IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 616 OF 2013

New India Assurance Co. Ltd. 1st Floor, Hutatma Smruti Mandir, Shopping Complex, Park Chowk, Solapur	… Appellant
Versus	
1 Smt. Yogita Shamsundar Rathi Age : 36 years, Occupation - Household 2 Kum. Madhavi Shamsundar Rathi Age – 16 years, Occupation : Education 3 Master Shrihari Shamsundar Rathi Age – 17 years, Occupation : Education (Nos. 2 and 3 being minor R/through their Mother i.e. Petitioner No.1. All R/o. BL No.4, Vrindavan Housing Society, Budhwar Peth, Solapur 4 Mr. Anil Laxman Kundur Age – Adult, Occupation : Business R/o. Maratha Vasti, Bhavani Peth, District – Solapur, Pin-413001	... Respondents

…………….

Mr. S. M. Dange, Advocate for the Appellant.
Mr. Saurabh Utangale i/b. Utangale & Co., Advocate for Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.
DATE : 18th APRIL, 2024

ORAL JUDGMENT :

1. The issue involved in this appeal is income of deceased is considered on higher side.

2. It is contention of learned counsel for the appellant/Insurance

Company that the Tribunal has considered income of deceased at Rs.3,50,000/- per year without any evidence on record which is on higher side. He further submitted that the income tax returns produced on record by the claimants shows the average income of the claimant is below Rs.3,50,000/- but the Tribunal has not considered this fact and has awarded exorbitant compensation. He further submitted that at the time of accident, the deceased was 42 year old, the proper multiplier is 14, however the Tribunal has applied multiplier of 15. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos. 1 to 3/ claimants that the Tribunal has considered all the aspects while passing Judgment and Order. Learned counsel further submitted that in the income tax year 2005-06 the Tribunal has not considered income from the profit of M/s. Godavari Industrial Traders at Rs.1,11,811/- as the said profit was exempted under Section 10(2A) of Income Tax Act. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount awarded on lower side, hence requested to allow the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Solapur (for short "**the Tribunal**"). To prove the income of deceased the claimant No.1 Yogita has examined herself at Exhibit-27. She has stated that deceased Shamsundar was Railway Contractor and he was earning Rs.5,00,000/- per annum and he used to pay income tax for every year. She produced xerox copy of income tax returns for the year 2004-05 and 2005-06 on record at Exhibit-5. In support of evidence of PW-1, the claimants have examined Sanjay Madda, Chartered Accountant at Exhibit-38. He has stated that deceased Shamsundar was his client and he would submit income tax returns in respect of income of deceased Shamsundar. He has produced original acknowledgment of income tax returns for the year 2004-2005, 2005-2006 and 2006-2007 of deceased Shamsundar, it is at Exhibit-39/1 to 39/3. The income tax returns for the year 2006-2007 was filed by the claimant No.1, it was filed after the death of the deceased. In support of their case, the claimants have examined Vishnudas Rathi at Exhibit-46, younger brother of the deceased. He has stated that he the deceased Shamsundar and their father were partners in the firm namely M/s. Godavari Industrial Traders and after the death of deceased Shamsundar, his wife became partner of the said firm. He produced xerox copy of the partnership deed of M/s. Godavari Industrial Traders, it is at Exhibit-43. While dealing with the issue of income of the deceased considering the evidence on record the Tribunal has considered yearly income of the deceased at Rs.3,50,000/-, I do not find infirmity in it. In my view, the income tax returns for the year 2003-2004 shows total income of Rs.1,28,300/-. The income tax returns of the year 2004-2005 shows income of Rs.3,16,655/- and income tax returns for the year 2005-2006 shows income of Rs.2,34,131/-. The income tax returns of year 2005-2006 shows that there was income from firms at Rs. 1,11,811/-. It is mentioned that profit exempted under Section 10 (2A), this income has not been considered. In my view, deceased was filing income tax returns and as per income shown in the income tax returns, it is considered by the Tribunal. Moreover, the Tribunal has not awarded future prospects and consortium amount awarded is on lower side. The amount of future prospects and consortium amount matches with the income amount considered by the Tribunal. At the time of accident, the deceased was 42 year old, proper multiplier is 14 but the Tribunal has applied multiplier of 15. By applying proper multiplier of 14 the excess amount comes to Rs.2,33,334/-. The appellant/Insurance Company is entitled for this amount.

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

<u>O R D E R</u>

(a) The appeal is partly allowed.

(b) The appellant is permitted to withdraw the amount of Rs.2,33,334/- along with proportionate interest out of deposited amount.

(c) The claimants are permitted to withdraw the balance amount along with proportionate interest.

(d) The statutory amount be transferred to the Tribunal. Parties are at liberty to withdraw it as per rule.

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

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2024.05.08 15:55:11 +0530