IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.282 OF 2014

1. Smt. Anita Baijnath Gupta, age about 34 years, Occu: Household, widow of the deceased.

2. Master Rajan Baijnath Gupta, age about 11 years, Occu: Student, son of the deceased

3. Master Aditya Baijnath Gupta, age about 9 years, Occu: Student, son of the deceased

4. Master Alok Baijnath Gupta, age about 7 years, Occu: Student, son of the deceased

Applicant no.2 to 4 are minor therefore, claiming through next friend, mother, natural guardian, appellant no.1 Appellants
… (Original Applicants)

Versus

1. Shri Umashankar Satyanarayan Gupta, adult Occu: Business, Residing at House No.103, Gupta Niwas, Harinagar, Vasai Gaon, Tal. Vasai, Dist. Thane {Owner of Motor Tempo No.MH-04-BG}

2. United India Ins. Company Limited, Through its Divisional Manager, having their office at {Old Address: Gokhale Road, Naupada, Opposite Canara Bank, Thane} Respondent No.1/original opposite …party no.1

New Address :
At Pinak Galaxy, B Wing, 1st Floor, Near Mahadev Hotel, opposite Big Bazar, Kapurbawdi Junction, Kapurbawdi Thane West, Dist. Thane, PIN. 400607.
(Insurer of Motor Tempo No.MH-04-BG-7802)
Validity from 08.09.2008 to 07.09.2009 Respondent No.2/Original Insurer

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Ms. Rina Kundu for the Appellants.
Ms. Poonam Mital for the Respondent.

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CORAM : SHIVKUMAR DIGE, J.

DATED : 24th MARCH, 2023

Oral Judgment :

1. By this Appeal, the Appellants-Claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the claimants that while considering the income of deceased the Tribunal has deducted income from the net income of the deceased. It should be from gross yearly income. He further submits that the future prospects are not awarded and consortium amount awarded on lower side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2-Insurance Company that the Tribunal has considered all the aspects while considering the deduction of income tax. Hence, no interference is required in it.

4. I have heard both learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal,

Thane (for short 'the Tribunal'). It has come on record that yearly income of deceased for the year 2006-2007 was Rs.1,60,046/- and income tax was paid for that year of Rs.7,235/- and for year 2007-2008 yearly income was Rs.1,61,037/- the income tax paid was Rs.2,010/-, for year 2008-2009 yearly income was Rs.1,70,086/- and income tax paid was Rs.2,314/-. While deducting the income tax, the Tribunal has deducted income tax from net income and come to conclusion that the average income of deceased should be Rs.1,36,951/-. In my view, the observations of the Tribunal about the deduction of the income tax from net income is improper. It should be from gross income. Hence, I am setting aside the observation of the Tribunal, regarding deduction of income tax from net income and I am considering it from gross income. i am considering the deduction of income tax, from gross income average, yearly income of deceased comes to Rs.1,60,025/-. I am considering this income as yearly income of deceased. The Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.***,[1] the claimants are entitled for 40% future prospects. I am considering 1/4th amount for personal deduction. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram***,[2] each claimant is entitled to Rs.40,000/- as consortium with 10% increase and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate. In view of the above calculations, the claimants are entitled for following compensation.

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1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

Particulars		Amount
Yearly income	Rs.	1,60,000.00
40% future prospects	Rs.	64,003.00
Total	Rs.	2,24,011.00
1/4th personal expenses	Rs.	56,002.00
Remaining 3/4th income	Rs.	1,68,008.00
Dependency Rs.1,68,008X16 (multiplier)	**Rs.**	**26,88,128.00**
Add consortium amount (4 claimants)Rs.44,000X4	Rs.	1,76,000.00
Add Funeral expenses and loss of estate (Rs.16,500+16,500)	Rs.	33,000.00
Total entitled compensation	**Rs.**	**28,97,128.00**
(less) compensation awarded by Tribunal	Rs.	4,54,000.00
The claimants are entitled for enhanced amount of	Rs.	24,43,128/-

5. The Tribunal has awarded Rs.4,54,000/- if this amount is deducted from the amount considered by this Court it comes to Rs.24,43,128/-. The claimants are entitled for this amount.

6. In view of the above, I pass following order :-

O R D E R

(i) The Appeal is allowed.

(ii) The claimants are entitled for enhanced amount of Rs.24,43,128/- @ 7.5 per annum from the date of filing of claim petition till realization of the amount out of this amount Rs.2,09,000/-, is amount of consortium, the claimants are entitled 7.5% interest on this amount from 1st November, 2017 till realization of the amount.

(iii) The Respondents are directed to deposit enhanced amount along with accrued interest thereon within six weeks after the receipt of this order.

(ii) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

7. Pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)