

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.671 OF 2022

Reliance General Insurance Co. Ltd. }
Off. At 4th Floor, Chintamani Avenue, }
Off. Western Express Highway, }
Next to Virwani Industrial Estate, }
Goregaon (E), Mumbai. }

...Appellant

Versus

1. Smt.Lallidevi Mataprasad Yada }
2. Mr.Ajaykumar Mataprasad Yada }
3. Miss Sushma Mataprasad Yadav }
4. Mr.Mulayam Mataprasad Yadav }
5. Kumar Devbrat Mataprasad Yadav }
 }
6. Shri.Baijnath Biharilal Yadav }
(Deleted as per Courts Order dated }
16.06.2022) }
 }
7. Smt.Karma Baijnath Yadav }
All are R/at Room No.7, Pannalala }
Yadav Chawl, Near Fish Market, }
Kurar Village, Appapada, Malad (E), }
Mumbai-400 097. }

8. Mr.Rajeev R. Pandey }
R/at Flat No.201, Jubilee View Co. }
Op. Hsg. So., Yari Road, Versova, }
Andheri (W), Mumbai-400 061. }

...Respondents

Ms.Kalpana Trivedi, for the Appellant.
Mr.Jitendra Gor, for the Respondents.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 29 MARCH 2023

JUDGMENT :-

. The issue involved in this Appeal is income of deceased is considered on higher side.

2. It is contention of the learned counsel for the Applicant that the Tribunal has considered yearly income of deceased from salary at Rs.4,63,137/- and on that basis compensation is awarded which are on higher side. The learned counsel further submits that the deduction of personal amount should be 1/5th, but the Tribunal has considered 1/4th. Hence, requested to allow the Appeal.

3. The learned counsel for the Respondent-Claimants submits that the Tribunal has considered all the aspects while calculating the compensation. Hence, no interference is required in it and requested to dismiss the Appeal.

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

5. While considering the income of deceased the Tribunal has observed that the deceased was working in MTNL. His pay slip is at Exhibit-39, Form No.16 of deceased is at Exhibit-40 and yearly Salary Certificate is at Exhibit-41. It is seen that gross salary of the deceased for Accounting Year 2013-2014 was Rs.4,81,107/- out of which Rs.2,500/- deducted towards professional tax and Rs.15,470/- towards income tax. On considering this deduction the Tribunal has considered yearly salary income at Rs.4,62,137/-. I do not find any infirmity in it as the documents shows the above salary income of deceased. At the time of the filing Claim Petition there were seven Claimants. On that basis the Tribunal has deducted 1/5th amount for personal expenses.

6. The learned counsel for the Claimants submits that the Tribunal has awarded Rs.77,000/- as consortium amount. As per view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***¹, each Claimant is entitled for Rs.40,000/- as consortium amount and Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate, it be awarded.

7. The learned counsel for the Appellant vehemently submits that the Appeal is filed by the Appellant-Claimants

¹ 2018 ACJ 2782 (SC)

cannot seek enhancement without filing separate Appeal. In my view, the Section 168 of the Motor Vehicles Act, 1988 states about just compensation. The Claimants are entitled for consortium. Hence, I am considering consortium amount. There are six Claimants. Each Claimants are entitled Rs.40,000/- it comes to Rs.2,40,000/- and Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. The total comes to Rs.2,70,000/-. The Tribunal has awarded Rs.77,000/- for consortium amount, if this amount deducts from this amount it comes to Rs.1,93,000/-, the Claimants are entitled for this amount. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimants are entitled for additional amount of Rs.1,93,000/-.
- (iii) The Appellant is directed to deposit additional amount within four weeks, after receipt of the order.
- (iv) The Claimants are permitted to withdraw deposited amount.
- (v) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it as per Rule.
- (vi) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)