

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.180 OF 2023

Reliance General Insurance Co. Ltd.
4th Floor, Chintamani Avenue, Off, Western
Express Highway, Next to Virvani Indl.
Estate, Goregaon {E}, Mumbai – 400 053
Policy No.1105442312025627
Valid from:4/12/2014 to 3/12/2015

Appellant
... (Org. Opp. No-2)

Versus

1. Manjula Kabiraj Das,
Aged 38 years (widow of deceased)
2. Bikram Kabiraj Das,
Aged 18 years (son of deceased)
3. Rajlakshmi Kabiraj Das,
Aged 17 years, (daughter of deceased)
Residing at: Room No.261,
Building No.16, Type II, Telecom,
Township, S.T. Road, Deonar,
Mumbai – 400 088

... (Resp.1 to 3 Org. Applicants)

4. Atmaram Shantarm Talekar,
125, Naik Nagar, Shaikh Misari Road,
Navtarun Naik Nagar, Wadala,
Mumbai – 400 037.

Respondents
...(Resp. No-1 Insured)

Ms. Kalpana R. Trivedi for the Appellant.

Mr. Vasant M. More for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th MARCH, 2023

ORAL JUDGMENT:

1. Heard learned counsel for the Appellant and learned counsel for the Respondents.
2. The issues involved in this Appeal are deduction of salary, deduction of arrears allowance mentioned in the salary and future prospects amount.
3. It is contention of learned counsel for Appellant that the salary of deceased was around Rs.30,000/- per month and the deceased was getting various allowances, by deducting those allowances, the salary would be less than Rs.25,000/-, but Tribunal has considered Rs.25,000/- as salary of the deceased, which is improper. The learned counsel further submits that, at the time of accident, deceased was 44 year old, the Tribunal has given 30% future prospects which is improper. The learned counsel further submits that the wife of deceased has been taken in service in the place of her deceased-husband on compassionate basis and she gets Rs.20,000/- salary per month. She received ex-gratia amount of Rs.6,50,000/- from her Company. When wife of deceased got a job, the claimants are not entitled for compensation. But these facts are not considered by the Tribunal. Hence, requested to allow the Appeal.

4. The learned counsel for the Respondents-claimants submits that deceased was working as Assistant Technician in the Telecom Company and his salary was Rs.30,491/- per month. He was permanent Government Employee, and after deduction of Income Tax and the Professional Tax i.e. TDS from the employees salary, the Tribunal has considered his salary at Rs.25,000/- per month. The learned counsel further submits that it is settled principle of law that while considering the salary of deceased, Tribunal has to consider deduction of Income Tax and Professional Tax and not other allowances. The learned counsel for the claimants further submits that at the time of accident, deceased was 40 year old, hence, the future prospects awarded by the Tribunal is proper and requested to dismiss the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal').

6. In respect of the issue of salary, it is contention of learned counsel for the Appellant that it should be around Rs.20,000/- by deducting other allowances. Perused the salary slip at Exhibit-37. This salary slip shows that the deceased was getting amount of Rs.30,491/- per month as salary. The Tribunal has deducted the TDS and Professional Tax, and after deducting it, the Tribunal has considered Rs.25,000/- per month as salary of the deceased. I do not find any infirmity in it. In my view it is settled principle of law that, salary income should be considered by deducting professional tax and income tax. The Tribunal has

considered this fact. The salary considered by the Tribunal is proper.

7. In respect of issue of future prospects, deceased was 45 year old at the time of accident. As per the view of the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.**,¹ the Tribunal has considered 30% future prospects. The future prospects considered by the Tribunal is proper and I do find any infirmity in it.

8. It is contention of the learned counsel for the Appellant that since the wife of deceased had joined the service in place of her husband and ex-gratia amount was given to her by the company, she is not entitled for compensation, but these facts are not considered by the Tribunal. In my view, giving service to the wife of deceased in place of her deceased-husband on compassionate basis, cannot be a ground to deny her compensation, which she is entitled under provisions of the Motor Vehicles Act, 1988 (for short 'M.V. Act'). Giving service on compassionate basis is the policy decision of that company or department. The void which occurred in the life of that lady due to death of her husband cannot be filled by giving service on compassionate basis. Section 165 of M.V. Act states about. Claims Tribunal, which reads as under :-

165. Claims Tribunals.-(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this

1. 2017 ACJ 2700 (SC)

Chapter referred to as Claims Tribunals) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

This Section empowers the State Government to constitute Claims Tribunals to adjudicate upon claims for compensation arising out of motor vehicle accidents, resulting in death or bodily injury to persons or damage to any property of third parties. This Section states about compensation arising out of Motor Accident Claims. Giving service on compassionate ground, can't become embargo to get compensation under M.V. Act.

9. In respect of issue ex-gratia amount. The dictionary meaning of ex-gratia payment is a payment not legally required. An ex-gratia payment is considered voluntary. The ex-gratia, means by 'favour'. It is an payment, made to an individual by an organization, government or insurer for damages or claims but is does not require the admittance of liability by the party making the payment. In my view, the ex-gratia amount is different from the compensation awarded under the M.V. Act. The ex-gratia payment is voluntary, whereas compensation under M.V. Act is mandatory on the basis of liability or contractual liability. Hence, I do not see merit in contention of learned counsel for the Appellant, that an ex-gratia is received by the claimants, they are not entitled for compensation.

10. In view of the above, Appeal is devoid of merit and I pass following order:-

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The claimants are permitted to withdraw the entire awarded amount along with accrued interest thereon deposited by the Appellant.
- (iii) The statutory amount along with accrued interest be transmitted to the Tribunal. Parties are at liberty to withdraw it as per rule.
- (iv) Pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)