IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 831 OF 2008
WITH
CROSS OBJECTION (ST) NO.12064 OF 2008

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

Versus

1. Smt. Jaibunisha Tahir Ali Shaikh)
(Widow of the deceased))

2. Ms.Rukar Khatun Tahir Ali Shaikh)
(Minor daughter of the deceased))

3. Master Farhan Tahir Ali Shaikh)
(Minor son of the deceased))

4. Ms.Sebba Khatun Tahir Ali Shaikh)
(Minor daughter of the deceased))

5. Ms.Aalsja Khatun Tahir Ali Shaikh)
(Minor daughter of the deceased))

6. Shri.Ali Hasan Adalat Shaikh)
(Father of the deceased))

7. Smt.Sairunnisha Ali Hasan Shaikh)
(Mother of the deceased))
Respondent No.2 to 5 minors)
through their mother and next)
friend-Respondent No.1)

All residing at Plot No.25,)
H Line, Room No.2,)
Shivaji Nagar, Govandi)
Mumbai 400043.)

8. Shri.B.Nandakumar)
N.4/521, 90th Street,)
Muthamil Nagar,)
Chennai 600011) ..Respondents
(Respondent No.1 to 7 are Original Applicants and Respondent No.8 is Orig. Opposite Party)

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Mr. Shubham Misar i/by Mr. H.G. Misar for the Appellant.

Ms. Amrin Khan i/by Mr. A. M. Gokhale for the Respondents & Cross Objectionist.

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CORAM : SHIVKUMAR DIGE, J.

DATED : 30th MARCH, 2023

JUDGMENT :

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 learned counsel for the Appellant that the Tribunal has considered monthly income of deceased at Rs.6,000/- without any evidence. Accident had occurred due to sole negligence of the deceased, as he was driving the motorcycle at the time of accident, but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents-Claimants that the FIR in respect of the said accident was lodged against driver of offending vehicle. No witness was examined by the Appellant-Insurance Company to prove the negligence of deceased.

4. The learned counsel further submits that the deceased was doing the business of scrap material and he was earning Rs.6,000/- per month. The Claimant No.1, wife of deceased has deposed on oath that deceased was earning Rs.6,000/- per month and on that basis compensation is allowed. Moreover, future prospects and consortium amount is not awarded. 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. To prove the income of deceased, claimant No.1 has stated that her husband was doing the business of scrap material and from which he was earning Rs.6,000/- per month. No documentary evidence was produced on record to prove that, deceased was doing scrap material business. It is contention of learned counsel for the Appellant that without any evidence, the Tribunal has considered monthly income of deceased at Rs.6,000/- which is on higher side. In my view, the Claimant No.1 has stated about the business of deceased as well as deceased was maintaining the family of seven people. It shows that he was doing the business. Hence, I am considering notional monthly income at Rs.4,000/- per month. In respect of issue of contributory negligence, admittedly, the FIR is lodged against the driver of

offending vehicle. Moreover, to prove the negligence of deceased, the Appellant has not examined any witness. Hence, without any evidence, mere on submission, this Court cannot consider contributory negligence of the deceased. Hence, I do not see merit in it. The Tribunal has not awarded future prospects and consortium amount while awarding compensation. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi***, the claimants are entitled for future prospects. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***, each claimant is entitled for Rs.44,000/- as consortium amount, 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.

Particulars		**Amount**
Monthly Income	Rs.	4000.00
40% future prospects	Rs.	1600.00
Deduction towards personal expenses 1/5th	Rs.	4480.00
Yearly Income Rs.4,480X12	Rs.	53,760.00
Rs.53,760 X 15 (multiplier)	Rs.	**8,06,400.00**
Loss of consortium Rs.44,000/-X7 (applicants)	Rs.	3,08,000.00
Loss of Estate	Rs.	16,500.00
Funeral Expenses	Rs.	16,500.00
Total Compensation	Rs.	**11,47,400.00**

Compensation awarded by the Tribunal	Rs.	6,61,000.00
Total Compensation Payable	Rs.	**4,86,400.00**

8. The Tribunal has awarded compensation of Rs.6,61,000/- if this amount is deducted from the amount considered by this Court it comes to Rs.4,86,400/- 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.831 of 2008 is dismissed. No order as to cost.

(ii) Cross objection is allowed.

(iii) The Claimants are entitled for enhanced amount of Rs.4,86,400/- @ 7.5% per annum from the date of filing of application till realization of the amount. Out of this amount, amount of consortium is Rs.3,08,000/-, 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 after 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.)