IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 302 OF 2014
with
CROSS OBJECTION STAMP NO.35190 OF 2023

	Royal Sundaram Alliance General Insurance Co. Ltd., Sundaram Towers, 46, Whites Road, Royapettah, Chennai.	…	Appellant
	versus		
1	Jagdish Shankar Joshi, Age : 62 years, Occ. Nil.		
2	Meghana Jagdish Joshi, Age 50 years, Occ.Household.		
3	Shweta Dhaval Joshi (@ Shweta Vinay Bhide) Age : 27 years, Occ. Household, Nos.1 to 3 R/o: C-15, Nirmiti Heights, Shiv Tirth Nagar, Paud Road, Pune.		(Org. Claimants)
4	Pavan Dhanraj Karde, Occ. Owner and Driver of insured car, R/o : A-5/608, Atul Nagar, Opp. Cipla-Foundation, Warje, Pune – 52.	…..	(Owner/ Driver) Respondents

Mr. Rahul Mehta i/b. KMC Legal Venture, Advocate for the Appellant.
Mr. Yogesh Pande, Advocate for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th MARCH, 2024.

Oral Judgment :

1. The appellant-Insurance Company has preferred this appeal against the judgment and order passed by Motor Accident Claims Tribunal, Pune (for short “the Tribunal”). The claimants have filed cross objection for enhancement of compensation. As the appeal and cross-objection are against the same judgment and order, I am deciding it, by this common judgment.

2. It is contention of learned counsel for the appellant – Insurance Company that, at the time of the accident, the driver of the offending vehicle was not holding valid and effective driving license. Learned counsel further submitted that, at the time of the accident, deceased was under probation but the Tribunal has considered his whole salary as income, which is erroneous. Learned counsel further submitted that during the pendency of the claim petition, the widow of the deceased remarried, so the Tribunal should not have considered her as dependent of the deceased. Learned counsel submitted that the Tribunal has awarded consortium amount on higher side. He submitted that the while awarding compensation, the Tribunal should have considered the multiplier of the parents of the deceased instead of deceased. Hence,requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 3/claimants that while considering income of the deceased, bonus and leave encashment have not been considered, it be considered.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. To prove their defense that, at the time of the accident, the driver of the offending bus was not holding effective and valid driving license, the appellant – Insurance Company has not examined any witness, hence, I do not see merit in it. It is settled principle of law that if any defense is taken by the Insurance Company, it must be proved by producing evidence on record.

5.1. It is contention of learned counsel for appellant that during the pendency of the claim petition, the widow of deceased has remarried. In my view, though the widow has remarried, deceased was her husband and, at the time of filing claim petition, she was widow of deceased. Hence, her remarriage cannot be a ground to deprive her from getting compensation.

5.2. It is contention of learned counsel for the appellant that, at the time of the accident, deceased was under probation period and he was not permanent employee, hence, his monthly income should not have been considered. In my view, though the deceased was under probation, he was an employee and he was getting salary as he would have got as a permanent employee. The probation period is the initial period of service, so it cannot be said that deceased was working on temporary basis. Hence, the monthly income considered by the Tribunal is proper.

5.3. The Tribunal has awarded consortium amount of Rs.2,25,000/-, in my view, it is on higher side. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses. There are three claimants, the total comes to Rs.1,80,000/-.

5.4. It is the contention of learned counsel for the appellant that the multiplier as per the age of the parents should have been applied while calculating the compensation of the deceased. In my view, it is settled principle of law that the multiplier must be applied as per the age of the deceased. Hence, I do not see merit in it.

5.5. It has come on record that the monthly salary of the deceased was Rs.76,163/- but the Tribunal has not considered it. It appears from the record that gross salary of the deceased after deducting professional tax is Rs.75963/-. The Tribunal has considered monthly salary of the deceased at Rs.40,000/-, after deducting leave encashment of Rs.9500/-, bonus of Rs.21636/- and taxes of Rs.4,800/-. In my view, the Tribunal should not have deducted the bonus amount from the monthly income of the deceased. As per the view of the Hon'ble Apex Court in the case of ***National Insurance Company versus Indira Srivastava and ors.2008 ACJ 614***, the claimants are entitled for bonus amount. It is the contention of learned counsel for the appellant/insurance company that the claimants are not entitled for leave encashment. I agree with the contention of learned counsel for the appellant that claimants are not entitled for leave encashment. Considering the bonus amount, the monthly income of the deceased comes to Rs.66463/-. I am considering this amount as monthly income of the deceased. Considering this income, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.66463/- pm x 12)	Rs.	797556.00
50% towards future prospects		398778.00
Total		**1196334.00**
1/3rd deductions towards personal expenses	Rs.	398778.00
Total	Rs.	797556.00
Rs.797556/- x 17(multiplier)	Rs.	13558452.00
Medical expenses	Rs.	8737.00
Consortium (Rs.48000/- x 3 claimants)	Rs.	144000.00
Loss of Estate	Rs.	18000.00
Funeral Expenses	Rs.	18000.00
Total Compensation.		**13747189.00**

The Tribunal has awarded Rs.83,93,737/-, if this amount is deducted from the amount of Rs.1,37,47,189/- considered by this Court, it comes to Rs.53,53,452/-. The claimants are entitled for this amount.

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

O R D E R

1. First Appeal No.302 of 2014 is partly allowed.
2. Cross Objection (St.) No.35190 of 2023 is allowed.
3. The claimants are entitled for enhanced compensation of Rs.53,53,452/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount.
4. The claimants are not entitled for interest on delayed period of 9 years and 122 days on enhanced amount.
5. The appellant-Insurance Company shall deposit the enhanced amount along with proportionate interest thereon within eight weeks from the receipt of this order.
6. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
7. The claimants shall pay court fees on enhanced amount as per Rule.
8. The statutory amount in First Appeal No.302 of 2014 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.)