IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.255 OF 2017

WITH

CROSS OBJECTION STAMP NO.7715 OF 2023

Reliance General Insurance Co. Ltd.)
4th Floor, Cintamani Avenue,)
Off. Western Express Highway,)
Next To Virwani Industrial Estate,)
Goregaon (E), Mumbai 400 063) ….Appellants

Versus

1.Sudha Naresh Yadav)
Age 33 years, Occ. Housewife,)
(widow of the deceased))
2. Bhavana Naresh Yadav)
Age 12 years, Occ. Student,)
(Minor Daughter of the deceased))
3. Alpana Naresh Yadav)
Age 11 years, Occ. Student,)
(Minor Daughter of the deceased))
4. Vishal Naresh Yadav)
Age 09 years, Occ. Student,)
(Minor Son of the deceased))
(As respondent Nos. 2 to 4 are being)
minor, they are appearing through)
their mother i.e. respondent No.1))
All are R/o. Building No.110, Room No.2)
MHADA Colony, Mankhurd, Mumbai.)
5. Vishwanath Ramnaresh Mishra)
Office at : House No.3642, Mahatma)
Phule Nagar, Belapur Road,)
Kalwa, Thane.)
(Owner of tempo bearing No.)
MH-04-CP-0457)) …..Respondents

Ms. Poonam Mital , Advocate for the Appellant.
Ms. Rina Kundu, Advocate for Respondent Nos. 1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th JANUARY, 2024.

ORAL JUDGMENT :

1. The issues involved in this appeal are yearly that the income of deceased and compensation awarded under the head of loss of estate, love and affection and funeral expenses are on higher side.

2. The respondent Nos.1 to 4/claimants have also filed cross-objection for enhancement of compensation. As the appeal and cross-objection are against the same judgment and order, I am deciding it by this common judgment.

3. It is the contention of learned counsel for appellant- Insurance Company that The Tribunal has considered yearly income of deceased on higher side and compensation awarded under the head of loss of estate, love and affection and funeral expenses are on higher side. Hence, requested to allow the appeal.

4. It is contention of learned counsel for respondent Nos.1 to 4/claimants that to prove the income of deceased, the Income Tax Returns are filed onrecord by the claimants. The witnesses were examined to prove the income of deceased. The Tribunal has wrongly considered average yearly income of deceased at Rs.1,67,496/-, it should be Rs.2,39,000/-. Learned counsel further submitted that Tribunal has not awarded future prospects and consortium amount. Hence, requested to allow the appeal filed by the claimants and dismiss the appeal filed by Insurance Company.

5. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claim Tribunal, Thane, (for short “the Tribunal”). The issue involved in these appeals are the income of deceased. To prove the income of deceased, the claimants have examined Sudha Yadav-Claimant No.1 at ‘Exhibit-24’. She has stated that her husband was doing business of octroi collection at octroi naka, Vashi and he was earning Rs.2,68,991/- per annum. The Income Tax Returns of Assessment Year 2008-2009, Assessment Year 2009-2010 and Assessment Year 2010-2011 are filed on record. Meena Paradhi-PW-2, Inspector in Income Tax Department, Thane, at Exhibit-39 has stated that Income Tax Returns of deceased were filed in her office and for the Assessment Year 2008-2009 income of deceased was Rs.1,50,460/-, for Assessment Year 2009-2010 income of deceased was Rs.1,59,460/- and for Assessment Year 2010-2011 income of deceased was Rs.1,92,750/-. The average income comes to Rs.1,67,496/-, on that basis, the Tribunal has considered the income of deceased at Rs.1,67,496/-. In my view, the Income Tax Returns on record of deceased shows that gross income of deceased for the Assessment-Year 2008-2009 was Rs.2,24,563/-,gross total income for Assessment-Year 2009-2010 was Rs.2,59,462/-and gross total income for Assessment-Year 2010-2011 was Rs.2,68,911/-. After deducting, income tax of these three years, the average income amount comes to Rs.2,47,014/-. The

Tribunal has deducted, deductions under Chapter VIA of Income Tax Act. The income tax return shows that it is investment for life insurance premium and stamp duty and registration fees. This amount cannot be deducted. Hence, I am considering the yearly income of the deceased at Rs.2,47,014/-.

The Tribunal has not granted future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC) ,*** it should be 25%%. Hence, I am considering 25% amount of average income as future prospects.

The Tribunal has not awarded consortium amount. 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.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses.

Considering the above calculations, Respondent Nos.1 to 4/claimants are entitled for following compensation :

Average income	Rs. 2,47,014.00
25% future prospects	Rs. 61,753.00
Total	Rs. 3,08,767.00
1/4th deduction for personal expenses	Rs. 77,191.00
Dependency per annum	Rs. 2,31,575.00
Rs.2,31,575/- x 15 (multiplier)	**Rs.34,73,625.00**
Consortium Rs.48000/- x4 (claimants)	Rs. 1,92,000.00

Loss of estate	Rs. 18,000.00
Loss of funeral expenses	Rs. 18,000.00
Entitled Compensation	**Rs.37,01,625.00**
Compensation awarded by Tribunal	Rs.21,09,330.00
Enhanced Compensation	**Rs.15,92,295.00**

Respondent Nos.1 to 4/claimants are entitled for enhanced amount of Rs.15,92,298/-.

7. In view of above, I pass the following order :

O R D E R

1. First Appeal No.255 of 2017 is dismissed. No order as to cost.
2. Cross-Objection filed by the claimants is allowed.
3. The claimants are entitled for enhanced compensation of Rs.15,92,295/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.2,28,000/- is consortium amount. The claimants are entitled for interest @ 7.5% on this amount from 1st November 2017 till realisation.
4. Appellant-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.

5. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

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

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

(SHIVKUMAR DIGE, J.)