IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1026 OF 2022

Reliance General Insurance Co. Ltd. }
570, Naigaon, Cross Road, Next to }
Royal Industrial Estate, Wadala, }
Mumbai-400 031 } **...Appellant**

Versus

1. Smt.Maimunnisha Akram Muzawar }
2. Mohammed Wasim Akram Muzawar }
3. Mohammed Nadim Akram Muzawar }
4. Mohammed Nasim Akram Muzawar
5. Sahiba @ Sayba Khatoon Akram Muzawar

All R/at Plot No.27, A-35, Road No-2, Shivaji Nagar, Govandi, Mumbai-400 043.

6. Mr.Anilkumar P. Chaudhary }
Own House, Vahuli Village, Post-Padgha, Bhiwandi-421 302 } **...Respondents**

Ms.Kalpana R. Trivedi a/w Ms.Mayuri Mangeshkar, for the Appellant.
Mr.T.J. Mendon, for the Respondent

CORAM : S.G. DIGE, J.

DATE : 7 FEBRUARY 2023

JUDGMENT :-

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

2. The learned counsel for the Appellant submits that the income of deceased considered by the Motor Accident Claims Tribunal is on higher side. The Tribunal has awarded exorbitant and excessive compensation. The learned counsel further submits that it has come in the evidence of Chartered Accountant-Manoj Dube examined by the Claimant that deceased had not paid income tax. The Tribunal has considered monthly income of deceased on average basis which is not proper, hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Clamaint that every year deceased was filing Income Tax return. The Chartered Accountant has stated about filing of the Income Tax Return's. The last year income of deceased before the accident was Rs.17,212/- but Tribunal has considered the monthly income of deceased on average basis which is proper. The learned counsel further submit that the Tribunal has granted consortium amount only to wife of the deceased and not other claimants. They are entitled for consortium amount of Rs.40,000/- each. He relied on decision in the case of ***Magma General Insurance Co. Ltd V/s. Nanu Ram.***[1]

4. I have heard both the counsel. Perused judgment and order passed by the Tribunal.

5. The issue involved in this Appeal is income of the deceased considered on higher side. To prove income of deceased,

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1 **2018 ACJ 2782 (SC)**

Claimants have examined wife of deceased. The Claimant No.1 Smt.Maimunnisha Muzawar at Exhibit-20. She has stated that her deceased husband was carpenter and earning Rs.20,000/- per month. He used to file income tax returns. To support evidence of this witness, the Claimants have examined Chartered Accountant Shri.Manoj Dubey at Exhibit-31. He has stated that, he know deceased, this witness had filed income tax returns of deceased. The income tax return of year 2009-2010 are at Exhibit-32. The gross annual income for this year was Rs.1,60,300/-, the net tax payable was Rs.1,060/-, the assessee did not pay that tax.

6. He further stated that income of deceased for year 2010-2011 was at Rs.1,80,500/-. The income tax acknowledgment is at Exhibit-33. The next tax payable was Rs.2,110/-. The assessee had not paid said tax. This witness further stated that income of deceased for financial year 2011-2012 was Rs.2,09,600/-. The income tax acknowledgment is at Exhibit-34. Nothing elicited in cross-examination of this witness, while dealing with issue of income the Tribunal has observed that on the basis of income tax returns the monthly income of deceased for year 2011-2012 comes to Rs.17,212/-. The monthly income for financial year 2009-2010 comes to Rs.13,358/- and monthly income for financial year 2010-2011 comes to Rs.14,865/-. Considering average of these amounts the Tribunal has considered income of deceased at Rs.16,000/- per month. I do not find any infirmity in it.

7. Though the Claimants have not preferred Appeal for enhancement, it is settled law that the Claimants are entitled for just compensation. The Tribunal has awarded consortium of Rs.40,000/- to widow of deceased, as per view of Hon'ble Apex Court in case of Magma (Supra), each Claimant is entitled for Rs.40,000/-, so I am considering Rs.40,000/- each for remaining four claimants as consortium amount it comes to Rs.1,60,000/-. In view of above, I pass following order.

ORDER

(i) The Appeal is dismissed. No order as to costs.

(ii) The Appellant shall deposit an amount of Rs.1,60,000/- within six weeks before the Motor Accident Claims Tribunal, Mumbai.

(iii) The Claimants are permitted to withdraw the deposited amount.

(iv) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it.

(v) All pending Civil Applications, if any, are disposed of.

(S.G. DIGE, J.)