IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.348 OF 2020

	The New India Assurance Co. Ltd.	)	
	41 B, 4th Floor, Maker Tower-E,	)	
	Near World Trade Center, Cuffe	)	
	Parade, Mumbai – 400 005.	)	Appellant
	Versus		
1	Smt. Anand Bhairunsingh Devda,	)	
	Age : 34 years,	)	
	(Widow of the deceased)	)	
2	Miss Khushbhu Bhairusingh Devda	)	
	Age : 10 years,	)	
	(Daughter of the deceased)	)	
3.	Kumar Krishnapalsingh Bhairusingh	)	
	Devda, Age 14 years	)	
	(Son of the deceased)	)	
	Applicant Nos.2 and 3 are appearing	)	
	through their natural mother natural	)	
	guardian- Applicant No.1	)	
	All residing at Kallasapati Building,	)	
	1st Floor, Dapoda Village, Taluka	)	
	Bhiwandi, District Thane.	)	
4	Shri Venkat Raosaheb Wagh	)	
	At Post – Haloli, Reti Bunder	)	
	Taluka Palghar, Dist. Thane,	)	
	(Owner of the Motor Truck No. MH-	)	
	04-CU-2464)	)	

5 Shri Venkat Raosaheb Waghe	)	
R/at Gayatri Nagar, Nagaon,	)	
Near Shivsena Shakha,	)	
Ta. Bhivandi, Dist. Thane.	)	
(Driver of Motor Truck/No.	)	
MH-04-CU-2464)	)	Respondents

Ms. Poonam Mital, Advocate for the Appellant.
Mrs. Rina Kundu, Advocate for Respondent Nos.1 to 3/Claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th MARCH 2023.

<u>Oral Judgment :</u>

1. The issues involved in this appeal are, the other insurance company has not been joined as a party and quantum of compensation.

2. It is contention of learned counsel for the appellant that owner of the offending vehicle had insured the offending vehicle with two insurance companies but the other insurance company was not joined as a party defendant in the claim petition and only the appellant – insurance company was joined as a defendant. The Tribunal has fixed liability on the appellant – insurance company,

which is improper. Learned counsel further submits that Tribunal has considered monthly income of deceased at Rs.10,000/- without any evidence, which is on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the claimants that the claimants were not aware about the insurance of the offending vehicle with two insurance companies. In written statement, no defence was taken by appellant – insurance company that there are two insurance companies. Moreover, the owner of the offending vehicle can insure the vehicle with many insurance companies and it cannot be a ground to deny compensation to the claimants. Learned counsel further submits that it was the case of the claimants that deceased was earning Rs.30,000/- per month and in that regard, evidence was led before the Tribunal but Tribunal has considered only Rs.10,000/- per month as income of deceased, which is on lower side. Hence, requested to dismiss the appeal.

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

5. In respect of issue of insurance policy, the defense was taken by the appellant in written statement that the vehicle was insured with Royal Sundaram Allianz Insurance Company and the said insurance company has not been made party to this petition but no evidence was led by the appellant –insurance company to prove that the vehicle was insured with other insurance company. In the absence of evidence, I do not find merit in the contention of learned counsel for the appellant that the said vehicle was insured with other insurance company.

6. To prove the income of deceased, the claimant No.1 examined herself at Exhibit 45. She has stated that her husband was running business in the name and style of M/s. Bhavani Jewellers and earning Rs.30,000/- per month. The Bank account extracts are at Exhibits 56 and 57 which show deceased used to deposit Rs.500/- per day in Sahyadri Nagri Sahakari Patpedhi Limited. In support of her evidence, the claimants have examined PW2 - Subhash Vitthal Patil, General Manager of Sahyadri Nagri Sahakari Patpedhi Limited, he has stated that deceased used to deposit Rs.500/- every day in his bank account. The claimants have examined elder brother of deceased – PW3 - Jethusingh

Bhaversingh Devda. He has stated that deceased was running business in the name and style of M/s.Bhavani Jewellers at Mankoli Naka, Bhiwandi and was earning Rs.30,000/- per month. Considering the evidence on record, the Tribunal has observed that deceased used to deposit Rs.500/- daily in Sahyadri Nagri Sahakari Patpedhi Limited. The bank account extracts are at Exhibits “56” and “57” and on that basis, the Tribunal has considered monthly notional income of deceased at Rs.10,000/- per month. I do not find infirmity in it.

7. It is contention of learned counsel for the appellant that Tribunal has awarded Rs.25,000/- for funeral expenses, it should be Rs.15,000/-. The Tribunal has awarded Rs. 1,00,000/- each to two children for loss of love and affection, Rs. 1,00,000/- for loss of estate and Rs.1,00,000/- as consortium, which is excessive. As per the view of Hon’ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.40,000/- as consortium amount, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. There are three claimants, so consortium amount comes to Rs.1,20,000/- and Rs.30,000/- for funeral expenses and loss of estate. So the amount awarded by the Tribunal is on higher side.

8. The monthly income of deceased is Rs.10,000/-. 40% future prospects comes to Rs.4,000/-, so total monthly income of deceased comes to Rs.14,000/-. Thus, 2/3rd income comes to Rs.9,333/- per month. Since deceased was 32 year old, proper multiplier is 16. Thus Rs.9,333/- x 12(months) x 16(multiplier), comes to Rs.17,91,936/-. If Rs.1,20,000/- towards consortium and Rs.30,000/- for funeral expenses and loss of estate are added, the total comes to Rs.19,41,936/-. The claimants are entitled for this amount. If this amount is deducted from the amount of Rs.23,45,000/- awarded by the Tribunal, it comes to Rs.4,03,064/-. It is an excess amount. The appellant- Insurance Company is entitled for this amount.

8. In view of above, I pass following order :

O R D E R

1. The appeal is allowed.

2. The claimants are entitled for compensation of Rs.19,41,936/-at the rate of interest awarded by the Tribunal.

3. The appellants are permitted to withdraw the amount of Rs.4,03,064/- along with accrued interest thereon.

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

5. Statutory amount along with accrued interest thereon be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.

The appeal stands disposed of.

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

(SHIVKUMAR DIGE, J.)