IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1871 of 2010

1. Shernaz Pesi Ravji)
2. Nazneen Pesi Ravji, 18 years)
3. Delnaz Pesi Ravji, 15 years)
   No.3 being a minor by next friend)
   Applicant No.1, all residing at)
   Flat No.4, 1st floor, Nana Building)
   Near Tardeo Bride, Opp: Navjeevan)
   Society, Gilder Lane, Bombay)
   400 008.)
4. Khorshed C. Ravji, 70 years)
   Residing at Motafalia Nariampura,)
   Navsari – Gujarat.) ….Appellants

Versus

1. M/s. Frozen Freight Carriers,)
   11/3, Mathura Road, Bajarpur,)
   NEW DELHI.)
2. National Insurance Co. Ltd.)
   Maha Auto Garage Compound,)
   Opp. Cadbury Co., Thane.)
   through their Regional Office)
   at 12, J. T. Road, Churchgate,)
   Mumbai – 400 020.) ….Respondents

Mr. T. J. Mendon, Advocates for the Appellants.
Ms. S. S. Dwivedi, Advocate for the Respondents.

CORAM : S. G. DIGE, J.

DATE : 23rd FEBRUARY 2023.

Oral Judgment :

1. By way of this appeal, the appellants are seeking enhancement of compensation.

2. It is contention of the learned counsel for the appellants that the Tribunal has considered monthly income of the deceased at Rs.6250/- per month, then, yearly income comes to RS.75,000/- but the Tribunal has considered Rs.68,000/- per annum, which is improper. Learned counsel further submits that the Tribunal has applied wrong multiplier as well as the Tribunal has deducted 1/3rd amount for personal expenses, it should be 1/4th and the compensation under future prospects and consortium is not awarded. Hence, requested to allow the appeal.

3. Learned counsel for the respondent- Insurance Company submits that the deceased was a priest. The income of the deceased for last three years has come in the evidence of the Chartered Accountant but the Tribunal has considered only last year's income of the deceased, which is not proper. The income of the deceased for the earlier two years was very less but the Tribunal has considered monthly income of the deceased on higher side and

on that basis, the Tribunal has considered the yearly income of the deceased which is proper. The Tribunal has awarded compensation after considering evidence on record. Hence, no interference is required in it.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal (for short "the Tribunal"). While considering the income of the deceased, the Tribunal has observed that it is the submission of claimants' advocate that the income of the deceased was Rs.6250/- per month, as such, the income of the deceased could not have been more than Rs.68,000/- per annum. On that basis, the Tribunal has considered the income of deceased at Rs.68,000/- per annum. In my view, there is evidence of Chartered Accountant and Income Tax Returns of deceased on record. Considering the evidence of the Chartered Accountant at Exhibit "42", it appears that income of deceased was fluctuating, hence, I am considering yearly income of deceased at Rs.73,000/- per year.

5. The Tribunal has not awarded future prospects as per the view of the Hon'ble Apex Court in the case of ***National Insurance***

Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC) . At the time of the accident, the deceased was 43 year old, hence, claimants are entitled for 25% future prospects.

6. The Tribunal has applied multiplier of 12. As per the view of the Hon'ble Apex Court in the case of ***Sarla Verma and Ors versus Delhi Transport Corp. & Anr. AIR 2009 SC 3104***, for the age of 43, the proper multiplier is 14, hence, I am considering this multiplier.

7. The Tribunal has not awarded consortium amount as per the view of the Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled to Rs.44,000/- with 10% increase in consortium, Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate. At the time of filing the claim, there were 5 claimants. The father of deceased died during the pendency of the claim petition. Hence, deleted from the proceedings. The Hon’ble Apex Court in the case of ***Kirti and Ors versus Oriental Insurance Co. Ltd. 2021 ACJ 1*** has held that the subsequent death of the deceased’s dependent mother ought not to be a reason for reduction of motor accident compensation.

The Hon'ble Apex Court further held that claims and legal liabilities crystallizes at the time of accident itself and changes post thereto ought not to ordinarily affect pending proceeding and the respondent-insurer cannot seek benefit of the subsequent death of a dependent during the pendency of legal proceedings. Hence, I am considering consortium amount for five claimants.

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

Yearly Income of the Deceased	Rs.	73,000.00
Plus Future Prospects @25%	Rs.	18,250.00
Total	**Rs.**	**91,250.00**
1/4th deduction towards personal expenses	Rs.	22,812.50
Total	**Rs.**	**68,437.50**
Age of the deceased was 43 years, so the multiplier is 14 (Rs.68437.50/-multiplied by 14)	Rs.	9,58,125.00
Consortium Rs.44,000/- multiplied by 5	Rs.	2,20,000.00
Funeral Expenses	Rs.	16,500.00
Loss to Estate	Rs.	16,500.00
Total Compensation	**Rs.**	**12,11,125.00**
Compensation Awarded by the Tribunal	Rs.	5.54,008.00
Enhanced Compensation Amount		**Rs. 6,57,117.00**

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

O R D E R

1. The appeal is allowed.

2. The claimants are entitled for enhanced compensation of Rs.6,57,117/- @9% per annum from date of filing of claim petition till realisation. Out of the this amount, the amount of Rs.2,53,000/- is for consortium and loss of estate and funeral, the claimants are entitled for interest @7.5%.per annum on this amount from 1st October 2017 till realisation.

3. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

10. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)