IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1280 OF 2023

1. Deepali Nanasaheb Bodake
Age-32 years, Occ: Household

2. Shreya Nanasaheb Bodake
Age-8 years, Occupation : Education

3. Samarth Nanasaheb Bodake
Age-5 years, Occ: Education,
Applicant Nos.2 and 2A being minor Represented through Applicant No.1 Mother

R/o. Jai Malhar Housing So., Mhetre Wasti, Chikhlee, District-Pune, Presently R/o. Nagoba Galli, Bodhale Buwa Chawl, Behind Post Office, Kurduwadi, Taluka-Madha, District-Solapur.

4. Rajaram Pandurang Bodake
Age-67 years, Occ : Agricultural

5. Dropadi Rajaram Bodake
Age-67 years, Occupation : Household

R/o. Jai Malhar Housing So., Mhetre Wasti, Chikhlee, District-Pune, presently R/o. Laul, Taluka-Madha, District-Solapur.

(Org. Applicants)
...Appellants

Versus

1. M/s.Balaji Tiles Prop. Amit Chhajed }
Prop : Amit Chhajed }
Age-Major, Occupation : Business }
R/o. S.No.196, Old Pune Mumbai Road, }
Opposite Wyavahare Auto Mobiles, }
Chinchwadgaon, Pune-411 033. }

2. Divisional Manager } (Org.
Bajaj Allianz General Insurance Co. Ltd. } Opponents)
R/o. Tower-1, 1st Floor, Commerce Zone }
Ashok Path, Yerwada, Pune. } **...Respondents**

Mr.R.S. Alange, for the Appellants.
Mr.Sarthak S. Diwan, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st MARCH 2024

ORAL JUDGMENT :-

. By way of this Appeal, the Claimants are seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellants-Claimants that deceased was working as a Technician in Force Motors Limited and he was getting salary of Rs.33,397/- per month, but Tribunal has considered monthly income of the deceased at Rs.28,097/- by deducting allowances. The learned counsel further submitted that the Tribunal ought not to have

deducted the allowance as it was part of the salary except Income Tax. The learned counsel further submitted that, the Tribunal has awarded consortium amount on lower side. The learned counsel further submitted that the Tribunal has not awarded interest on compensation amount from the date of the filing of the Claim Petition. The learned counsel further submitted that the Tribunal has held 10% contributory negligence of the deceased on the ground that he was not wearing helmet, which is erroneous. Hence, requested to allow the Appeal.

3. The learned counsel for the Appellants relied on ***Fakir Chand Taneja & Ors V/s. Oriental Insurance Company Limited and Another.***[1]

4. It is contention of the learned counsel for the Respondent-Insurance Company that while considering salary of the deceased the Tribunal has deducted allowances, which is proper. The learned counsel further submitted that initially the Claim Petition was filed at Pune. Thereafter, on the Application of the Claimants it was transferred to Solapur. Delay was caused

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due to the Claimants, hence, Tribunal has awarded interest on the compensation amount properly. The learned counsel further submitted that the Tribunal has considered all the aspects while passing judgment and order. No interference is required in it. Hence requested to dismiss the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Solapur.

6. To prove the income of the deceased the Claimant's have examined Claimant No.1 Deepali Bodake at Exhibit-78 wife of the deceased. She has stated that the deceased was working as technician in Force Motors Limited, Akurdi, Pune. He was permanent employee. His last drawn salary was Rs.35,000/- per month. In support of evidence of PW-1 the Claimant's have examined PW-2 Rahul Gundecha, Assistant Manager in Accounts Department in Force Motors, Pune at Exhibit-62. He has stated that deceased Nanasaheb was serving as Technician Engineer in their company and he was getting salary of Rs.33,397/- per month. In cross-examination this witness

admitted that along with salary conveyance allowance, washing allowance and other allowances were being paid to the deceased.

7. While dealing with the issue of income of the deceased the Tribunal has observed that deceased was getting allowance's and after deducting allowances the Tribunal has considered monthly income of deceased at Rs.28,097/-. I am unable to understand the observations of the Tribunal, the Tribunal should have deducted Income Tax and Professional Tax and not other allowances. As per view of the Hon'ble Apex Court in the case of *Fakir Chand (Supra),* while considering the salary of the deceased the Tribunal has to deduct Income Tax and Professional Tax and not other allowances. Hence, after deducting Income tax and Professional Tax, I am considering income of deceased at Rs.33,397/-. Though the Tribunal has considered 10% contributory negligence of the deceased on the count that deceased was not wearing helmet, but no evidence was produced by the Insurance Company to prove that at the time of the accident the deceased was not wearing helmet. Hence, I am setting aside the observations of the Tribunal in respect of the

10% contributory negligence of the deceased. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***[2]**,** each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. The Tribunal has awarded interest on compensation amount from 6-12-2019, it should be from 28-4-2017 from the filing of the Claim Petition. Though the Petition was transferred from one place to other place, it cannot be a ground to deprive the Claimant's from getting interest on compensation. Considering these calculations the Claimants are entitled for following compensation.

Particulars	**Amount**
Monthly Income	Rs.33,397.00
Annual Income (Notional Income X 12 months)	Rs.4,00,764.00
(+) Future Prospects (50%)	Rs.2,00,382.00
Annual Income After Future Prospects	**Rs.6,01,146.00**
Multiplier 17	Rs.1,02,19,482.00
Deduction 1/4th	Rs.25,54,871.00
After Deduction	**Rs.76,64,611.00**

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Consortium (Rs.48,000 x 5)	Rs.2,40,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Total Compensation Payable	**Rs.79,40,611.00**
Tribunal Awarded	Rs.58,66,500.00
Enhanced Amount	**Rs.20,74,111.00**

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

ORDER

(i) The Appeal is allowed.

(ii) The Claimant's are entitled for enhanced amount Rs.20,74,111/- @ 7.5% per annum from date of the filing of the Claim Petition i.e. from 28th April 2017 till realization of the amount. Out of this amount Rs.2,76,000/- is consortium amount the Claimant's are entitled @ 7.5% interest on this amount from 1st November 2017 till realization of amount.

(iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 8 weeks after receipt of this order.

(iv) The Claimant's are permitted to withdraw the deposited amount alongwith interest.

(v) The Claimants are entitled for interest @ 8% from the date of filing of Petition i.e. from 28th April 2017 to 6th December 2019 for the awarded amount of Rs.58,66,500/-. The Claimant's are permitted to withdraw the said interest.

(vi) The Claimant's shall pay Deficit Court Fees on enhanced amount, if any, as per Rule.

(vii) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)