IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 775 OF 2022

Reliance General Insurance Co. Ltd.	)	
4th Floor, Chintamani Avenue, Off. Western	)	
Express Highway, Next to Virvani Indl.	)	
Estate,	)	...Appellant
Goregaon {E}, Mumbai - 400 053.	)	{Org Opp. No.-2}

Versus

1. Shri Anshiram Sunderdas Khatri @ Anshi	)	
Age - 67 years,	)	
2. Smt. Meena Anshiram Khatri	)	
Age - 60 years	)	
3. Smt. Kashish Ajay Khatri	)	
Age - 38 Years	)	
4. Master Niraj Ajay Khatri	)	
Age 23 years	)	
All R/o 104, Mangalam Apt, New Link	)	.
Road,	)	{Resp. 1 to 4 Org.
Opp. Swaraj Bank, Ulhasnagar - 421 003	)	Applicants}
6. Shri Tanaji Jotiba Surve	)	{Org Respondent
NL 2 / 15/ B-4 , Sector - 9,	)	No. - 1 Insured}
Nerul, Navi Mumbai	)	...Respondents

Ms. Kalpana R. Trivedi, Advocate for the Appellant.
Mr. Jitendra P. Gor, Advocate for Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd MAY, 2023.

Oral Judgment :

1. The issues involved in this appeal are contributory negligence of deceased and income of deceased considered on higher on side.

2. It is contention of learned counsel for the appellant that accident occurred due to sole negligence of the deceased but this fact is not considered by the Tribunal. Learned counsel further submits that claimants filed three years' income tax returns for the Assessment Years 2012-2013 , 2013-2014 and 2014-2015. The date of accident was 23rd December, 2014, so last year's income tax is filed after the death of deceased , which is not proper. But this fact is not considered by the Tribunal and has awarded exorbitant and excessive compensation. Hence, requested to allow the appeal.

3. Learned counsel for the respondents/claimants submits that the accident occurred when deceased was riding on motorcycle and offending tempo gave dash to motorcycle of deceased. The

offence was registered against the driver of offending tempo. No witness was examined by the appellant to prove the negligence of deceased. Learned counsel further submits that deceased was doing garment business and he was earning Rs. 5,00,000/- to Rs.6,00,000/- p.a., but on the basis of the evidence on record, Tribunal has considered his annual income at Rs.4,46,503/- which is proper. Learned counsel further submits that Tribunal has awarded consortium amount to claimant No.1 only. The Tribunal has not given consortium to the child of deceased, it be given.

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

5. It is claimants' case that on 23 December, 2014 at about 14:35 hrs. deceased was riding on his motorcycle, when he reached at Ranjnoli Naka Chowk on Thana-Nashik Road at Kongaon, Bhiwandi, the offending motor tempo no. MH-43-F-5794 came in fast speed and dashed the motorcycle of deceased from backside. As a result, the deceased sustained severe injuries and he succumbed to injuries during the treatment. An offence was registered against the driver of offending tempo.

6. It is contention of learned counsel for the appellant that accident occurred due to sole negligence of deceased. While dealing with this issue, the Tribunal has held that the driver of offending tempo gave dash to the motorcycle of deceased from backside. The spot panchanama at Exhibit-'22' described the exact position of the spot of incident. The appellant has not adduced any kind of evidence to show that the accident occurred due to negligence of deceased. Therefore, considering the evidence on record, the Tribunal has observed the accident occurred due to sole negligence of driver of offending tempo. I do not find any infirmity in it, as the appellant has not adduced any evidence on record nor the driver of offending tempo was examined to prove that the accident occurred due to sole negligence of deceased.

7. In respect of issue of income, the Tribunal has observed that the gross of income of the deceased for the Assessment Year 2012-2013 was Rs.3,60,906/-, for Assessment Year 2013-201, it was Rs.5,47,850/- and for Assessment Year 2014-2015, it was Rs. 5,50,950/-.

8. To prove the income of deceased, the claimants examined claimant No.3. He has stated that deceased was doing the business of garments i.e. Ambika Synthetics, Amrutlal Jain, Ashvira Fashions Ltd, Heeramoto Textiles (India) Pvt. Ltd., Rajendra Synthetics, Jainma Silk Mills, Saras Collections, Sree Synthetics, Salasar Fabrics Pvt. Ltd., Nilesh Jain, Lalitkumar Jain and various other individuals and companies dealing in textiles. The gross income of the deceased for the Assessment Years 2012-2013, 2013-2014 and 2014-2015 was Rs.3,60,906/-, Rs.5,47,850/- and Rs.5,50,950/- respectively. The copies of Income Tax Returns are at Exhibit "29" collectively.

9. It is the contention of learned counsel for the appellant - Insurance Company that the Income Tax Returns filed for the year 2014-2015 are not proper as it was filed after the death of deceased. In my view, the accident occurred on 23rd December 2014 and Income Tax Returns were filed in the month of March 2015, so it can be considered, as after death of deceased, filing of income tax returns for the year 2014-2015, comes till March 2015. Hence, I do not see merit in the contention of the learned counsel for the appellant that it was filed after death of deceased.

10. The Tribunal has awarded consortium to claimant No.1. There are four claimants. 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 to Rs.40,000/- as consortium. The remaining three claimants are entitled for consortium amount, it comes to Rs. 1,20,000/-.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The claimants are entitled for additional amount of Rs.1,20,000/- at 7.5% interest per annum from 1st November 2017 till realisation of the amount.
3. The appellant is directed to deposit the additional amount along with accrued interest thereon within six weeks from the receipt of this order.

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

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

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

(SHIVKUMAR DIGE, J.)