IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 362 OF 2022

Reliance General Insurance Co. Ltd.
Thane D.O. Kalpataru Prime,
Wagale Estate, Road No.16, Thane,
(Insurer of Tempo bearing No.MH-11-AL-4090)) ...Appellant

versus

1 Sujata Vishwanath Biman,
Age – 37 years, Occ.: Housewife.

2 Tulsi Vishwanath Biman,
Age – 18 years, Occ.: Education

3 Vrunda Vishwanath Biman,
Age – 14 years, Occ : Education,
Respondent No.3 is appearing through next friend and natural guardian i.e. Respondent No.1

4 Mahesh Tukaram Jadhav,
Resident of 771 B Ward, Rajaram Road, Ravivar Peth, Taluka Karveer, Kolhapur – 416012.
(Owner of Tempo bearing No.MH-11-AL-4090)) ...Respondents.
(Respondent Nos.1 to 3 are Original Applicants and Respondent No.4 is Original Opponent)

Ms. Shalini Shankar, Advocate for the Appellant.
Ms. Rina Kundu, Advocate for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd JANUARY, 2024.

Oral Judgment :

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

2. It is contention of learned counsel for the appellant that deceased was running printing press business. No evidence was produced on record to prove the income of the deceased, in spite of that, the Tribunal has considered the yearly income of deceased at Rs.3,84,275/-, which is on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 3/claimants that deceased was running printing press in the name and style of "M/s. Om Binders and Printers and used to earn Rs.50,000/- per month. The deceased used to file income tax returns. On that basis, the Tribunal has considered yearly income of the deceased. Learned counsel further submitted that the Tribunal has erroneously deducted an amount of Rs.2,500/- as professional tax, which is improper, it be added in the income of the deceased.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short "the Tribunal").

5. To prove the income of the deceased, claimant No.1-Sujata Biman, wife of the deceased examined herself. She has stated that deceased was running printing press in the name and style of M/s. Om Binders and Printers and he used to earn Rs.50,000/- per month. She further stated that deceased used to pay income-tax. She has placed on record income tax returns of the deceased for the Assessment Years 2017-2018, 2018-2019 and 2019-2020. Nothing elicited in the cross-examination of this witness. To support the evidence of CW-1, claimants examined Dixon Davis-CW-2, Income Tax Officer. He has stated that as per his office record, the deceased had filed income tax returns for the Assessment Years 2018-2019 and 2019-2020 wherein the income of Rs.3,86,523/- and Rs.3,88,027/- are shown as the income of the deceased. Considering the evidence on record, the Tribunal has considered the average income on the basis of income tax returns filed by the deceased and after deducting Rs.2500/- as professional tax, considered income at Rs.3,85,775/- per annum. I do not find infirmity in it.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
2. Respondent Nos.1 to 3/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)