IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 714 OF 2010

1. Mr. Sudhakar Dattatraya Bhagat,
   Aged: 55 years, Father of deceased.

2. Mrs. Saupanali Sudhakar Bhagat
   Aged: 50 years, Mother of deceased.

3. Miss Shradha Sudhakar Bhagat
   Aged: 20 years, Unmarried Sister of the deceased. All are residing at Building No. 185/51/3, Pant Nagar, Ghatkopar (E), Mumbai - 400075

….Appellant
(Orig. Applicants)

Versus

1. M/s. Citizen Transport Company,
   859, Steel Yard, Kalamboli,
   Taluka Panvel, Dist. Raigad.

2. The New India Assurance Co. Ltd.
   New India Assurance Building,
   87, M. G. Road, Fort, Mumbai-400001.

….Respondents
(Orig. Opp. Party
& Insurer).

Mr. T. J. Mendon for the Appellant.
Smt. Urmila K. Sanil for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd APRIL 2023.

JUDGMENT :

1. The issue involved in this appeal is income of deceased is considered on lower side.

2. It is contention of learned counsel for the appellant that deceased was working in a company and he was getting salary of Rs.27,000/- per month but considering the evidence on record and on the average basis, the tribunal has considered the monthly salary of deceased at Rs.11,026/-. However, at the time of calculation including future prospects, the tribunal has considered monthly salary at Rs. 15000/- wrongly and on that basis calculation is done which is not proper. Hence, requested to allow the appeal by taking salary of Rs.11,026/-. Learned counsel further submits that the tribunal has deducted 2/3 amount for personal expenses, it should be 1/2 as deceased was bachelor. The tribunal has applied multiplier of age of parents of deceased i.e. claimants, it should be as per age of deceased.

3. It is contention of learned counsel for the respondents/insurance company that while awarding compensation,

the tribunal has considered all the aspects and on that basis compensation is awarded. No interference is required in it. Learned counsel further submits that the tribunal has considered monthly salary of deceased properly.

4. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal'). While dealing with the income of deceased the tribunal has observed the salary structure dated 26th November, 2003, in para 9. Wherein, gross salary of deceased is mentioned as Rs.11,098/- and on the basis of average salary, tribunal has considered monthly salary of deceased. After deduction at Rs.11,026/- while calculating the compensation, the tribunal has considered the salary of deceased with future prospects at Rs.15000/-. In my view, it is either typographical mistake or inadvertent mistake. Hence, I am considering the salary of deceased at Rs.11,026/- without future prospects. The deceased was bachelor, the tribunal has deducted 2/3 amount for personal expenses, it should be 1/2. Hence, I am deducting 1/2 amount for personal expenses. The tribunal has applied multiplier as per the age of claimants who are parents of the deceased. It is settled principle of law that it should be as per the age

of deceased. At the time of accident deceased was 24 years old, proper multiplier is 18. I am considering it. The tribunal has not awarded future prospects as deceased was permanent employee. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC).*** The claimants are entitled 50% future prospect.

In view of above calculations, the claimants are entitled for following compensation.

Age of the deceased	24 years
Income of the deceased	Rs. 11,026/-
Multiplier of age	18
Future prospects 50%	Rs. 5518.00 11026 + 5518.00 = 16544.00 16544 x 12 x 18 ---------------------- 2 Rs. 17,86,52.00/-
Consortium	Rs. 88,000/-
Funeral	Rs. 16,500/-
Loss of Estate	Rs. 16,500/-
Total	Rs.19,07,752.00/-

The tribunal has awarded Rs.6,24,000/-. If this amount deducts from amount considered by this Court it comes to

Rs.12,83,752/-. Claimants are entitled for this amount.

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

i. Appeal is allowed.

ii. The claimants are entitled for enhanced amount of Rs. 12,83,752/- at the rate 7.5% per annum from the date of filing claim petition till realization of the amount, out of this amount Rs.1,21,000 is consortium amount, the claimants are entitled interest at the rate 7.5% P.A. on this amount from 1 October, 2017 till realization of the amount.

iii. The respondents are directed to deposit the enhanced amount along with accrued interest thereon, within six weeks after the receipt of the order.

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

6. Pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)