

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 315 OF 2022

Shriram General Insurance Company Ltd.
601, 6th Floor, Raunak Arcade, B Wing, Gokhale
Road, Naupada, Thane-West

....Appellant

Versus

1. Savita Nitin Gorade
Aged about 28 years, Occu : Nil
2. Vaishnavi Nitin Gorade
Aged about 08 months, Occ: Nil
Through Mother No.1
[Legal Guardian of Minor]
3. Balu Maruti Gorade
Age : 25 years, Occupation :Nil
All are R/o. Pirlote,
Taluka Khed, District-Ratnagiri
4. Rajendra Gulab Chavan
Age about – Major, Occu : Business
R/o. Bharne, Shindewadi
Taluka Khed, District-Ratnagiri
5. Ganesh Gulabrao Chavan
Age about – Major, Occu : Business
R/o Bharne Shindewadi, Taluka : Khed
District : Ratnagiri

....Respondents

.....

Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocate for the Appellant.

Mr. Sarthak Diwan i/b. A.M.Kulkarni, Advocate for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th DECEMBER, 2023

JUDGMENT :

1. The issue involved in this appeal is income of deceased is considered on higher side.

2. It is the contention of learned counsel for the appellant that deceased was working as a driver in Chartered Logistic Company Ltd. and the Tribunal has considered his monthly income at Rs.12,000/- per month without any evidence on record which is on higher side. Learned counsel further submitted that no voucher in respect of salary of deceased was produced on record. Mere on the basis of salary certificate the Tribunal has considered monthly salary of deceased which is not proper. He further submitted that the Tribunal has awarded 50% future prospectus which is on higher side as deceased was not a permanent employee of the company, hence requested to allow the appeal. He relied on ***United India Insurance Company Limited Vs. Kunti Binod Pande and Ors.***¹.

3. It is the contention of learned counsel for the respondents - claimants that deceased was working as a driver in Chartered Logistic Company Ltd. as a driver prior to 4 years of the date of accident and he was getting salary of Rs.12,000/- per month and Rs.3,000/- Bhatta. The Chartered Accountant of the company was examined as a witness and he has supported the case of claimant but the Tribunal has considered the salary of deceased @Rs.12,000/- per month which is on lower side. Learned counsel further submitted that as per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram***² the

1 2019 SCC Online Bom 5606

2 2018 ACJ 2782 (SC)

Tribunal has not awarded the consortium amount, it be awarded. He further submitted that the Tribunal has properly awarded the future prospects as deceased was the permanent employee of the said company. Hence, no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Ratnagiri (for short "**the Tribunal**"). To prove the income of deceased the claimants have examined PW-2 Khetaram Choudhary, Branch Manager of Chartered Logistic Company Ltd. He has stated that the deceased was working as a driver in their company. Their company had 500 transport vehicles and various branches across the country. Deceased was working in their company as a driver and was getting salary of Rs.12,000/- p.m. and Rs.3,000/- as allowance. The salary certificate is at Exhibit-26. Nothing elicited in his cross examination to disbelieve his evidence. I do not find merit in the contention of learned counsel for the appellant that there was no evidence on record to show that deceased was permanent employee of Chartered Logistic Company Ltd. and no vouchers of his salary were produced on record. In my view, PW-2 Khetaram Choudhary who is Branch Manager has categorically stated that the deceased was working in their company. The Company Registration Certificate is produced on record which shows that the company is duly registered under the

Companies Act and there was no suggestion to the witness Khetaram that the company was not in existence. Hence the income considered at Rs.12,000/- p.m. by the Tribunal is proper and 50% future prospects awarded is proper as, deceased was working in said company prior to 4 years of the accident.

5. It is the contention of learned counsel for claimant that Rs.3,000/- be considered in addition to the income of deceased. In my view, it cannot be considered as income as it was not part of salary and it was only allowance and allowances cannot be considered as a part of salary. Moreover, claimants have not filed cross objection for enhancement of the compensation. I have gone through the case laws cited by the learned counsel for appellant. The facts of cited case and present case are different.

6. The Tribunal has not awarded the consortium amount. As per the view of the Hon'ble Apex Court in the case of *Magma (supra)* each claimant is entitled for Rs.44,000/- as consortium amount, Rs.16,500/- towards loss of estate and Rs.16,500 towards funeral expenses, there are 3 claimants, so total comes to Rs.1,65,000/-. The Tribunal has awarded Rs.25,000/- towards consortium amount and Rs.6,000/- towards funeral expenses. Total comes to Rs.31,000/- if this amount deducts from Rs.1,65,000/- it comes to Rs.1,34,000/-. The claimants are entitled for

this amount.

7. In view of the above, I pass following order:

ORDER

- (i) Appeal is dismissed. No order as to costs.
- (ii) The respondents / claimant Nos.1 to 3 are entitled for enhanced amount of Rs.1,34,000/- @ 6% interest per annum from 1st November, 2017 till realisation of the amount.
- (iii) Appellant-Insurance company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the date of receipt of this order. The parties are at liberty to withdraw it as per rule.
- (iv) Respondents/claimant Nos. 1 to 3 are permitted to withdraw the deposited amount along with accrued interest thereon.
- (v) The statutory amount be transmitted to Motor Accident Claims Tribunal, Ratnagiri along with accrued interest thereon.

8. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)