

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 184 OF 2023

Reliance General Insurance Company Limited

Through its Corporate Office

4th Floor, Chintamani Avenue,

Near Virwani Industrial Estate,

Opposite Western Express Highway,

Goregaon (E), Mumbai-400 063.

(Ori.Opponent No.2)

...Appellant

Versus

1. Nilam Devi Harishchand Yadav

Age : 31 years, Widow of the deceased

(Ori. Applicant No.1)

2. Miss. Ragamo Harishchand Yadav

Age : 12 years, Minor daughter of the decd.

(Ori. Applicant No.2)

3. Mast. Aryan Harishchand Yadav

Age : 9 years, Minor son of the decd.

(Ori. Applicant No.3)

4. Mast. Aryash Harishchand Yadav

Age : 6 years, Minor son of the decd.

(Ori. Applicant No.4)

(Applicant Nos. 2 to 4 being minor
represented through Mother)

All residing at Vill. Shivpur, Post Seur,
Taluka Mariyahu, District Janupur
222 161, State Uttar Pradesh.

5. ~~Shri. Asharfilal Ramjeet Yadav~~ (Ori. Applicant No.5)
6. ~~Smt. Shanti Devi Asharfilal Yadav~~ (Ori. Applicant No.6)
(Nos.5 and 6 deleted vide Court's
order dated 02/05/2023)
7. Mr. Swapnil Suresh Shetye
R/o. S. No. 9/2, Kanchan Comfortz,
B-Wing, Floor No. 808, Yewalewadi,
Near Nimbalkar Estate, Dist. Pune
411 048, State Maharashtra. (Ori.Opponent No.1)
- ...Respondents

Ms. Kalpana Trivedi for the Appellant.

Mr. Jitendra P. Gor for Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd MAY, 2023.

JUDGMENT :

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

2. It is the contention of the learned Counsel for the Appellant that the deceased was working as a Clerk in M/s. Yadav Tours and Travels. No documentary evidence was produced on record to show that he was getting salary of Rs. 15,000/- per month, but the Tribunal has considered his salary at Rs. 15,000/- per month, which is on higher side and on that basis, exorbitant and excessive compensation is awarded by the Tribunal, which is not proper, hence, requested to allow the Appeal.

3. Learned Counsel for the Respondents-Claimants submits that to prove the income of the deceased, the Claimants have examined two witnesses. One of them is employer of the deceased, who has stated that the deceased was working in his office as a Clerk and was getting Rs. 15,000/- per month as salary. The salary certificate is also produced on record. The Tribunal has considered all aspects while awarding the compensation, hence, 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 (for short 'the Tribunal').

5. To prove the income of the deceased, the Claimant-Respondent No.1 Nilam Devi examined herself. She has stated that the

Claimants were depended upon the income of the deceased. At the time of accident, the deceased was serving as a Clerk with M/s. Yadav Tours and Travels and was getting salary of Rs. 1,80,000/- per annum. In support of the evidence of the Claimant-Respondent No.1, the Claimants have examined AW-2 Satyanarayan Yadav at Exh.26. He has stated that he runs a business in the name and style 'Yadav Tours & Travels'. The deceased Harishchandra was working in his office as a Office Clerk and he used to pay him monthly salary of Rs. 15,000/-. The salary certificate is at Exh.27. In cross-examination, this witness has stated that he has not maintained muster roll and pay roll. He is not an income tax payee. He has not obtained vouchers from Harishchandra, at the time of payment of salary. On the basis of evidence of these two witnesses, the Tribunal has considered the monthly salary of deceased at Rs. 15,000/- per month, I do not find any infirmity in it.

6. It is the contention of the learned Counsel for the Appellant that there is no proof of payment of salary, as the vouchers of salary were not produced on record.

7. In my view, the PW-2 has categorically stated that the deceased was working in his office as an Office Clerk. Wife of the

deceased has stated the same fact. The deceased was maintaining his family. He was 34 years old. Not filing the vouchers of salary cannot be a ground to say that the deceased was not working as an Office Clerk. Moreover, there is no cross-examination by the learned Counsel for the Appellant on the ground of salary. Hence, I do not find merit in the contention of the learned Counsel for the Appellant that the income of the deceased is considered on higher side.

8. It is contention of the learned Counsel for the Claimants-Respondent Nos. 1 to 6 that the consortium is given only to widow of the deceased. At the time of filing the claim petition, there were 6 Claimants. Learned Counsel further submits that, at the time of filing the claim petition, the parents of the deceased were alive. Hence, consortium be given to them also.

9. Learned Counsel for the Appellant strongly objected to award the compensation on the ground that in the Appeal filed by the Appellant, the Claimants cannot claim the consortium. They have not filed a separate Appeal for getting the consortium amount.

10. In my view, as per Section 168 of Motor Vehicle Act, 1988, the Claimants are entitled for just compensation. The Tribunal has awarded consortium to the widow of the deceased. The Claimant No.2

is daughter of the deceased. The Claimant Nos. 4 and 5 are sons of the deceased. As per the view of the Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (S.C.)*, each Claimant is entitled for Rs.40,000/- as consortium amount. Hence, I am considering the consortium amount to three Claimants. The parents of the deceased are no more. I am not considering consortium amount for them. In view of above, I pass following order :

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The Claimants are entitled for additional amount of Rs. 1,20,000/-, along with accrued interest at 7.5% per annum from 1st November, 2017, till the realization of the amount.
- iii. The Appellant is directed to deposit additional amount along with accrued interest thereon, within 6 weeks, after receipt of the order.
- iv. The Claimants are permitted to withdraw the deposited amount, along with accrued interest thereon.

- v. As the parents of the deceased are died during the pendency of the Appeal, the amount of compensation of their share be given to the Claimant No. 1.
- vi. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw the amount, as per rule.
- vii. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)