IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1978 OF 2010

Reliance General Insurance Company Limited)
Corporate Office)
570, Rectifier House, Naigum Cross Road)
Next To Royal Industrial Estate)
Wadala, Mumbai-400031)
(Original Opponent No.3)

Versus

1. Smt. Nilam Tukaram Ghag)
   Age: 46 Years, Occ: Housewife)
   (Original Applicant No.1)

2. Ku. Kiran Tukaram Ghag)
   alias Kiran Sachin Pawar)
   Age: 19 years, occu: Education)
   (Original Applicant No. 2)
3. Ku. Joyoti Tukaram Ghag)
   alias Jyoti Shantaram Sanas.)
   Age: 17 years, Occ: education.)
   (Original Applicant No. 3)
4. Mayuri Tukaram Ghag)
   Age: 15 years, Occ: Education)
   All are r/o: Sr. No. 14, Jay Jawan nagar)
   Yarwada, Pune-6)
   (Original Applicant No. 4)
5. Shri Suresh jayaram Bhapkar)
   Age: 48 years, Occ: Rickshaw Driver)
   R/o: 226, Somwar Peth, Near Khadiche)
   Maidan, Pune.)
   (Original Opponent No.1)
6. Shri Uttam Bhagvan Zende)
   Age: Adult, Occ: Business)
   R/o: Dive, Tal: Purandhar)
   Dist: Pune)
   (Original Opponent No.2)

Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant.
Mr. Yogesh Pande for the Respondent Nos. 1 to 4.

CORAM : S. G. DIGE, J.

DATE : 31st JANUARY, 2023.

JUDGMENT. :

1. The Issue involved in this appeal is breach of terms and conditions of insurance policy.

2. It is contention of learned counsel for appellant that at the time of accident, the driver of offending vehicle was not holding valid and effective driving license. In spite of that the tribunal has awarded compensation.

3. The learned counsel further submit that the income of deceased is considered on higher side by the tribunal, no evidence was laid before the tribunal to prove the income of deceased. In spite of that the tribunal has considered the income of deceased on higher side and on that basis excessive compensation is awarded. Hence requested to allow appeal.

4. The learned counsel for Respondent Nos. 1 to 4/Original claimants submits that deceased was serving as an Arm Guard in Bank of Baroda, Branch Camp, Pune and was drawing salary of Rs. 13,008/- per month. After deduction of income tax and professional tax. The tribunal has considered the monthly salary at Rs. 12,608/- which is proper.

5. The learned counsel further submit that the tribunal has not awarded future prospects and consortium amount. The claimants are poor person and they had no knowledge about filing appeal for enhancement of the compensation, but it is settled principal of law that claimants are entitled for just compensation. Hence requested to award future prospect and consortium amount. Learned counsel relied on ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC) & New India Assurance Co. Ltd. vs. Somwati & Ors., 2020 ACJ 2321 (SC).***

6. I have heard both learned counsel. Perused judgment and order passed by the tribunal. The issues involved in this appeal are income of deceased and pay and recover order passed by the tribunal. To prove the income of deceased Smt. Neelam Tukaram

Ghag wife of deceased examined herself. She stated that her husband was working as Arm Guard in Bank of Baroda and was drawing salary of Rs. 13,008/- per month, the salary sleeps are at Exhibit 30 and 32. After deducting professional tax and income tax, the tribunal has considered Rs. 12,608/- as monthly income of deceased. I do not find any infirmity in it.

7. The issue in respect of breach of terms and conditions of insurance policy. On the basis of evidence of Smt. Sweta Singh at Exhibit- '18', officer of Regional Transport Office, Pune, the Tribunal has held that the driver of offending vehicle was not holding effective and valid driving license at the time of accident, accordingly pay and recover order is passed. Moreover respondent no. 5 who is the owner of offending vehicle has not challenged the order passed by the tribunal. It is settled law that when driver was not holding valid and effective driving license at the time of accident in such cases, insurance company has to pay the compensation to the claimants and recover it from the owner of the offending vehicle. Hence, I do not find merit in the contentions of appellant that pay and recovery order passed by the tribunal is perverse.

8. The tribunal has not awarded future prospects and

consortium amount. It is contention of the learned counsel for the appellant that the claimants have not preferred appeal for enhancement of compensation. In the appeal filed by insurance company they can't claim enhancement. Section 168 of Motor Vehicle Act, 1988, states about award. It read thus.

> 168. **Award of the Claims Tribunal**.-(1) On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of [1][section 163] may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

9. This Section deals with award of the claims Tribunal, it empowers the Tribunal to pass an award determining the amount of compensation that appears to it to be just compensation. It is settled law that while awarding compensation the Tribunal should award adequate compensation, which is fair and equitable, on the facts and circumstance of the case. In the present case the tribunal has considered income of deceased properly. Hence, I am not

considering the amount for future prospects. Though appeal is not preferred by the claimants it cannot be ground to deny the amounts which are they entitled as a just compensation. The Tribunal has awarded amount of Rs. 9,500/- as a conventional amount towards funeral loss of estate and loss of consortium. As per the view of Hon'ble Apex Court in the case of MAGMA ***Magma General Insurance Co. Ltd. vs. Nanu Ram (Supra)***. Each claimant is entitled for Rs. 40,000/- compensation and Rs.15,000/- for funeral expenses and Rs. 15,000/- for loss of the estate. There are four claimants, each claimant is entitled to Rs. 40,000/-. Total of it comes to Rs. 1,60,000/- and Rs. 15,000/- for funeral expenses and Rs. 15,000/- for loss of estate total of it comes to Rs. 1,90,000/-. The Tribunal has awarded Rs. 9500/- for conventional heads if it deducts from the amount of Rs. 1,90,000/- it comes to Rs. 1,80,500, the claimants are entitled for this amount.

10. In view of above, I pass following order.

<u>ORDER</u>

i. Appeal is dismissed. No order as to cost.

ii. The respondent nos. 1 to 4 / claimants are entitled for the additional compensation of Rs.

1,80,500, at the rate of 7.5% interest from the 1st October, 2017 till realization of the amount.

iii. The Appellant are directed to deposit the additional amount along with accrued interest thereon, within a period of eight weeks. After the receipt of the order. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon .

iv. The statutory amount be transmitted to the Tribunal along with interest, the parties are at liberty to withdraw it as per Rule.

(S. G. DIGE, J.)