IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.529 OF 2021

National Insurance Co. Ltd.,
Ganesh Chandra Chambers,
Powai Naka Satara, Through TP HUB,
National Insurance Building,
1st Floor, Churchgate, Mumbai 400 020. ….Appellant

Versus

1 Charushila Pandurang Jadhav,
Age 36 years, Occ. Household

2 Sakshi Pandurang Jadhav,
Age 19 years, Occupation Education

3 Akash Pandurang Jadhav
Age 17 years, Occ. Education

4 Arya Pandurang Jadhav
Age 12 years, Occ. Nil, Respondent No.1
for herself and for Respondent Nos. 3 to 4
as a minor guardian, all R/o. C/o. Shivaji
Shankar Bhosale at post, Hiwarwadi,
Tal, Khatav, Dist. Satara ..Orig. Applicants

5 Ashok Kashinath Patange
Age 59 years, Occ. Motor Owner,
R/o. Pira Sangh Camp, Thakurpada,
Bhiwandi, Dist. Thane. ...Opp Party No.1

6 The Manager,
Tata AIG General Insurance Co.,
1st Floor, Office No.101-102, Prestige
Precinct, Eastern Express Highway,
Village, Panchpakhadi, Dist. Thane 444
602) Deleted ….Opp. Party No.2

7 Arjun Narayan Pawar,
Age 32 years, Occ. Driver, R/o. Shivalik
Kirana Stores, Mahalaxmi Nagar,
Ambarnath (East),
Vehicle No.Mh-04-G 3989,
Policy Validity Period 2/6/11 to 1/6/2012 (Opp. Party No.3)
...Respondents

Ms. Poonam Mital, Advocate for the Appellant.
Mr. Sharad Bhosale i/b. Mr. Dilip Bodake, Advocate for respondent Nos.1 to 4/ claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th DECEMBER, 2023.

Oral Judgment :

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

2. It is the contention of learned counsel for the appellant that deceased was a driver. The Tribunal has considered his income at Rs.10,000/- per month. Learned counsel further submitted that Income Tax Returns for the Year 2006-2007 to 2010-2011 were filed on record but the Tribunal has considered the income of 2010-2011 and not the earlier years. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for respondent Nos.1 to 4/claimants that deceased was the owner and driver of the vehicle. He used to file Income Tax Returns. He was doing business of Tourism. The Tribunal has considered the average income of three years. Deceased was earning more than Rs.15,000/- per month but the Tribunal has considered Rs.10,000/- which is proper and no interference is required in it.

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

5. To prove the income of the deceased-Pandurang Jadhav, claimants have produced Income Tax Returns for the year 2006-2007 to 2010-2011 on record, which are at “Exhibit-44”. While considering the income of deceased, the Tribunal has observed that income of deceased for the year 2010-2011 was Rs.14,546/- but the Tribunal has observed that deceased was not having fixed income and considering the average income on the basis of Income Tax Returns for the above said period, the Tribunal has considered Rs.10,000/- as monthly income of the deceased. I do not find any infirmity in it.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
2. Respondent Nos. 1 to 4/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.)