IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 146 OF 2022

1. Smt. Ajit Kaur Rajendra Singh Vasu,)
   age about 61 years, occupation Household,)
   widow of the deceased.)

2. Ms. Simran Kaur Rajendra Singh Vasu,)
   about 40 years, occupation Nil, (Daughter of)
   the deceased).)

3. Mr. Shivpal Rajendra Singh Vasu)
   age about 33 years, Occupation business,)
   son of the deceased.)

   All appellants are residing at Mari Gold Society,)
   B-2, Room No. 601, Near Mira Road Police Station,)
   Tal & Dist. Thane.)

….Appellant
(Original Applicants)

Versus

1. Mr. Lal Mohd. Walikar, A-1, 420, A. G. Nagar,)
   Amar Palace Hotel, Western Express Highway,)
   Thane- 401 107. (Owner of Motor Dumper))

….Respondents No.1
Original Applicant

2. M/s. New India Assurance Company Ltd.,)
   Thane Divisional Office, Shivkripa)
   Commercial Complex, Naupada, Thane)
   (West) Policy No. 110601/31/07/01/24752.)

Ms. Rina Kundu for the Appellant.
Ms. Poonam Mittal for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th APRIL 2023.

JUDGMENT. :

1. By way of this appeal, Appellants/Claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the appellant that, deceased was running hotel, he was filing income tax returns. The income tax returns were filed on record, to prove the income of deceased. But, the tribunal has considered notional monthly income of deceased at Rs.6,000/- per month, which is on lower side. The income tax returns shows, deceased was earning more than 16,000/- per month. The income tax returns are in the personal name of deceased. It shows that, deceased was getting monthly income more than Rs.16,000/- per month. But, this fact is not considered by the tribunal. Learned counsel further submits that, the tribunal has awarded consortium amount on lower side. Hence, requested to

allow the appeal.

3. It is contention of learned counsel for the respondents/insurance company that deceased was running hotel business. After death of deceased, it is continued and son of deceased is looking after the hotel business. The hotel business is family business of the claimant's and it is not closed after the death of deceased. Hence, the notional monthly income considered by the tribunal is proper and no interference is required in it.

4. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short 'the Tribunal'). To prove the income of deceased, the claimant no. 2 Simran Kaur (the daughter of the deceased) examined. She has stated that her father was owner of the hotel popularly known as "Simran Pure Veg Restaurant" at Kandivali. Her father was in catering business, more than 10 years. She stated that, M/s. Baweja Movies Private Limited was the main client of her father and entire responsibility of the catering business was on her father. Her father was having license issued under the Shops and Establishment Act for

running the hotel business. Her father used to earn Rs.2,49,788/- per annum from his hotel business. Her father was filing income tax returns. Due to sudden death of her father, they have loss of income and all they were dependent on the income of her father. In cross examination, this witness admitted that license issued under Shops and Establishment Act is not surrendered. Her father and brother were the only two persons who were looking after the business of hotel. To prove the income of deceased, the claimants have examined Smt. Sneha Naik, Officer in Income Tax Department, Mumbai, this witness stated that the income tax returns of deceased for year 2007-2008 and 2008-2009 were filed in their office. In cross-examination this witness admitted that, she has no personal knowledge about the income tax returns of deceased and **Seeta Laxmi Sunder is ward wise in charge of their department** and she has to make scrutiny of the income tax return. Considering the evidence of these two witnesses and documentary evidence, tribunal has observed that, after the death of deceased, the hotel business is continued, it is not closed. Hence, the tribunal has considered notional monthly income of deceased at Rs.6,000/-. I am unable to understand the observations of the tribunal. It has come on record that deceased was earning Rs. 2,50,000/- per annum from the hotel business. The income tax returns are filed on record. Which shows that the monthly income of deceased was more than Rs.16,000/- per month. It has come on record that deceased was the only earning member of the claimants' family. Though, the hotel business is continued after the death of deceased. The managerial loss considered by the tribunal is on lower side. Hence, I am considering Rs.10,000/- per month, as managerial loss. The tribunal has awarded as Rs.20,000/- consortium, for applicant no.1 only. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC),*** each claimant is entitled for Rs.40,000/- as consortium amount. The claimants are entitled of Rs.16,500/- for loss of estate and Rs.16,500/- for funeral expenses. There are three claimants.

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

Notional Income per month	Rs.	10,000/-
Less 1/3 amount future prospects	Rs.	3,334/-
Total Income Per Month	Rs.	6,666/-

Annual Income of Rs. 6,666/- X 12	Rs.	79,992/-
Total Income	Rs.	79,992/-
Rs. 79,992/- X 7 (multiplier)	Rs.	5,59,944/-
Add: Consortium (44,000/- X 3)	Rs.	1,32,000/-
Add: Loss of Estate	Rs.	16,500/-
Add: Funeral Expenses	Rs.	16,500/-
Total Compensation	Rs.	7,24,944/-
Less compensation awarded by the Tribunal	Rs.	3,86,000/-
Enhanced Compensation	Rs.	3,38,944/-

The claimants are entitled for enhanced compensation of Rs.3,38,944/-.

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

ORDER

i. Appeal is allowed.

ii. The claimants are entitled of enhanced compensation Rs.3,38,944/- @ 7.5% per annum from filing of claim petition, till realization of the amount, out of this amount consortium amount is Rs.1,55,000/-. The claimants are entitled interest @ 7.5% on this amount from 1 October, 2017, till realization of the amount.

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

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

(SHIVKUMAR DIGE, J.)