IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 1070 OF 2018

The National Insurance Co. Ltd.)
Royal Insurance Building,)
1st Floor, 14, J. Tata Road)
Churchgate Mumbai 400 020)….Appellant

Versus

1. Narayan Chindhu Gaikwad)
   Age: 52 years, Occ: Nil)

2. Bhagabai Narayan Gaikwad)
   Age: 48 years, Occ: Household)

3. Ranjeet Narayan Gaikwad)
   Age: 18 years, Occ: Education all r/o)
   Khalapur Krantinagar)
   Taluka, Khalapurd Dist: Raigad)

4. Sanjay Sawant r/o 123/402, Phajalganj)
   Kanpur)….Respondents

Smt. Poonam Mital, Advocate for the Appellant.
Mr. T. J. Mendon, Advocate for the Respondent Nos. 1 2 & 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th JANUARY, 2024.

Oral Judgment. :

1. The issues involved in this appeal are income of deceased is considered on higher side and confirmation of Insurance Policy.

2. It is contention of learned counsel for the Appellant that in written statement specific plea was taken by the Appellant/Insurance Company that policy was admitted subject to confirmation from the office, but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered monthly income of deceased at Rs.3,000/- per month without any evidence on record, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that though Respondents had taken plea and Insurance Policy was admitted subject to confirmation but till conclusion of the trial confirmation was not given, it shows that the policy was valid policy. Learned counsel further submitted that deceased was 32 years at the time of accident and he was a labourer on brick-klin and he was earning Rs.9,000/- per month but the Tribunal has considered his income on lower side. Learned counsel further submitted that consortium amount is awarded on lower side.

Hence, requested it be awarded.

4. I have heard both learned counsel. Perused Judgment and order passed by the Motor Accident Claims Tribunal Alibag, District Raigad (for short “the Tribunal”).

5. In written statement, the Respondent No.2/Insurance Company has pleaded that Insurance Policy is admitted subject to confirmation from the office. While dealing with this issue, the Tribunal has observed that xerox copy of the cover note of Insurance Policy of offending truck is produced on record by the Respondent No.2, it is at Exhibit-5/5. However, till passing judgment confirmation was not given nor any evidence was adduced, in respect of Insurance Policy hence, the Tribunal has accepted copy of cover note, I do not find infirmity in it. As policy was admitted by the Appellant/Insurance Company and no evidence was led to prove that the said policy, was not issue by the Insurance Company. To prove the income of deceased Claimants have examined PW-1 father of deceased. He has stated that deceased was working as labourer and he was master of making brick-klin and he was earning Rs. 9,000/- per month.

6. Considering the evidence on record, the Tribunal has

considered monthly income of deceased at Rs.3,000/- per month. I do not find infirmity in it. While awarding the compensation, the Tribunal has awarded Rs.10,000/- for funeral expenses and Rs.10,000/- for loss of love and affection, it is on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC),*** each claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are three claimants. The total of it comes to Rs.1,80,000/-, if the amount of Rs.20,000/- awarded by the tribunal deducted from it, it comes to Rs.1,60,000/-. The Claimants are entitled for this amount.

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

ORDER

i. Appeal is dismissed. No order as to costs.

ii. The claimant are entitled for enhanced amount of Rs. 1,60,000/- @ 7.5% per annum from 1st November, 2017 till realisation of the amount.

iii. The appellant/insurance company shall deposit the enhanced amount along with accrued interest thereon within six weeks after receipt of the order. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

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

8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)