IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 48 OF 2019
WITH
CROSS OBJECTION (STAMP) NO. 980 OF 2020

National Insurance Co. Ltd.
Hub Office, Sterling Cinema Bldg.,
5th Floor, Murzban Road,
Opp. CST Station, Fort,
Mumbai – 400 001.
(Insurance Co. of Truck No.CG-04-E-8265
Branch – South Ambazari Road, Laxmi
Nagar, Nagpur, Maharashtra.) (Ori. Resp. No.2)
...Appellant

Versus

1. Shri. Mohan Gajanan Pradhan
Age : 57 years, Occu.: Nil. (Ori.Applicant No.1)

2. Mrs. Leela Mohan Pradhan
Age : 54 years, Occu.: Household, (Ori.Applicant No.2)

3. Vinay Mohan Pradhan
Age : 23 years, Occu.: Student, (Ori.Applicant No.3)

Residing at A/304, Vedshri Co-op Housing
Society, Plot No.E/30, Sector 3,
Kharghar, Sector 3, Belpada,
Navi Mumbai, District Thane.

4. Mr. Inderjeet Singh Dhillon
Age : Adult, Occu.: Trnasport,
Residing at 6-E Road, Tatibhandh, Raipur,
District Raipur, Chattisgarh, PIN 492 099.
(Owner of truck no. CG-04-E-8265) (Ori. Resp. No.1)
...Respondents

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Mr. Parth Parikh i/by Mr. Asim Vidyarthi for the Appellant.

Mr. T. J. Mendon for Respondent Nos. 1 to 3.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 31st MARCH, 2023.

JUDGMENT :

1. The issue involved in this Appeal is 30% deduction of Income Tax amount from the income of deceased not considered by the Tribunal.

2. The Claimants/Respondent Nos.1 to 3 have filed Cross-Objection for deduction of amount from personal expenses twicely and not awarding amount of Consortium and future prospects. Appeal and Cross Objection are against the same Judgment and Order, I am deciding it with common Judgment.

3. It is contention of learned Counsel for the Appellant that the Tribunal has considered monthly income of deceased at Rs.58,000/- per month and on that basis compensation is awarded. Learned Counsel further submits that while awarding compensation, the Tribunal should have deducted 30% amount as Income Tax on the income of the deceased. But it has not been done, hence, requested to allow the Appeal. He relied on,

1) ***Ranjana Prakash Versus Divisional Manager (2011) 14 Supreme Court Cases 639.***

2) ***N. Jayasree Versus Cholamandalam MS General Ins. Co. Ltd. 2021 ACJ 2685.***

3) ***National Insurance Co. Ltd. Versus Birender 2020 ACJ 759.***

4. Learned Counsel for the Claimants/Respondent Nos.1 to 3 submits that it has come in the evidence of the Claimants-witnesses that the salary was being paid to the deceased after deduction of the Income Tax. Hence, no question of further deduction of Income Tax arises. Learned Counsel further submits that while awarding the compensation, the Tribunal has not awarded future prospects and consortium amount, it be awarded.

5. I have heard both learned Counsel. Perused Judgment and Order passed by the Motor Accident Claims Tribunal, Alibaug-Raigad (for short ‘the Tribunal’).

6. It is contention of learned Counsel for the Appellant that 30% amount should have been deducted on the income of deceased. To prove the income of deceased, the Claimants have examined Witness Hitesh Vejlibhai Joshi at Exh. 32. This witness has stated that he was working as Director in Horizon Supports and Services Pvt. Ltd.. The deceased was serving in their company and he was getting annual

salary of Rs.7,60,000/-. In cross examination, this Witness admitted that the salary was being paid to the deceased after deduction of the Income Tax. Now the question remains, when the company was paying salary to the deceased after deducting the Income Tax, can the Income Tax be taken on income of deceased? In my view, when Income Tax was already paid, then it is not necessary to deduct Income Tax on the said income. Moreover, it is the look out of Income Tax Department to see whether Income Tax is paid or not.

7. It is settled principle of law that while considering the salary of deceased, the Court has to consider salary of deceased after deduction of Income Tax and Professional Tax. In the present case, the Director of Company, where deceased was working, has stated that the salary was being paid to the deceased after deduction of Income Tax. Hence, I do not see merit in the contention of learned Counsel for the Appellant that it was necessary to deduct 30% Income Tax on the income of deceased.

8. I have gone through the case laws cited by learned Counsel for the Appellant. The facts of cited case and case in hand are different as in the present case the Witness has stated that the salary was being paid to the deceased after deduction of Income Tax.

9. The Tribunal has not awarded future prospects and consortium amount as well as the Tribunal has deducted 1/3 amount for personal expenses and thereafter ½ amount for personal expenses as deceased was bachelor. The Tribunal has deducted amount for personal expenses twicely. It should be once. The deceased was bachelor, hence, ½ amount deducted for personal expenses.

10. The Tribunal has not awarded consortium amount, 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 for Rs.40,000/- as consortium amount with 10% increase and Rs.16,500/- for funeral expenses and Rs. 16,500/- for loss of estate. In view of above calculations, the Claimants are entitled for following compensation :

Particulars	**Amount**	
Monthly Income	Rs.	58,000.00
Future prospects 50%	Rs.	29,000.00
Monthly Income with Future Prospects	Rs.	87,000.00
Deduction towards personal expenses 50% of Rs.87,000.00 comes to Rs.43,500.00.	Rs.	43,500.00
Yearly Income Rs.43,500.00 X 12	Rs.	5,22,000.00
Rs. 5,22,000.00 X 18 (Multiplier)	**Rs.**	**93,96,000.00**
Loss of consortium Rs. 44,000/- x 3 (Family Members – Filial and Parental)	**Rs.**	**1,32,000.00**

Loss of Estate	**Rs.**	**16,500.00**
Funeral Expenses	**Rs.**	**16,500.00**
Total Compensation	**Rs.**	**95,61,000.00**

11. The trial Court has awarded Rs. 63,64,000/-. If this amount deducted from the amount considered by this Court, it comes to Rs. 31,97,000/-. The Claimants are entitled for this amount. In view of above, I pass following Order :

ORDER

i. Appeal is dismissed. No order as to cost.

ii. Cross-Objection is allowed.

iii. The Claimants are entitled for enhanced amount of Rs.31,97,000/- along with interest @ 7.5%, from filing date of Claim Petition, till realization of the amount, out of this amount, Rs.1,65,000/- is consortium amount, the Claimants/Respondent Nos.1 to 3 are entitled for interest @ 7.5% on this amount from 1st November, 2017, till realization of the amount.

iv. The Appellant is directed to deposit enhanced amount along with accrued interest thereon, within six weeks after receipt of this Order. The Claimant are allowed to withdraw deposited amount along with accrued interest thereon.

v. The statutory amount be transmitted to the Tribunal.

vi. Parties are at Liberty to withdraw it as per rules.

12. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)