IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 510 OF 2018

Reliance General Insurance Company Limited
Through its Corporate Office
4th Floor, Chintamani Avenue, Off Western Express
Highway, Goregaon-East, Mumbai .... Appellant

Versus

1. Anita Gorakh Chavan
   Age 33 years, Occupation – Housewife

2. Atul Gorakh Chavan
   Age 14 years, Occupation – Education

3. Rupesh Gorakh Chavan
   Age 12 years, Occupation – Education

4. Swapna Gorakh Chavan
   Age 10 years, Occupation – Education

   [Nos. 2 to 4 minor, through their natural
   Guardian – Mother, Applicant No.1
   All R/at Katvi, Tal Maval, Dist. Pune

5. Gyandeep Singh Chandok
   S/o. Bhupender Darshan Singh Chandhok
   Age : Adult, Occupation – Business
   R/at Plot No.84, Sector No.17, Flat No.201,
   Natasha Tower, Koparkhairane, Navi Mumbai Respondents

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Mr. Rahul Mehta, Advocate for the Appellant .
Mr. D.D.Shinde i/b. Y.G.Thorat, Advocate for Respondent.

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CORAM : SHIVKUMAR DIGE, J.
DATE : 30th NOVEMBER, 2023.

JUDGMENT :

1. The issues involved in this appeal are monthly income of deceased, is considered on higher side, damages to the vehicle is given in the claim petition, consortium amount is awarded on higher side and rate of interest is awarded on higher side.

2. It is the contention of learned counsel for the appellant that deceased was agriculturist. There was no income proof of his monthly income. In spite of that Tribunal has considered monthly income of deceased at Rs.15,000/- per month without any documentary evidence which is on higher side and on that basis compensation is awarded. Learned Counsel further submitted that damages are awarded to the jeep. A separate application needs to be filed for claiming the damages. But this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has awarded loss of consortium amount of Rs.1,00,000/- and Rs.25,000/- for funeral expenses which are on higher side. The rate of interest is given @ 9% p.a. which is on higher side, hence requested to allow the Appeal.

3. It is the contention of learned counsel for the respondents that deceased was agriculturist and doing milk business and he was getting Rs.5,00,000/- per annum from the said business. The surveyor report in respect of the damage to the Jeep was filed on record and on that basis,

the Tribunal has awarded the damages. The rate of interest awarded by the Tribunal is proper. The Tribunal has considered all the aspects while awarding the compensation. Hence, no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by Motor Accident Claims Tribunal (for short "**the Tribunal**"). In respect of income of the deceased, it is claimant's case that, deceased was an agriculturist as well as he was doing business of milk and from these two business he used to earn Rs.5,00,000/- per annum. To prove their case, claimants have filed 7/12 extracts of the land owned by the deceased on record. These are at Exhibits-33 to 36. It appears from the record that deceased was cultivating sugarcane crop and deceased was having total 5 acres land and he was cultivating sugarcane crop and padwal crop in it. On the basis of evidence on record, the Tribunal has considered that deceased was getting Rs.5,000/- per month income from the said agriculture lands. I do not find any infirmity in it.

5. To show the income of the deceased from milk business the claimants have examined five witnesses. From the evidence of these witnesses, it has come on record that deceased was selling milk and he was having 26 she buffaloes and 10 Jersey cows and by selling milk to various dairies and hotels, he used to earn Rs.1,00,000/- per month and after making expenses towards purchase of fodder and labour charges etc.

his net profit was around Rs.65,000/- per month from the milk business.

6. Considering the evidence of these witnesses the Tribunal has considered the monthly income of deceased from milk business at Rs.10,000/- per month. I do not find any infirmity in it. The income of deceased from agriculture and milk business considered at Rs.15,000/- per month is proper.

7. To prove the damages of jeep, witness Shantanu Domarika examined at Exhibit-52 who is working as a private surveyor and loss assessor for Insurance Company. He has filed the surveyor report on record which is at Exhibit-53 on that basis the Tribunal has awarded damages of the jeep. I do not find any infirmity in it. The Tribunal has awarded the amount towards loss of consortium amount of Rs.1,00,000/-, loss of love and affection of Rs.1,00,000/-and funeral expenses Rs.25,000/-. These are on higher side.

As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram***[1] claimants are entitled to Rs.44,000/- each, for loss of consortium, Rs.16,500/- for loss of estate and Rs.16,500/- for funeral expenses. There are 4 claimants. The total amount comes to Rs.2,09,000/-. The Tribunal has awarded 2,25,000/. Rs.16,000/- is excess amount. The Tribunal has awarded interest @ 9% p.a.

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8. Learned Counsel for the claimants submitted that it can be reduced and he is consenting for 7.5%. Considering the above reasons, I pass following order:

O R D E R

(i) The appeal is partly allowed.

(ii) Respondent Nos.1 to 4/claimants are entitled for Rs.30,87,930/- @ 7.5% from the date of filing application till realisation of the amount.

(iii) Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(iv) Appellants are permitted to withdraw excess amount along with proportionate rate of interest.

(v) The statutory amount be transferred to MACT, Pune. Parties are at liberty to withdraw it as per rules.

9. The appeal is disposed off. Interim Applications if any are also disposed off.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2023.12.08 11:04:20 +0530