IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 201 OF 2023

Reliance General Insurance Company Limited
Through its Corporate Office
4th Floor, Chintamani Avenue
Off Western Express Highway,
Goregaon - East, Mumbai. ...(Ori.Opponent No.2)
...**Appellant**

Versus

1. Mina Liladhar Patil
   Age : 32 years, Widow of the deceased ...(Ori.Applicant No.1)

2. Ku. Juili Liladhar Patil
   Age : 3 years, Minor Daughter
   of deceased through her mother
   Smt. Mina Liladhar Patil as a Natural
   Guardian And Next Friend. ...(Ori.Applicant No.2)

3. Smt. Dhanubai Kashinath Patil
   Age : 60 years, Mother of deceased

   All the above Respondents are
   presently residing at Kaman Village,
   Tal. Vasi, District Thane. ...(Ori.Applicant No.3)

4. M/s. Shree Nandwana Transport
Having their Office K-4, Mainsurat
Compound, Anjur Phata, Bhiwandi
Thane – 421 302. ...(Ori.Opponent No.1)

...**Respondents**

Mr. Rahul Mehta i/by KMC Legal Venture for the Appellant.
Ms. Rina Kundu for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 31st MARCH, 2023.

JUDGMENT :

1. The issues involved in this Appeal are income of deceased is considered on higher side and compensation awarded on higher side under other heads.

2. It is contention of learned Counsel for the Appellant that the Tribunal has considered monthly income of deceased @ Rs.17,854/-, without any evidence on record, which is on higher side. Learned Counsel further submits that the Tribunal has awarded Rs.1,00,000/- for loss of Consortium and Rs.1,00,000/- for loss of care and guidance, which are excessive. Hence, requested to allow the Appeal.

3. It is contention of learned Counsel for the Respondents that deceased was in Government service. He was serving in Vasai Virar Municipal Corporation and getting monthly salary of Rs.20,000/-. But the Tribunal has considered his monthly salary @ Rs.17,854/-. The Tribunal has awarded the compensation considering all the aspects, 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').

5. To prove income of deceased, the Claimants have examined Umesh Dnyaneshwar Mhasnekar (PW-2) at Exh.41. He has stated that he is serving in establishment department of Vasai Virar Municipal Corporation since last 20 years. Deceased Leeladhar Vishwanath Patil was working as a Senior Clerk in Municipal Corporation and he was getting monthly salary of Rs.18,900/-. The Salary Slips are at Exh.44/1 to 44/3. Considering the evidence of this witness and salary slips and deduction of Professional Tax and Income Tax of deceased, the Tribunal has considered Monthly salary at Rs.17,854/-. I do not find any infirmity in it. In my view, deceased was serving in the Municipal

Corporation and he was getting fixed salary, so no question of his salary considered on higher side arises.

6. The Tribunal has awarded Rs.1,00,000/- for loss of Consortium and Rs.1,00,000/- for loss of care and guidance for minor children. In my view, 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 and Rs.15,000/- for loss of estate and Rs.15,000/- for funeral expenses. There are three Claimants, the consortium amount comes to Rs.1,20,000/- and Rs.30,000/- for funeral expenses and loss of estate, the total of it comes to Rs.1,50,000/-. The Tribunal has awarded Rs.5,000/- for funeral expenses. The total amount awarded by the Tribunal comes to Rs.2,05,000/-. If this amount is deducted from the amount considered by the this Court, it comes to Rs.45,000/-. This is an excessive amount. In view of above I pass following order :

ORDER

i. Appeal is partly allowed.

ii. The Appellants are permitted to withdraw Rs.45,000/- alongwith accrued interest thereon, out of deposited amount.

iii. The Claimants are permitted to withdraw remaining amount alongwith accrued interest thereon.

iv. The statutory amount be transmitted to the Tribunal alongwith accrued interest thereon.

v. The parties are at liberty to withdraw it, as per rule.

(SHIVKUMAR DIGE, J.)