IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 315 OF 2004

1 Kalpana Samir Mane
40 yrs., Occu. Household.
2 Adhirath Samir Mane
14 yrs., Minor through natural guardian mother No.1
Both R/o. Plot No.85, Salokhengagar, Kolhapur … Appellants

Versus

1 The Secretary, MSRTC, Vahatuk Bhavan, Mumbai
(Summons be served on Depot Manager, MSRTC, Central ST Stand, Kolhapur)
2 The Internal Insurance Fund
Vahatuk Bhavan, Mumbai (Summons be Served through Depot Manager, MSRTC, Central ST Stand, Kolhapur).
3 Krishnath Shankar Davadate (Deleted) … Respondents

………..

Mr. Tejpal S. Ingale a/w. Ms. Priyanka Babar, Advocate for the Appellants.
Ms. P. M. Bhansali a/w. Ms. Rajlaxmi PUnjabi, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.
DATE : 23rd APRIL, 2024

ORAL JUDGMENT :

1. By way this appeal claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for appellant that deceased was occupant in the car but the Tribunal has considered 50% contributory negligence of the deceased and has deducted amount in that regard which is erroneous. Learned counsel further submitted that deceased was doing practice of labour consultancy. He was consulting in labour Court and he was earning Rs.10,000/- per month but the Tribunal has considered his monthly income at Rs.2,000/- which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount is awarded on lower side hence, requested to allow the appeal.

3. Learned counsel for respondent/corporation submitted that accident occurred due to sole negligence of the car driver in which deceased was occupant. Permission be given to the Corporation to take appropriate action to file appropriate proceedings against the car driver. Learned counsel further stated that no evidence was produced on record to prove the income of the deceased, the Tribunal has considered all the aspects while passing Judgment and Order, no interference is required in it. She further submitted that at the time of accident deceased was 42 years old. The Tribunal has considered multiplier of 18 it should be 14.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Kolhapur (for short "**the Tribunal**"). It is claimant's case that on 12.08.1998 the deceased Samir along with his friend was proceeding towards Vijapur by Maruti car No. MAS 9452 and one Sanjay Chavan was driving the said car slowly and cautionsly by the side of the road. When the car reached near the spot of accident, one S.T. bus came from the opposite side in high speed, came to the side of the car and dashed the car due to which the deceased sustained grievous injuries and died on the spot. The accident occurred due to sole negligence of the driver of offending bus. The offence was registered against the driver of offending bus. Admittedly deceased was occupant in his car and his friend Sanjay was driving the car but Tribunal has considered 50% contributory negligence of the deceased and on that basis 50% compensation is deducted, I am unable to understand the observations of the Tribunal for fixing 50% contributory negligence of the deceased, as the deceased was occupant in the car hence his contributory negligence cannot be considered.

5. It is contention of learned counsel for the respondent No.1 that liberty be given to the respondent No.1/Corporation to file appropriate proceedings against the driver of the car. In my view, permission as prayed cannot be granted. Respondent No.1 /Corporation can file appropriate proceedings against the car driver as per provisions of law. To prove the income of the deceased the claimant No.1 Kalpana has examined herself at Exhibit-22. She has stated that deceased was 42 years old at the time of accident. He was doing a profession of legal consultancy for last 10 years. He was well qualified i.e. B.A. LL.B., MSW and he was earning

Rs.10,000/- or more per month. He was annually income was about Rs. 1,20,000/-. While dealing with the issue of income of the deceased, the Tribunal has observed that no cogent evidence produced on record to show the income of the deceased on that basis the Tribunal has considered monthly income of the deceased at Rs.2,000/- per month, in my view deceased was doing profession of legal consultancy he had 10 years practice. Considering his educational qualification, I am considering Rs.4,000/- as monthly income of the deceased. The Tribunal has not awarded 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 future prospects.*

5.1. The Tribunal has applied multiplier of 18 at the time of accident the deceased was 42 years so proper multiplier is 14. The Tribunal has awarded consortium amount on lower side. As per 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 to Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

6. Considering the above calculations, claimants are entitled for following compensation.

Particulars	Rs.	Entitlement
Monthly Income	Rs.	4,000.00
Annual Income X 12	Rs.	48,000.00
1/3rd personal deduction	Rs.	32,000.00
Future prospects (being aged 42 yrs)	Rs.	40,000.00
Multiplier Rs.40,000 X 14	Rs.	5,60,000.00
Consortium (Rs.48,000/- X 2 claimants)	Rs.	96,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	**6,92,000.00**
Less compensation awarded by the Tribunal	Rs.	1,66,000.00
Total enhanced amount	Rs.	**5,26,000.00**

7. In view of above, I pass following order.

ORDER

i. The appeal is allowed.

ii. The claimants are entitled for enhanced amount of Rs.5,26,000/- @ 7.5% interest per annum from the date of filing of claim petition till realisation of the amount. Out of this amount, Rs.1,32,000/- is consortium amount, the claimants are entitled for interest @ 7.5% per annum on this amount from 1st November 2017 till realisation of the amount.

iii. Insurance Company is directed to deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

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

v. The claimants shall deposit the deficit Court fees on enhanced amount as per rule.

8. The appeal is disposed of. All pending applications, if any also disposed of .

(SHIVKUMAR DIGE, J.)