IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 45 OF 2021

	National Insurance Company Ltd.	)	
	Through Divisional Manager	)	
	Divisional Office, 17, Jai Complex,	)	
	Opp. Punjani Industrial Estate,	)	
	Poharan Road, Thane.	)	
	Through its Mumbai Regional Office	)	
	III having office at Royal Insurance	)	
	Building, 1st Floor, 14, J. Tata Road,	)	...Appellant
	Churchgate, Mumbai – 400 020.	)	(Orig. Opp No.2)
	Versus		
1	Kumar Viraj Arunkumar Chawan	)	
	Age 13 yrs, Occu:Education	)	
2	Mr. Vivekanand Bajarang Chawan	)	
	Age 39 yrs, Occu : Service	)	
3	Mr. Bajarang Ganpati Chawan	)	
	Age 72 years, Occu : Nil	)	
4	Mr. Radhabai Bajarang Chawan	)	
	Age 62 years, Occu : Household,	)	...Respondents
	All Residing at Chinchani (Ambak)	)	1 to 4
	Tal-Kadegaon, Dist. Sangli	)	(Original Applicants)
5	Prashant Madhukar Patil	)	
	Age : Adult, Residing at Vaishet,	)	..Respondent 5
	Post: Navgaon, Tal: Alibaug, Dist:	)	(Original Opp. Party
	Raigad.	)	1)

Ms. Harshada Rane, Advocate for the Appellant.
Mr. T. J. Mendon, Advocate for Respondent Nos.1 to 4/Claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th MARCH 2023.

Oral Judgment :

1. The issue involved in this appeal is Tribunal has awarded exorbitant and excessive compensation.

2. Learned counsel for the appellant submits that at the time of accident, deceased was 42 year old, then, future prospects should be 30% on the actual income but Tribunal has considered 50%, which is excessive. Learned counsel further submits that while considering salary of the deceased, Tribunal has considered salary under the head “House Rent Allowance” and “House Accommodation Charges”, it should be either Accommodation Charges or House Rent Allowance but this fact is not considered by the Tribunal. Learned counsel further submits that Tribunal has awarded Rs.1,00,000 for loss of love and affection and Rs.1,00,000/- for loss of estate and Rs.25,000/- for funeral and ritual expenses, which are excessive. Learned counsel further submits that Tribunal has not deducted professional tax from salary of the deceased. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondents/ claimants that while awarding compensation, Tribunal has considered all aspects and, on that basis, compensation is awarded. While considering salary of deceased, Tribunal has to consider salary of deceased less income tax and professional tax. He relied on ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC).***

4. I have heard both learned counsel, perused judgment and order passed by Motor Accident Claims Tribunal (for short "the Tribunal").

5. In respect of issue of future prospects, admittedly, at the time of accident, deceased was 42 year old but the Tribunal has awarded 50% future prospects, it should be 30% future prospects. Hence, I am considering 30% future prospects.

6. In respect of salary of deceased, the Tribunal has deducted only income tax and not professional tax. Hence, I am considering deduction of Rs.200/- as professional tax.

7. It is contention of learned counsel for the appellant that Tribunal should have deducted House Rent Allowance or House Accommodation Allowance from the salary of deceased but it has not been deducted.

8. Learned counsel for the appellant further submits that medical reimbursement allowance should have been deducted but it has not been deducted. It is contention of learned counsel for the claimants that it is settled law that while considering salary of deceased, there should be deduction of income tax and professional tax. The Hon'ble Apex Court in case of ***Pranay Sethi (Supra)*** has observed that annual salary should be read as actual salary less tax. Hence, I am considering salary of deceased less income tax and professional tax. The Tribunal has considered house rent allowance and house accommodation while awarding compensation. In my view, out of these two allowances, only one allowance should have been considered by the Tribunal, I am considering only one allowance.

9. In respect of contention of learned counsel that the Tribunal has awarded compensation under head of love and affection, loss of estate, funeral expense on higher side, as per the

view of Hon'ble Apex Court in 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, Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate with 10% increase.

10. In view of above calculations, the claimants are entitled for following compensation :

Monthly wages of deceased	Rs.	58881.00
Less Income Tax	Rs.	3033.00
Less Professional Tax	Rs.	200.00
Total	Rs.	55648.00
Plus Future Prospects @30%	Rs.	16694.00
Total	Rs.	72342.00
Less 1/3rd Deduction towards personal expenses	Rs.	24114.00
Total	**Rs.**	**48228.00**
Age of the deceased was 42 years, so the multiplier is 14 (Rs.48228.00 x 12(months) x 14(multiplier)	Rs.	81,02,304.00
Consortium Rs.44,000/- multiplied by 4 (4 claimants)	Rs.	1,76,000.00
Funeral Expenses	Rs.	16,500.00
Loss to Estate	Rs.	16,500.00
Total Entitled Compensation	**Rs.**	**83,11,304.00**

The Tribunal has awarded compensation of Rs. 96,07,464/-. If this amount is deducted from the amount considered by this Court, it comes to Rs.12,96,160/-. It is an excess amount. The appellant is entitled for it.

11. In view of above, I pass following order ;

O R D E R

1. Appeal is partly allowed.
2. The claimants are entitled for Rs.83,11,304/- along with interest awarded by the Tribunal.
3. The appellants are permitted to withdraw the amount of Rs. 12,96,160/- along with accrued interest thereon out of the deposited amount if not withdrawn.
4. The claimants are permitted to withdraw the amount awarded by this Court with accrued interest thereon.
5. Statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it.

The appeal stands disposed of.

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

(SHIVKUMAR DIGE, J.)