IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 199 OF 2023

	ICICI Lombard General Insurance Co. Ltd. Through its authorized representative Sanjeev Tripathi Having its office at CS No. 1082/1, Bagla Chowk, Near ICICI Bank, Kolhapur	)))))... Appellant
	Versus	
1	Rajendra Govind Joshi Age : 62 years, Occ. Business	))
2	Sonal Rajendra Joshi Age : 58 years, Occ. Housewife Both R/o. Vasantraj, CS No. 510-B, Plot No. 36, E-Ward, Ghatge Colony, Dist : Kolhapur	))))
3	Sayeed Mohammad Haneef Age : Major, Occ. Business R/o. D-81, Vashi Plaza, Sec-17, Vashi, Navi Mumbai	)))... Respondents

....

Mr. Rajesh Kanojia i/b. Res Juris, Advocate for the Appellant.
Mr. Ramdas A. Shelke, Advocate for Respondent Nos. 1 and 2.

CORAM : SHIVKUMAR DIGE, J.
DATED : 2nd DECEMBER, 2024.

ORAL JUDGMENT :

1. The issues involved in this appeal are the offending vehicle did not have permit, the driver of offending vehicle was not holding effective and valid driving licence and income of the deceased is considered on higher side.

2. Learned counsel for the appellant-Insurance company submitted that driver of offending vehicle was not holding effective and valid driving licence at the time of accident and the offending vehicle did not have valid permit. The Tribunal has considered monthly income of the deceased who was 3rd year engineering student at Rs.30,000/- p.m. it is on higher side but these facts are not considered by the Tribunal, hence requested to allow the appeal.

3. Learned counsel for the respondents submitted that the driving licence of the offending vehicle was produced before the Tribunal. The permit of the offending vehicle was produced before the Tribunal. The Tribunal has passed well reasoned order, hence no interference is required in it.

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"). While dealing with the issue of income of the deceased the Tribunal has observed that deceased was last year Mechanical Engineering student and had bright future prospects. He was excellent in academic career he could have easily succeeded and could have captured a good job or could have contributed in his family business. Considering these aspects the Tribunal has considered monthly income of the deceased @Rs.30,000/- pm. In my view, deceased had not completed his engineering education, he was taking education hence the income of the deceased considered by the Tribunal is on higher side. Considering educational qualification of the deceased, I am considering income of the deceased at Rs.23,000/- per month.

The Tribunal has awarded 50% future prospects which is on higher side. 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 40% future prospects as the deceased was not permanent employee.

The Tribunal has not awarded consortium amount. As per the view of the 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/- as a funeral expenses, Rs.18,000/- for loss of estate. There are two claimants.

The Tribunal has awarded interest rate of 7% p.a. on compensation amount from the date of petition till its realisation, it should be 7.5% p.a.

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

Particulars	Rs.	Entitlement
Monthly Income	Rs.	23,000/-
Future prospects 40%	Rs.	9,200/-
50% Personal Expenses	Rs.	16,100/-
Total Income	Rs.	16,100/-
Annual Income X12 X Multiplier	Rs.	34,77,600/-

(16,100 X 12 X 18)		
Consortium (Rs. 48,000 X 2)	Rs.	96,000/-
Loss of Estate	Rs.	18,000/-
Funeral Expenses	Rs.	18,000/-
Total	Rs.	36,09,600/-
Compensation awarded by the Tribunal	Rs.	48,90,000/-
Total amount refunded	**Rs.**	**12,80,400/-**

The Tribunal has awarded Rs.48,90,000/- as compensation if this amount deducts from the compensation amount considered by this Court, it comes to Rs.12,80,400/-. This is excess amount.

6. In view of the above, I pass following order:

ORDER

i. The appeal is allowed.

ii. The appellant/Insurance Company is permitted to withdraw Rs.12,80,400/- along with proportionate interest.

iii. The claimants are permitted to withdraw Rs.36,09,600/- @ 7.5% p.a. from the date of filing claim petition till realisation of amount.

iv. The statutory amount be transferred to the Tribunal. The parties are at liberty to withdraw it as per the Rules.

v. R & P be sent back to the Tribunal.

7. In view of disposal of appeal, pending applications, if any also disposed of.

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2024.12.12 11:29:08 +0700