IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.494 OF 2023

1	Sonam Sanjay Jain,	)	
	Aged 35 years., Occu.: Household,	)	
	Residing at Flat No.11,	)	
	Satyaswapna Society, Old Mumbai-	)	
	Pune Road, Dehuroad,	)	
	Pune – 412101.	)	
2	Diyaan Sanjay Jain	)	
	Aged 5 years., Occu.Nil,	)	
	Appellant No.1 for herself and as	)	
	Natural Guardian for Appellant No.2.	)	
3	Mohanlal Pukhraj Jain (Decs),	)	
	Aged 67 years, Occu.Nil,	)	
	All are residing at Flat No.11,	)	
	Satyaswapna Society, Old Mumbai-	)	…..Appellants/Ori
	Pune Road, Dehuroad, Pune –	)	Claimants
	412101.	)	

Versus

1	The Reliance General Insurance Co.	)	
	Ltd., Office at 602, Laxmi Commercial	)	
	Centre, 6th Floor, Senapati Bapat	)	
	Marg, Dadar (W), Mumbai.	)	

2 Mohinder Singh Waraich,)
Aged Adult, Occu. Business,)
Residing at 1344, 1 CGS Colony,)
Sector VII, OSM Plot, Antop Hill,)
Mumbai – 400037.) ….Respondents
Opponents

With
FIRST APPEAL STAMP NO. 15501 OF 2017

Reliance General Insurance Co. Ltd.)
4th Floor, Chintamani Avenue, Off)
Western Express Highway, Next to)
Virwani Industrial Estate,)
Goregaon (E), Mumbai 400 063.) ….Appellant

Versus

1 Sonam Sanjay Jain,)
Aged 30 years., Occu.: Household.)
2 Diyaan Sanjay Jain)
Aged 10 months., Occu.Nil,)
Applicant No.1 for herself and as)
Natural Guardian for Applicant No.2.)

3 Mohanlal Pukhraj Jain (Decs),)
Aged 62 years, Occu.Nil,)
All are residing at Flat No.11,)
Satyaswapna Society, Old Mumbai-)
Pune Road, Dehuroad, Pune –)
412101.

4	Mohinder Singh Waraich	)	
	Age Adult, Occ.: Business,	)	
	R/at: 1344, 1CGS Colony, Sector,	)	
	VII, OSM Plot, Antop Hill,	)	
	Mumbai 400 037.	)	
		)	
5	Niyaz Mohd. Abdul Hafeez	)	
	(deleted as per pursis Exh.20)	)	….Respondents

Mr. Bhushan Walimbe, Advocate for the Appellants in First Appeal No. 494 of 2023 and for Respondent Nos. 1 to 3 in First Appeal Stamp No. 15501 of 2017.

Ms. Poonam Mittal, Advocate for Respondent No.1 in First Appeal No. 494 of 2023 and for the Appellant in First Appeal Stamp No. 15501 of 2017.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19TH APRIL, 2023.

Oral Judgment :

1. The appellants - Insurance Company and the claimants have preferred appeal against the judgment and order passed by the Motor Accident Claims Tribunal, Pune, (for short “the Tribunal”). As both these appeals are against the same judgment and order and on the same issues, hence, I am deciding both the appeal by this common judgment.

2. It is contention of learned counsel for the appellant-Insurance Company that the Tribunal has applied wrong multiplier while calculating the compensation. The Tribunal has awarded 50% future prospects, it should be 40%. Learned counsel further submits that the Tribunal has awarded excessive compensation under the head of consortium and loss of love and affection. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the respondents/claimants that deceased was admitted in the hospital. The claimants have incurred amount on providing attendant , special diet and other expenses but these amounts are not considered by the Tribunal while awarding compensation. Learned counsel further submits that while awarding compensation, the Tribunal has considered all the aspects, and on that basis, compensation is awarded and 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, Pune (for short “the Tribunal”).

5. It is the contention of learned counsel for the appellant – Insurance Company that deceased was 37 year old at the time of the accident, the tribunal has applied multiplier of 16, it should be 15. As per the view of Hon'ble Apex Court in the case of ***Sarla Verma & Ors vs Delhi Transport Corp.& Anr. AIR 2009 SC 3104***, for age of 37, the proper multiplier is 15, hence, I am considering multiplier of 15. The Tribunal has awarded 50% future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC),*** the claimants are entitled for 40% future prospects, hence, I am considering 40% future prospects. The Tribunal has awarded Rs.1,00,000/- as consortium amount, Rs.1,00,000/- for loss of love and affection and Rs. 25,000/- for funeral expenses, total comes to Rs.2,25,000/-. The deceased was self-employed. In case of self employed person 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/- with 10% increase as consortium amount, Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate. There are three claimants, the consortium amount comes to Rs.1,32,000/- and Rs.33,000/- for funeral expenses and loss of estate, total comes to Rs. 1,65,000/-.

The Tribunal has awarded an amount of Rs.7011/- for transportation of body, it should be Rs.15,000/-, hence, I am considering Rs.15,000/-. Considering the above calculations, the claimants are entitled for following compensation:

Particulars	**Rs. Amount**
Annual Income	2,11,174.00
40% future prospects	84,470.00
Total	2,95,644.00
1/3 deduction for personal expenses	98,548.00
Total	1,97,096.00
Rs.1,97,096/- X 15(multiplier)	**29,56,440.00**
Consortium (Rs.44,000/- x 3 (claimants))	1,32,000.00
Funeral Expenses	16,500.00
Loss of Estate	16,500.00
Medical Expenses	6,59,205.00
Transportation of Boday	15,000.00
Total Compensation	**37,95,645.00**

Considering the above calculations, the claimants are entitled for compensation of Rs.37,95,645/-. The Tribunal has awarded compensation of Rs.42,70,000/. An amount of Rs.4,74,355/- is an excess amount. The appellant- Insurance Company is entitled to withdraw this excess amount.

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

O R D E R

1. First Appeal No. 2923 of 2017 and First Appeal Stamp No. 15501 of 2017 are partly allowed.

2. The claimants are entitled for compensation of Rs.37,89,000/- @ 9% per annum from the date of filing claim petition till realisation of the amount.

3. The appellant-Insurance Company is permitted to withdraw the excess amount of Rs.4,74,355/- along with accrued interest thereon.

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

5. The statutory amount in First Appeal Stamp No.15501 of 2017 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

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

(SHIVKUMAR DIGE, J.)