

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1338 OF 2016

Digitally
signed by
SHANTANU
SHANKARSA
DHUDUM
Date:
2023.04.11
18:27:24
+0530

The New India Assurance Co. Ltd.)
 Thane D. O. (140700),)
 D. O. Shivkrupa Commercial Estate,)
 Gokhale Road, Naupada, Thane - 400602.)
 Through Mumbai Regional Office - V,)
 Vindhya Commercial Complex, 2nd Floor,)
 Sector 11, CBD Belapur,)
 Navi Mumbai - 400614)....Appellant
 (Org. Insurer)

Versus

1. Smt. Bharati Ashok Bhagat)
 Age 36 years, Occ: Housewife,)
2. Kumar Akshay Ashok Bhagat)
 Age 9 years, Occ.: Education,)
3. Kumari Sakshi Ashok Bhagat)
 Age 3.6 years, Occ.: Education,)
 Resp. No. 2 and 3 being minor through)
 Resp. No. 1 mother natural guardian)
4. Sou. Rajani Pandurang Bhagat)
 Age 64 years, Occ: Housewife,)
5. Shri. Pandurang Mahadud Bhagat)
 Age 68 years, Occ.: Retired,)
 All r/at Flat No. 7, Building "B",)
 Sukhawani Baugh, Adinath Nagar,)
 Bhosari, Pune-411039.)
- Since deceased through legal heirs)

- 5(1) Ashok Pandurang Bhagat)
 Since deceased through Lrs.)
 (a) Smt. Bharati Ashok Bhagat)
 Age: 47 years, Occ. Housewife)
 (b) Kum. Akshay Ashok Bhagat)
 Age. 20 years Occ. Education)
 (c) Kumari Shakshi Ashok Bhagat)
 Age: 14, Occ. Education)
 Since Minor through natural)
 guardian i.e. (a).)
 5(2) Smt. Rajani Pandurang Bhagat)
 Age. 69 years, Occ. Housewife)
 All R/at. Flat No. 7 Bldg "B")
 Suykhwani Baug, Adinath Nagar)
 Bhosari, Pune 411039.)
 5(3) Sou. Mangal Prakash Gajmal)
 Age. 55 years, Occ: Housewife)
 Flat. Gurukrupa, A.9, Ramnagari)
 Hsg. Society, Gavhane Vasti,)
 Bhosari, Pune - 39.)
 5(4) Sou. Manisha Madan Sapkal)
 Age. 53 years. Occ: Housewife)
 Flat 137/4, Rohan Garan,)
 Mashenagar, Bhosari, Pune-411039)
 5(5) Shri. Santosh Pandurang Bhagat)
 Age: 45 yers Occ: service)
 R/at Flat No. 7, B wing Sukhwani)
 Baug, Adinath Nagar, Bhosari,)
 Pune-411039)
 6. Shri. Sanjay Parasharam Palav)
 Age Adult, Occ: Service,)
 R/at Flat No. A-1-309, Utkarshanagar,)
 Karjat Road, Near Badlapur Transport,)

Badlapur (E), Dist. Thane)

7. Shri. Umesh Atmaram Patkar)

Age Adult, Occ.: Medical Practice,)

R/at 203, Saileela CHS, Station, Road,)

Near DNSB, Kulgaon, Badlapur (E),)

Thane - 421503)....Respondents

(Resp. 1-5 org. Claimants,
Resp. 6-7 org. Opp. 1-2)

Mr. Devendranath S. Joshi for the Appellant

Mr. Vilas B. Tapkir for the Respondent Respondent No. 1 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th MARCH 2023.

JUDGMENT :

1. The issues involved in this appeal are negligence of the deceased and salary and other allowances considered by the tribunal on higher side while awarding compensation.

2. It is contention of learned counsel for the appellant that the accident occurred due to sole negligence of the deceased but tribunal has considered the negligence of driver of offending vehicle which is not proper. The tribunal has not considered the evidence produced on record. Learned counsel further submits that while considering the

income of deceased, the tribunal has considered the advanced salary as well as other allowances and on that basis exorbitant and excessive compensation is awarded which is not proper. Hence, requested to allow the appeal.

3. Learned counsel for the respondents/claimants submits that FIR was lodged against the driver of offending vehicle. The spot panchanama shows, there was negligence of the driver of offending vehicle. Moreover, the appellant has not examined driver of offending vehicle to prove that there was negligence of the deceased. Learned counsel further submits that while considering the income of the deceased the tribunal has considered all the aspects and on that basis compensation is awarded hence no interference is required in it.

4. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'the tribunal'). In respect of issues of negligence, the tribunal has observed that the FIR was lodged against the driver of offending vehicle. The spot panachama shows that the accident was occurred due to negligence of driver of offending vehicle. Hence, the tribunal has held that the accident occurred due to sole negligence of driver of offending vehicle, I do not find any infirmity in it. In my view, to

prove the negligence of deceased, the appellant should have examined driver of offending vehicle but no witness is examined by the appellant to prove the negligence of deceased. FIR was lodged against driver of offending vehicle. Spot panchanama shows negligence of driver of offending vehicle. Hence, I do not see merit in the contention of learned counsel for the appellant. In respect of income of deceased, the tribunal has considered monthly salary of deceased Rs. 33,000/- p.m. while considering the income of deceased. The tribunal has considered salary advance of Rs. 9,000/- as well as super annuation allowance of Rs. 21,127/-, and skill development allowance of Rs. 2461.92/-.

5. In my view, salary advance cannot be considered as income of deceased as well as super annuation allowance and skill development allowance cannot be considered as part of salary while considering the salary income of deceased. The tribunal has considered the salary of month of February, 2011 and March, 2011. The tribunal has considered average salary of these two months. The salary slip of March, 2011 shows, actual salary of the deceased. I am considering this income as monthly income of Rs.32,588/-. After deducting allowance and income tax and professional tax from this

salary allowances, meant for personal benefits of the deceased Skilled Development Allowances - Rs. 2461.92/-, Superannuation Allowances - Rs.21,127.00/-, Salary Advance - Rs.9,000.00/- and Income Tax - Rs.11,178,00/-, Professional Tax - Rs.2,500.00/- the yearly salary income comes to Rs.3,32,632/-. I am considering this income of deceased as yearly income. It is contention of learned counsel for the claimants that the tribunal has not awarded consortium amount it be given. It is contention of learned counsel for the appellant that in appeal filed by the respondent claimants cannot claim consortium amount. In my view, it is settled principle of law that claimants are entitled for just compensation. Moreover, the claimants have filed cross objection. 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 Rs. 44,000/- as consortium amount, there are five claimants. In view of above the claimants are entitled for following compensation.

Annual Income of deceased		Rs. 3,32,632.00/-
Personal Expenses	1/4 th	Rs. 83,158.00/-
Dependency		Rs. 2,49,474.00/-
Future prospects	50%	Rs. 1,24,747.00/-

Basic + FPI		Rs. 3,74,211.00/-
Multiplier		15
Total Loss of Dependency		Rs. 56,13,165.00
Conventional Heads : Consortium Loss of Estate Funeral Exp.	Rs. 2,20,000/- Rs. 16,500/- Rs. 16,500/-	44,000 X 5 Rs. 2,53,000/-
Compensation payable		Rs. 58,66,165.00/-

The tribunal has awarded amount of Rs. 70,07,500/-. As per the calculation of this court amount comes to Rs. 58,66,165.00/-, if this amount deducts from the amount awarded by the tribunal it comes to Rs. 11,41,335. The appellants are entitled for this amount. At this stage learned counsel for the claimants submits that, on instructions, the claimants would not press relief prayed in cross objection his statement is accepted.

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

ORDER

- i. Appeal is allowed.
- ii. The claimants are entitled for the compensation of Rs. 58,66,165, as per the rate of interest awarded

by the tribunal.

- iii. The appellants are permitted to withdraw the amount of Rs. 11,41,335 along with accrued interest thereon.
- iv. The claimant are permitted to withdraw awarded amount along with accrued interest thereon.
- v. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

(SHIVKUMAR DIGE, J.)