IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.823 OF 2022

Reliance General Insurance Co. Ltd.
The Divisional Manager, Mumbai,
Divisional Office, 4th Floor, Chintamani
Avenue, Near Virvani Industrial Estate,
Western Express Highway, Goregaon(E),
Mumbai.
(Insurer of Motor Tempo Bearing No. MH-04-F-6848)
Policy No.6066542334000036
Valid from 15/11/2014 to 14/11/2015 ….Appellant

Versus

1 Pishta Ashok Parihar
Age 20 years
(Widow of the deceased)

2 Bhavri Prakash Parihar
Aged about 40 years
(Mother of the deceased)

3 Prakash Maganji Parihar
Aged about 45 years
(Father of the deceased)
All residing at : Ram Jaruka Co-op.
Hsg.Society Ltd., Indralok Phase III,
Bhayander (East), Dist-Thane ….Original Applicants

4 Ravindra Mahadev Chavan
House No.719,
Kalyan Bhiwandi Road,
Ganesh Nagar Kon, Bhiwandi, District-Thane.
(Owner of the Motor Temp bearing
No.MH-04-F-6848) ...Respondents

Ms. Shalini Shankar, Advocate for the Appellant.
Ms. Rina Kundu, Advocate for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th DECEMBER, 2023.

Oral 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 doing service of recovery boy in Dainik Dabang Duniya Publication Pvt. Ltd. at C.B.D. Belapur, Navi Mumbai, and he was earning 15,000/- per month as salary. He was also doing the business of cosmetics work. The Tribunal has considered his yearly income at Rs.2,16,644/- per annum without any evidence of record, which is on higher side. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for respondents/claimants that the deceased was serving as recovery boy in Dainik Dabang Duniya Publication Pvt. Ltd. at C.B.D. Belapur, Navi Mumbai, and he was earning Rs.15,000/- per month as salary. He was also doing the business of cosmetic work and earning income of Rs.2,16,644 per annum. To prove the income of the deceased, Income Tax Returns were filed on record. On that basis, the Tribunal has considered the income of deceased. The income considered by the Tribunal is proper.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Thane, (for short “the Tribunal”).

5. To prove the income of the deceased, claimants have examined PW-1- Prakash. He has stated that deceased was doing service of recovery boy in Dainik Dabang Duniya Publication Pvt. Ltd. at C.B.D. Belapur, Navi Mumbai, and he was earning Rs.15,000/- per month as salary. He was also doing the business of cosmetics works and he was earning Rs.16,644/- per month. Nothing elicited in the cross-examination of this witness. In support of his evidence, the claimants have examined PW-2 Amit – Chartered Accountant. He has stated that he knew deceased who was doing the business of cosmetic products on labour charge basis and he had filed Income Tax Returns of the deceased for the Assessment Years 2013-2014 and 2014-2015. The income of the deceased for the Assessment Year 2013-2014 was Rs.1,89,690/- and the income of the deceased for Assessment Year 2014-2015 was Rs.2,15,230/-. The income tax returns are at ‘Exhibits 48 and 49’. The claimants examined PW-3- Inspector in the Income Tax Office. He has stated that deceased filed Income Tax Returns for the Assessment Years 2015-2016 on 26th August 2016. As per the said returns, the income of the deceased for the said period was Rs.2,71,570/-. While considering the income of the deceased, the Tribunal has considered the Income Tax Returns of the Assessment

Years 2013-2014 and 2014-2015. The Tribunal has not considered the Income Tax Returns of the Assessment Year 2015-2016 as it was filed on 25th August 2016 i.e. after the death of deceased i.e. on 27th August 2015. Considering the evidence on record, the Tribunal has considered the yearly income of the deceased at Rs.2,16,000/- per annum. I do not find infirmity in it as the deceased was also getting salary income.

6. In view of above, the appeal is devoid of merit and I pass the following order:

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
3. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

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

(SHIVKUMAR DIGE, J.)