed that according to the Respondents-Claimants, the deceased was 45 years old at the time of accident. The Respondents-Claimants have not produced any proof of birth date of deceased on record. The Respondent No.1 deposed at Exhibit-12, that the deceased was 46 years old at the time of accident. In the application, the Respondent No.1 is shown as 40 years old and

the Respondent No.2, the eldest son is shown as 20 years. In the circumstances it can be accepted that deceased was in the age group of 45 to 50 years and as per the second schedule of the Act the multiplier to be adopted is 30. I do not find any infirmity in it, in my view, the Respondent No.1, who is wife of deceased, her age is shown as 40 years of age at the time of giving evidence. The Tribunal has not considered the age of deceased, below 45 years and he has taken his age more than 45 years, so the age considered by the Tribunal is proper. In respect of contributory negligence admittedly, the deceased was pillion rider hence, question of his contributory negligence does not arise.

6. The Tribunal has considered monthly income of deceased at Rs.4,000/-, but has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi***[1], the claimants are entitled for 25% future prospects on it. The Tribunal has not awarded consortium amount. 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.44,000/- as consortium amount and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

7. Considering the above calculations, the claimants are entitled for following compensation.

1 2017 ACJ 2700 (SC)
2 2018 ACJ 2782 (SC)

Particulars		Amount
Monthly Income	Rs.	4000.00
25% future prospects	Rs.	1000.00
Deduction towards personal expenses 1/5th of Rs.5,000 comes to Rs.1,000/-. Therefore, Rs.5,000-Rs.1000 comes to	Rs.	4000.00
Total Income Rs.4,000X12	Rs.	48,000.00
Rs.48,000 X 13 (multiplier)	Rs.	**6,24,000.00**
Loss of consortium Rs.44,000/-X9 (applicants)	Rs.	3,96,000.00
Loss of Estate	Rs.	16,500.00
Funeral Expenses	Rs.	16,500.00
Total Compensation	Rs.	**10,53,000.00**
Compensation awarded by the Tribunal	Rs.	5,53,000.00
Total Compensation Payable	Rs.	**5,00,000.00**

8. The Tribunal has awarded amount of Rs.5,53,000/-, if this amount is deducted from amount considered by this Court, it comes to Rs.5,00,000/-. The claimants are entitled for this amount. In view of the above, I pass following order:-

O R D E R

(i) First Appeal No.533 of 2008 is dismissed. No order as to cost.

(ii) Cross objection is allowed.

(iii) The Claimants are entitled for enhanced amount of Rs.5,00,000/- at 7.5% per annum from the date of filing of application till realization of the amount, out of this amount, amount of consortium Rs.3,96,000/- the claimants are entitled @ 7.5% on this amount from 1st November, 2017 till realization of the amount.

(iv) The Appellant-Insurance Company is directed to deposit enhanced amount along with accrued interest thereon, within six weeks on receipt of this order.

(v) The Claimants are permitted to withdraw the amount along with accrued interest thereon.

(vi) The statutory amount along with accrued interest thereon be transmitted to the Tribunal. The parties are at liberty to withdraw it, as per rule.

9. Pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)