IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 FIRST APPEAL NO. 4368 OF 2023
L AND T GENERAL INSURANCE CO. LTD., THR THR BRANCH MANAGER, AURANGABAD
VERSUS
SHARDA PRAKASH JARHAD AND ORS
WITH
CIVIL APPLICATION NO. 12845 OF 2023
WITH
CIVIL APPLICATION NO. 11322 OF 2018

Mr.M.R. Deshmukh, Advocate for the appellant.
Mr.G.M. Jakkalwar, Advocate for respondent Nos. 2 to 4.

CORAM : KISHORE C. SANT, J.
DATE : 31.07.2024

PC :-

01. Heard learned Advocates for the parties. This appeal is filed by the insurance company challenging the judgment and order passed by the learned Adhoc District Judge-3, Jalna dated 10.04.2018 in MACP No.116 of 2013 only to the extent of quantum. The learned Tribunal has considered income of the deceased @ Rs.6,000/- per month. The learned Tribunal also awarded Rs.1 lakhs each towards loss of estate, consortium and love and affection. An amount of Rs.25,000/-is awarded towards funeral expenses. The learned Advocate for the insurance company thus submits that the learned Tribunal erred while taking notional income of the deceased @ Rs.6,000/- per month and awarding

amount towards loss of estate, consortium, love and affection and funeral expenses. He submits that the amounts awarded are on higher side. He submits that monthly income ought to have been taken @ Rs.4,500/-, considering the date of accident in the year 2012. Thus the learned Tribunal has granted more compensation than permissible.

02. The learned Advocate for the respondent opposes the appeal stating that the learned Tribunal has rightly considered all the aspects involved in the matter and no interference is called for. To support the point of notional income, the learned Advocate for the respondents relied upon judgment in the case of ***Magma General Insurance Co. Vs. Nanu Ram & Ors., AIROnline 2018 SC 189***, wherein monthly income of unskilled labour was considered to be Rs.5,432/- per month. He thus submits that in the present case the accident has taken place in the year 2012.

03. The learned Advocate for the appellant submits that in the case of ***Magma General Insurance (supra)***, the Court had relied upon minimum wages as applicable in the State of Haryana. The rate of wages in the State of Haryana is more than the wages in Maharashtra and further that in that case the accident had taken place in the year 2013.

04. However, considering all the above aspects, this Court finds that in absence of any specific defence on record, it would not be proper to consider notional income @ Rs.6,000/- per month. The learned Tribunal has also granted consortium lump-sum and funeral expenses are also granted on higher side. Loss of estate is also considered to be on higher side. Considering this and keeping in view the judgment in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi AIR 2017 SUPREME COURT 5157*** the claimants shall be entitled to the compensation as per the chart below :-

Sr. No.	Particulars	Amount in Rs.
1.	Notional Income per month	5,000.00
2.	Future prospectus @ 40%	2,000.00
3.	Monthly income after addition of future prospectus.	7,000.00
4	Deduction towards personal and living expenses considering number of claimants (considering number of claimants 4) 1/4th	1,750.00
5	Monthly dependency after deduction of personal and living expenses (Rs.7,000-Rs.1,750=Rs.5,250)	5,250.00
6	Annual dependency (Rs.5,250 x 12=63,000)	63,000.00
7	Multiplier for age of 29 years 17. Dependency compensation (annual income x multiplier) (Rs.63,000 x 17=10,71,000)	10,71,000.00
8	Non pecuniary losses a) Loss of consortium to each claimant Rs.40,000 x 4 = Rs.1,60,000/-) b) Funeral expenses Rs.15,000/- c) Loss of estate Rs.15,000/- a+b+c=Rs.1,60,000 + Rs.15,000 + Rs. 15,000 = Rs.1,90,000/-	1,90,000.00
9.	Total compensation pecuniary + non pecuniary (Rs.1071000 + Rs.190000)	12,61,000.00
	Total	12,61,000.00 along with interest @ 9% p.a.

05. It is reported that the appellant has deposited entire amount along with interest in the office of this Court. In view of the modification in the award, excess amount out of the amount deposited shall be refunded to the appellant-insurance company along with proportionate interest. Remaining amount as per the modified award be disbursed to the claimant along with interest.

06. With this the first appeal is disposed off. Pending civil applications, if any, also stand disposed off.

[KISHORE C. SANT, J.]

snk/2024/JUL24/fa4368.23