IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 304 OF 2023

1. Tukaram Vishwanath Patil Age : Adult, Father of the deceased, Occup : Agriculture 2. Shilata Tukaram Patil Age : Adult, Mother of the deceased, both residing at Shirur-Tajband, Ahmedpur, Dist.Latur	]]]]] Appellants] (original] Claimants)
Versus	]
1. Reliance General Insurance Co. Ltd. Regional Manaher, 270 Rectifier House, Naiguaum Cross Road, Near Royal Industrial Estate, Wadala (W), Mumbai – 400 013 Amended on 20.08.2019 as per order dated 20.08.2019 H Block, 1st Floor, Dhirubhai Ambai Knowledge City, Navi Mumbai – 400 710	]]] Respondent] No.1 (original] Insurer)]]]]
2. Lawrence Santan Fernandes Age : Adult, Occup-Mahindrra Pickup Owner, Flat No.1, Pashan Park, Opp. Deodhar Hospital	] Respondent] No.2] (original Opp.] Party)

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Mr. Vishwanath Patil i/b. Mr. Sandeep Katke, Advocate for the Appellant.
Ms. Kalpana Trivedi, Advocate for Respondent No.1.

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CORAM : SHIVKUMAR DIGE, J.
DATE : 22nd DECEMBER, 2023

JUDGMENT :

1. The issues involved in this appeal are application of wrong multiplier and salary of deceased is considered on lower side.

2. It is the contention of learned counsel for the respondents/claimants that salary package of deceased was Rs.5,30,892/- per year but the Tribunal has considered gross pay at Rs.38,932/- which is on lower side. Learned counsel further submitted that at the time of accident deceased was 25 years 8 months and 19 days old. The multiplier should be 18 but the Tribunal has considered it at 17 which is not proper. Learned counsel further submitted that consortium amount is awarded on lower side it be awarded. Hence requested to allow the appeal.

3. It is the contention of learned counsel for the appellant/Insurance Company that to prove the income of deceased the claimants have examined witness Laxman Ghadge, employer of deceased company. In cross examination he has admitted that variable pay shown at Exhibit-54 and yearly pay is based upon 12 months performance of the employee. On that basis the Tribunal has calculated the compensation which is proper and no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Pune (for short "**the Tribunal**"). To prove the income of deceased, the claimants have examined Tukaram Patil, PW-1 father of deceased. He has stated that the yearly package of deceased was increased from Rs.2,30,000/- p.a. to

Rs.5,30,000/- at the time of accident, deceased was getting salary of Rs.5,30,000/- per annum. To support the evidence of PW-1 the claimants have examined Laxmikant Ghadage, HR at Emerson Company, Pune. He has stated that deceased was working in their company and on 01.10.2011, he was promoted and his salary was increased to Rs.5,32,892/- per year. The said document is at Exhibit-50. While dealing with the issue of income of the deceased, the Tribunal has observed that witness Laxmikant Ghadage in cross examination has admitted that as per pay shown in Exhibit-54, pay is variable and yearly pay is based on 12 months performance of employee. It means package of yearly pay is variable, considering 12 months performance of the employee. The Tribunal further observed that to ascertain actual pay received by the employee salary slip of December-2011 shows Rs.38,932/- and after deducting income tax and professional tax the Tribunal has considered his monthly pay at Rs.37,144/-. I am unable to understand the observations of the Tribunal, as the accident occurred on 19.01.2012. The Tribunal has considered the salary of deceased is of October-2011. In cross examination, Mr. Ghadge has stated that variable pay shown at Exhibit-54 is payable once in a year and it is paid considering performance of 12 months. He has further stated that supplementary amount shown in the salary record at Exhibit-54 is taxable amount and it is calculated considering his other salary amount. This witness has not stated that this was the package given to the deceased. The salary package given to deceased was variable. Moreover, this witness was not cross examined on the point of salary of deceased no suggestion was given to this witness that deceased was not getting yearly package of Rs.5,30,000/-. In my view, the Tribunal has mechanically applied his mind and wrongly come to conclusion that the salary of the deceased was variable hence he has considered salary on lower side. No question was asked in cross examination to the witness Mr. Ghadage that salary of deceased was on lower side. When witness has specifically stated about the yearly package of the deceased, without referring those documents the Tribunal has considered only Exhibit-54 which is of October-2011 prior to four months of the accident date. Hence, I am considering the yearly salary of deceased at Rs.5,30,000/-. The Tribunal while calculating compensation has applied multiplier of 17. As per the view of Hon'ble Apex Court in the case of ***Sarla Verma & Ors vs Delhi Transport Corp.& Anr.***[1] it should be 18 as the deceased was of 25 years 8 month and 19 days. Considering the above calculations, the claimants are entitled for following compensation:

	Particulars	**Rs.**	**Entitlement**
I	Monthly Salary	Rs.	44,241.00
II	Professional Tax (-) Rs.200 p.m.	Rs.	44,041.00

1 AIR 2009 SC 3104

III	Add 50 % Future Prospect	Rs.	22,020.50
IV	Total (II + III)	Rs.	66,061.50
V	Deduction ½ (Bachelor)	Rs.	33,030.75
VI	Multiplier X 18 X12	Rs.	33,030.75
VII	Loss of dependency	Rs.	71,34,642.00
VIII	Add Consortium 44000 X 2	Rs.	88,000.00
IX	Funeral expenses	Rs.	18,000.00
X	Loss of Estate	Rs.	18,000.00
XI	NFL Amount Rs.50,000 was awarded in compensation granted by MACT, Pune on 16.04.2014	Rs.	50,000.00
XII	Compensation Entitled	Rs.	73,000,642.00
XIII	Compensation granted by MACT Pune by order dated 16.04.2014	Rs.	59,08,032.00
XIV	Enhanced compensation	Rs.	13,92,610.00

Considering the above calculations, the claimants are entitled to enhanced amount of Rs.13,92,610/-.

5. In view of above, I pass following order :

<u>O R D E R</u>

i. The appeal is allowed.

ii. The claimants are entitled for enhanced compensation of Rs.13,92,610/- @ 7.5% per annum from the date of filing of claim petition till realisation. Out of this amount, Rs.1,24,000/- is consortium amount, the claimants are entitled for interest @ 7.5% per annum on this amount from 1st November 2017 till realisation of the amount.

iii. The Respondent No.2-Insurance Company shall deposit, enhanced amount along with accrued interest thereon within eight weeks after receipt of this order.

iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

v. The statutory amount deposited in cross objection be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

6. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)