

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 209 OF 2022

Reliance General Insurance Co. Ltd.

Regional Manager 135B,

Ground Floor, Pushpam Plaza)

Near Nanadadeep, Hotel Tadiwala Road

Pune, Office at 4th Floor, Chintamani Avenue,

Opp. Western Express Highway,

Next to Virwani Industrial Estate, Goregaon

(E), Mumbai – 400 063

....Appellant

Versus

1. **Smt. Harsh Priya Nilesh Warghat**

2. **Lawnya Nilesh Warghat**

3. **Meghna Nilesh Warghat**

Applicant Nos. 2 & 3 are minor hence
 claiming Through No. 1 i.e her mother
 (M.G.R)

4. **Himmat Kisanrao Warghat**

5. **Sau. Indira Himmat Warghat**

All r/o 15A, Akoli Road Bharat Nagar,
 No. 2 Sai Nagar, Amrawati,
 Maharashtra, 444607

6. **Atish Enterprise**

Age Major, Occ. Dumper Owner

A/P MOI Taluka Khed, Dist Pune 412105

....Respondents

Ms. Poonam Mital, Advocate for the Appellant.

Mr. Yogesh Pande, Advocate for the Respondents.

CORAM : S. G. DIGE, J.

DATE : 28th FEBRUARY, 2023

JUDGMENT :

1. The issues involved in this Appeal are income of the deceased and driver of the offending vehicle was not holding effective and valid driving license at the time of accident.

2. It is contention of learned Counsel for the Appellant that the Tribunal has erred in considering monthly income of deceased at Rs.10,000/- without any evidence. The Learned Counsel further submitted that, driver of the offending vehicle was not holding effective and valid driving license at the time of accident. But this fact was not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of the learned Counsel for Respondents / Claimants that deceased was 30 years old at the time of the accident. He was serving at ICON Technologies as a Store Keeper. He was getting salary of Rs.10,000/- per month and on that basis, the Tribunal has considered his salary at Rs.9,800/- per month. After deducting professional tax, which is proper. The learned Counsel further submits that the appellant have not examined any witness to

prove that the driver of the offending vehicle was not holding a valid and effective driving license at the time of accident. After considering all the aspects, the Tribunal has passed the judgment and award. No interference is required in it.

4. I have heard both learned Counsel and perused judgment and award passed by the Motor Accident Claim Tribunal, Pune, (for short, **“the Tribunal”**).

5. In respect of the issue of income of deceased, applicant No.4 - Himmat Kisanrao Warghat examined himself. He has stated that deceased was his son and he was working as a Store Keeper in ICON Technologies at Plot No. 4, Gat No. 1534, Sonawane Wasti, Chikhali, Pune. He was getting salary of Rs. 10,000/- per month. He was skilled and experienced person. To support the evidence of this witness, the Claimants have examined AW-2 Mr. Lohit Subhash Nalawade at Exh. 44. He was H.R Manager of the Icon Press Components Pvt. Ltd., where the deceased was an employee. This witness has stated that the deceased was working as a Store Keeper in their company. He was earning salary of Rs.10,000/- per month. The company was deducting Rs.200/- as Professional Tax and rest of the amount was being paid to the deceased.

6. Considering the evidence of these two witnesses, the Tribunal held that the deceased was getting Rs.9,800/- per month I do not find any infirmity in it. In respect of issue of driver of the

offending vehicle was not holding effective and valid driving license at the time of accident. To prove their contention, Appellants have not examined any witness before the Tribunal. Without any evidence, this Court cannot consider the plea raised by the Appellants at appellate stage. I do not see merit in it.

7. It is the contention of learned Counsel for Respondent/Claimants that the Tribunal has awarded only Rs. 40,000/- as consortium amount to claimant No.1. There are 4 Claimants. They are entitled for the consortium amount. He relied on *Magma General Insurance Co. Ltd Vs. Nanu Ram, 2018 ACJ 2782 (SC)*.

8. It is the contention of learned Counsel for Appellants that the Claimants have not preferred an appeal, hence, they are not entitled for further amount of consortium. In my view, it is settled principle of law that Claimants are entitled for just compensation. As per the view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd (Supra)* each Claimant is entitled for Rs.40,000/- consortium amount and though there is no appeal filed by the Claimants for enhancement of compensation. This Court is not enhancing monthly income of deceased, without preferring the appeal, consortium amount can be awarded. There are four claimants. Each Claimant is entitled for an amount of Rs.40,000/- which comes to Rs.1,60,000/-.

9. The Tribunal has awarded Rs. 40,000/- to one Claimant.

The remaining three Claimants are entitled for Rs. 1,20,000/- In view of above, I pass following order.

ORDER

- i. Appeal is dismissed. No order as to costs.
- ii. The Claimants are entitled for consortium amount of Rs.1,20,000/- @ interest 7% per annum from 1st October, 2017, till realization of the amount.
- iii. The Appellants are directed to deposit an additional amount along with interest thereon within a period of six weeks.
- iv. The statutory amount of Rs. 25,000/- be transmitted to the Tribunal. Parties are at liberty to withdraw it as per rule.
- v. I make it clear that, if the Appellants have deposited the entire award amount along with accrued interest thereon and if the Claimants have received entire award amount along with accrued interests there on, in that case, the Appellant - Insurance Company is entitled to withdraw the statutory amount along with accrued interests there on, if the Claimants have not received entire award amount along with interest thereon, in that case, the Claimants are entitled for the statutory

deposit along with accrued interest thereon to adjust their award amount.

(S. G. DIGE, J.)