**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.63 OF 2017**

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| **The New India Assurance Co. Ltd.**<br>Mata Building, Dr. Ambedkar Road,<br>Near Civil Hospital, Sangli<br>Thr. Centralized Motor TP Claims<br>Hub, 41-B, 4th Floor, Maker Tower-<br>E, Near World Trade Centre, Cuffe<br>Parade, Pune-400 005. | } | **...Appellant** |
| *Versus* | | |
| **1. Smt.Varsha Abhay Tejani**<br>**2. Sou. Rita Mahendra Tejani**<br>**3. Shri.Mahendra Kriparam Tejani**<br><br>All R/at F-4, Vyankatesh Vijay Apt.,<br>Ratanshinagar Road, Sangli,<br>**4. Mahaveer Appasaheb Patil**<br>**5. Appasaheb Bapu Patil**<br><br>Both R/at Kalambi, Tal. Miraj,<br>District-Sangli | } | **...Respondents** |

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Mr. Devendranath Joshi a/w Mr. Paradyumna Thakurdesai Advocate for the Appellant.
Ms. Sakshi Kadam a/w Mr. Jitesh Mundhwa i/b Kedar Patil a/w Gargi Joshi & Pratik Tare, Advocate for the Respondents.

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**CORAM : S. G. DIGE, J.**

**DATE : 20TH FEBRUARY, 2023.**

**JUDGMENT :-**

1. The issues involved in this appeal are that the income of

deceased is considered on higher side and amount awarded under future prospects and consortium amount.

2. It is the contention of learned counsel for the appellant that the Tribunal has considered yearly income of deceased as Rs.3,19,087/- which is on higher side. Learned counsel further submits that it has come in the evidence of PW1 i.e. wife of deceased that deceased was doing the business of Ceramics i.e. M/s. Vardhman Ceramics. It was family business. After the death of deceased, the said business was conducted by his brother. So the income of deceased should have been considered as managerial loss but Tribunal has considered the income of deceased on higher side which is not proper. Learned counsel further submits that the Tribunal has awarded 50% future prospects when it has come on record that deceased was self employed, then, it should be 40% future prospects. The Tribunal has awarded Rs. 2,25,000/- under conventional heads, it should be Rs. 40,000/- each to the claimants. Hence requested to allow the appeal.

3. It is contention of learned counsel for respondents-claimants that the deceased was proprietor of the said firm. After his

death, wife of deceased and his family shifted to maternal home of claimant no. 1. After the death of deceased, the proprietorship of his business is transferred in the name of brother of deceased. There was total financial loss to the claimants. Hence, the income considered by the Tribunal and calculations done by the Tribunal are proper.

4. I have heard both learned counsel. Perused judgment and order passed by the Tribunal. To prove the income of the deceased, wife of deceased examined herself at Exhibit-37. She has stated that her husband was doing the business of Ceramics and he was earning income from it. After his death, she shifted to her parental house and there is total loss of her income. It has come on record that after the death of deceased, there is total loss to the family of the claimants. So it cannot be considered as a managerial loss as contended by the appellant. So the income of deceased considered by the Tribunal is proper.

5. The Tribunal has considered 50% future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Company Limited v Pranay Sethi***[1] it should be

1 (2017) 16 SCC 680

40% as deceased was the self employed. Hence I am considering 40% future prospects, which comes to Rs. 59,563/- The Tribunal has awarded Rs. 2,25,000/- under conventional heads. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd vs Nanu Ram Alias Chuhru Ram***[2], it should be 44,000/- each. There are three claimants and Rs. 16,500/- for loss of Estate and Rs.16,500/- for funeral expenses. In view of the above calculations, claimants are entitled for following compensation.

The working of the claim :

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| Annual income considered by Tribunal<br>Dependency (1/3) | Rs. Rs. 03,19,087/-<br>- Rs. 01,06,362/- |
| Income Tax Deduction (30%) | = Rs. 02,12,725/-<br>- 63,818/- |
| Future prospects (40%) | = Rs. 01,48,907/-<br>+ Rs. 59,563/- |
| Multiplier | = Rs. 02,08,470/-<br>x 15 |
| Consortium -(44,000 X 3 =01,32,000/-)<br>Loss of Estate -(Rs.16,500/-)<br>Funeral Expenses (-Rs. 16,500/-) | = Rs. 31,27,050/-<br><br>+ Rs. 01,65,000/- |
| Total Amount<br>Amount awarded by the Tribunal | Rs. 32,92,050/-<br>Rs. 39,47,685/- |
| Excess Amount | Rs. 06,55,635/- |

6. In view of above calculations excess amount to Rs. 6,55,635/-. The appellants are entitled for this amount. In view of

2 (2018) 18 SCC 120

the above, I pass following order.

**<u>O R D E R</u>**

i. Appeal is allowed.

ii. The appellants are entitled for the amount of Rs. 6,55,635/- along with accrued interest thereon. The appellants are permitted to withdraw this amount along with accrued interest thereon out of deposited amount, if entire amount is deposited before the Tribunal.

iii. The claimants are entitled for Rs. 32,92,050/- along with interest awarded by the Tribunal.

iv. The Claimants are permitted to withdraw this amount along with accrued interest thereon.

v. The appellants are permitted to withdraw balance amount along with accrued interest thereon.

vi. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it.

vii. The appeal stands disposed of.

7. All pending interim applications are disposed of.

**(S. G. DIGE, J.)**