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

FIRST APPEAL NO. 86 OF 2020

Reliance General Insurance Co. Ltd.)
Through Its Corporate Office)
 4th Floor, Chintamani Avenue)
 Off Western Express Highway,)
 Goregaon - East, Mumbai)

...Appellant/Original Respondent No.2

Versus

1. Smt. Nita Rohidas Pathare)
 Age 34 Yrs, Occu. : Household)

..Original Applicant No.1

2. Yadnesh Rohidas Pathare)
 Age : 14 yrs, Occu- Student)

..Original Applicant No.2

3. Sakshi Rohidas Pathare)
 Age 13 yrs, Occu, Student)

..Original Applicant No.3

Applicant No.2 and 3 are minor)
 Hence claiming through)
 Applicant No.1 mother)
 Natural Guardian)

4. Smt. Sakhubai Dattatray Pathare)
 Age 68 yrs, Occu. Household)

..Original Applicant No.4

Above all R/at Bhosale Wasti)
 Charuli Budruk, Pune)

5. Bharat Pandurang Mungase)
 Age : Major, Occu. Truck Owner)
 A/P RASE, Tal. Khed, Dist, Pune)

..Original Respondents No.1

..Respondents

Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant.
Mr. Yogesh Pande for the Respondent Nos. 1 to 4.

CORAM : S. G. DIGE, J.

DATE : 31st JANUARY, 2023.

JUDGMENT. :

1. The issues involved in this appeal are the income of deceased is considered on higher side, there was contributory negligence of the deceased in the accident and at the time of accident driver offending of vehicle was not holding effective and valid driving license.

2. It is contention of learned counsel for the appellant that the accident was occurred when deceased was crossing the road proper care should have been taken by deceased while crossing the road. There was no negligence of the driver of offending vehicle but, this fact is not considered by the tribunal.

3. The leaned counsel further vehemently submit that at the time of accident, the driver of offending Truck was not holding effective and valid driving license so also offending truck was not fit to ply, these issues were raised before the tribunal but tribunal has not considered it. Learned counsel further submits that the tribunal

has considered the salary of deceased at Rs. 22,533/- per month without any evidence which is on higher side. Hence requested to allow the appeal.

4. The learned counsel for Respondent Nos. 1 to 4- Claimants submits that deceased was sweeper in Pimpri Chinchwad Municipal Corporation and was earning Rs. 31,000/- per month by way of salary. The tribunal has considered the salary of deceased after deducting income tax and professional tax which is proper.

5. The learned counsel further submit that the appellant has not examined any witness to prove that the driver of offending truck was not holding effective and valid driving license. The said accident was occurred due to sole negligence of the driver of offending truck.

6. Learned counsel for the respondents further submits that no future prospects are awarded and consortium amount is given Rs. 1,00,000/- which is not proper. Hence requested to award future prospect and consortium amount.

7. I have heard both learned counsel, perused judgment and order passed by the Tribunal. It is contention of learned counsel for the appellant that the accident was occurred while crossing road by the deceased. It shows that there was sole negligence of the

deceased in the said accident. While dealing with this issue the tribunal has observed that the complaint FIR and spot panchanama are at Exhibit- '19', '20' and '21'. The spot pancahnama Exhibit-'21' shows that an accident took place Near Shivaji Chowk where 4 roads meets. The deceased Rohidas was walking in that Chowk. It was responsibility of truck driver to drive the truck cautiously as it was busy Chowk, it appears that he did not drive the truck at place of accident diligently and cautiously therefore prosecution for rash and negligence driving was lodged against him, FIR is at Exhibit '20'. Therefore the tribunal has held that accident took place due to rash and negligent driving of driver of offending truck. In my view, admittedly the accident was occurred in crowdy place i.e. Shivaji Chowk, Pimpri. The driver of offending Truck was aware that it was Chowk and there are people who are walking on the road and crossing the road, so he should have drove the truck in slow and moderate speed but, it appears from Exhibit-20 i.e. FIR driver of offending truck drove the truck in rash and negligence manner and gave dash to the deceased, due to which he died. Hence, I do not find any infirmity in the observation of the Tribunal that accident was occurred due to sole negligence of driver of the offending truck.

8. In respect of issue of not holding valid and effective driving

license by the driver of offending truck. The appellant has not examined any witness to prove that driver was not holding valid and effective driving license at the time of accident. Hence I do not see any merit in the contention of appellant.

9. It is contention of learned counsel for the appellant that income of deceased is considered on higher side. Admittedly the deceased was working as a sweeper in Pimpri Chinchwad Municipal Corporation and he was getting salary of Rs. 31,000/- per month. The tribunal has considered salary of deceased at Rs. 30,043/- salary certificate is at Exhibit-'32' and on that basis calculations are done. I do not find any infirmity in it. It is contention of learned counsel for the claimant that the Tribunal has not awarded future prospects and consortium amount it be awarded. It is contention of the learned counsel for the appellant that the claimants have not preferred appeal for enhancement of compensation. In the appeal filed by insurance company they can't claim enhancement. Section 168 of Motor Vehicle Act, 1988, states about award. It read thus.

168. Award of the Claims Tribunal.-(1) On receipt of an application for compensation made under Section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of ¹[section 163]

may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

10. This Section deals with award of the claims Tribunal, it empowers the Tribunal to pass an award determining the amount of compensation that appears to it to be just compensation. It is settled law that while awarding compensation the Tribunal should award adequate compensation, which is fair and equitable, on the facts and circumstance of the case. In the present case the tribunal has considered income of deceased properly. Hence, I am not considering the amount for future prospects. Though appeal is not preferred by the claimants it cannot be ground to deny the amounts which are they entitled as a just compensation. The Tribunal has awarded the lum sum amount as Rs. 1,00,000/- as consortium and of Rs. 25,000/- for funeral expenses. As per the view of Hon'ble Apex Court in the case of MAGMA ***Magma General Insurance Co. Ltd. vs. Nanu Ram (Supra)***. Each claimant is entitled for Rs. 40,000/- compensation and Rs.15,000/- for funeral expenses and Rs. 15,000/- for loss of the estate. There are four claimants, so claimants are

entitled for Rs. 1,60,000/- as consortium amount, out of which Rs. 1,00,000/- is deducted as awarded by the tribunal then it comes to Rs. 60,000/-. The Tribunal has awarded Rs. 25,000/- for funeral expenses. Hence, I am considering Rs. 5,000/- for funeral expenses and loss of estate. The claimants are entitled for this amount.

11. In view of above, I pass following order

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The respondent nos. 1 to 4/claimants are entitled for the additional amount of Rs. 65,000/- at the rate of interest 7.5% from the day of 17/10/2017 till realization of the amount.
- iii. The Appellants are directed to deposit the additional amount within a period of four weeks along with accrued interest thereon, after the receipt of the order.
- iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- v. The statutory amount be transmitted to the Tribunal

along with accrued accrued interest. The parties are at liberty to withdraw the statutory amount as per Rule.

12. All pending application stands disposed of.

(S. G. DIGE, J.)