

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.287 OF 2017

NILAM
SANTOSH
KAMBLE

Digitally signed
by NILAM
SANTOSH
KAMBLE
Date: 2023.04.05
12:51:32 +0530

The Divisional Manager, }
Reliance General Insurance Co. Ltd. }
(Old Add : Malhar Cinema Building, }
Ground Floor, Gokhale Road, Naupada, }
Thane (W) }
New Add : 4th Floor, Cintamani }
Avenue, Off Western Express Highway, }
next to Virwani Industrial Estate, }
Goregaon East, Mumbai-400 063. }
(Insurer of Car bearing No.MH-04-BQ- }
1682) }

...Appellant

Versus

1. Smt.Sukanti Rajiv @ Rajib Parida }
2. Miss. Sugyani Rajiv @ Rajib Parida }
3. Miss Subhangi Rajiv @ Rajib Parida }
4. Master Saidatta Rajiv @ Rajib Parida }
Appellant Nos.2 to 4 are minor, Thr. }
Their mother, natural guardian, }
Appellant No.1 }
All are R/at Krushanapura (Part), }
Krushnapur, G.P. Nayakanidhiha, }
District-Bhadrak, State-Orrisa. }

5. Mr.P.L. Ramswami }
 R/at B-102, Sanket Kopargaon, }
 Dombivali (W), District-Thane. } **...Respondents**

FIRST APPEAL (ST) NO.1393 OF 2020

1. Smt.Sukanti Rajiv @ Rajib Parida }
 }
2. Miss. Sugyani Rajiv @ Rajib Parida }
 }
3. Miss Subhangi Rajiv @ Rajib Parida }
 }
4. Master Saidatta Rajiv @ Rajib Parida }
 }
 Appellant Nos.2 to 4 are minor, Thr. }
 Their mother, natural guardian, }
 Appellant No.1 }
 All are R/at Krushanapura (Part), }
 Krushnapur, G.P. Nayakanidhiha, }
 District-Bhadrak, State-Orrisa. } **...Appellants**
(Original Applicants)

Versus

1. Mr.P.L. Ramswami }
 R/at B-102, Sanket Kopargaon, }
 Dombivali (W), District-Thane. } **...Respondent No.1**
(Owner of Car bearing No.MH-04- **(Original Opponent**
BQ-1682) } **No.1)**

2. The Divisional Manager, }
Reliance General Insurance Co. Ltd. }
 (Old Add : Malhar Cinema Building, }
 Ground Floor, Gokhale Road, }
 Naupada, Thane (W) }
 }
 }

New Add : 4th Floor, Cintamani }
Avenue, Off Western Express }
Highway, next to Virwani Industrial }
Estate, Goregaon East, Mumbai-400 }
063. }

(Insurer of Car bearing No.MH-04- }
BQ-1682)

...Respondent No.2
(Original Insurer)

Ms.Poonam Mittal, for the Appellant in FA No.287 of 2017 and for the Respondent in FAST No.1393 of 2020.

Ms.Rina Kundu, for the Respondent in FA No.287 of 2017 and for the Appellant in FAST No.1393 of 2020.

CORAM : SHIVKUMAR DIGE, J.

DATE : 23 MARCH 2023

JUDGMENT :-

. This Appeal is preferred by the Appellant-Insurance Company against the judgment and order passed by the MACT, Thane. The Claimants have filed Appeal for enhancement of compensation as both these Appeal's are out of the same judgment. Hence, I am deciding it by common judgment.

2. It is contention of the learned counsel for the Appellant-Insurance Company that the Tribunal has considered monthly income of deceased at Rs.12,500/- which is on higher side. No evidence was produced before the Tribunal about

income of deceased but on that basis the Tribunal has awarded exorbitant and excessive compensation.

3. The learned counsel further submit that the Tribunal has awarded excessive compensation under other heads i.e. Rs.1 Lakh for loss of estate and Rs.1 Lakh for loss of love and affection and Rs.25,000/- for the funeral & last rites which should not have been awarded. Hence, requested to allow the Appeal and dismiss the Appeal filed by the Claimants.

4. It is contention of the learned counsel for the Respondent-Claimants that deceased was doing service at Media House Advertising, CBD Belapur, Navi Mumbai and was earning Rs.12,500/- per month. While awarding compensation the Tribunal has not awarded future prospects. Hence, requested to allow the Appeal filed by the Claimants.

5. I have heard both the learned counsels.

6. In both Appeals issue is involved in respect of the income of deceased, to prove the income of the deceased. The Claimants have examined Sukanti Parida (C.W.-1) at Exhibit-22. She has stated that her husband was doing service at Media House Advertising, CBD, Belapur, Navi Mumbai and was earning Rs.12,500/- per month. To support her evidence the

Claimant's have examined Jagdish Ghavat (C.W.-2) at Exhibit-33. This witness has stated that he runs business of advertising by name and style Media House Advertising, and deceased Raju @ Rajib Bhaidhar Pardia was working with him on salary of Rs.12,500/- per month. His Salary Certificate is at Exhibit-37.

7. Considering the evidence of these witnesses the Tribunal has considered monthly salary of deceased at Rs.12,500/- per month. I do not find any infirmity in it. In my view, there was no cross-examination to these witnesses on the point of the Salary Certificate at Exhibit-37 issued by CW-2. Deceased was maintaining the family of four members, the monthly income of deceased considered at Rs.12,500/- is proper. While awarding the compensation the Tribunal has not awarded future prospects. As per view of the Hon'ble apex Court in the case of *National Insurance Co. Ltd. V/s. Pranay Sethi*¹, the Claimants are entitled for 40% future prospects. Hence, I am considering it.

8. The Tribunal has awarded Rs.1 Lakh for loss of estate, Rs.1 Lakh for loss of love and affection and Rs.25,000/- for funeral expenses. As per view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*², each Claimant is entitled for Rs.40,000/- with 10% increase as

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

consortium amount. Rs.15,000/- for funeral expenses, Rs.15,000/- and Rs.15,000/- for loss of love and affection with 10% increase. The amounts awarded by the Tribunal are excessive. Considering the above calculations the Claimants are entitled for following compensation.

Particulars	Amount
Income	Rs.12,500.00
40% future prospects	Rs.5,000.00
Total Income	Rs.17,500.00
Deduction 1/4th	Rs.4,375.00
3/4th Income	Rs.13,125.00
Dependency Rs.13,125/- X 12 X 16 factor	Rs.25,20,000.00
Consortium to 4 Applicants Rs.44,000/- x 4	Rs.1,76,000.00
Loss of Estate	Rs.16,500.00
Funeral Expenses	Rs.16,500.00
Total Compensation	Rs.27,29,000.00

9. The Tribunal has awarded compensation of Rs.20,25,000/-. If this amount deducts from the amount considered by this Court Rs.27,29,000/- it comes to Rs.7,04,000/-. The Claimants are entitled for this amount. I have deducted excess amount awarded under other heads i.e. love and affection etc. Hence, I have partly allowed the Appeal of Insurance Company.

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

ORDER

- (i) First Appeal No.287 of 2017 is partly allowed.
- (ii) First Appeal Stamp No.1393 of 2020 is partly allowed.
- (iii) The Claimants are entitled for enhanced amount of Rs.7,04,000/- @ 7.5% per annum from the date of filing Application till realization of amount.
- (iv) The Appellant/Insurance Company is directed to deposit the enhanced amount alongwith interest within 10 weeks after receipt of the order.
- (v) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it as per Rule.
- (vi) Delay for filing Appeal is condoned. Appeal be registered for record purpose.
- (vii) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)