

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 796 OF 2013

National Insurance Company Ltd.)
Mumbai Regional Office I,)
5th Floor, Sterling, Cinema Bldg.,) Appellant
65, Murzban Road, Fort, Mumbai-400 020) (Original Opp.No.2)

Versus

1	Jyothsna Satish Rao) Age : 31, Occ : Nil)	
2	Samanvay Satish Rao) Age : 9) Resp. No.2, being minor, through his) natural guardian Res. No.1)	
3	Shriniwas Rama Rao) Age : 65, Occ : Nil)) All R/o : E:-1/20, C-9, Trimurthy) Apartment, Sector No.10, Nerul, Navi) Mumbai, Dist : Thane)	
4	Mohoddin Babasaheb Attar) Age : Major, Occ : Transport,) R/o. Own House 957, Shahabad) Post : Kokan Bhavan, Dist : Thane)	Respondent No.1 to 3 are the Original Claimants No.1 to 3

Mr. Amol B. Gatne, Advocate for the Appellant.

Mr. Shashikant Gaikwad, Advocate for Respondent Nos.1 to 3/claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 25th JANUARY, 2024.

Oral Judgment :

1. The issues involved in this appeal are income of the deceased is considered on higher side and the amount of future prospects is awarded on higher side.

2. It is contention of learned counsel for the appellant-Insurance Company that the Tribunal has considered monthly income of the deceased at Rs.25,000/- without any evidence on record. Form No.16 produced on record does not reflect the pan number. Ledger account pages are produced on record shows the debit amount of Rs.11,390/- and other amounts. It shows that the deceased was not getting salary of Rs.25,000/- per month but the Tribunal has not considered this fact. Learned counsel further submitted that Tribunal has awarded 50% future prospects, it should be 40%. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondents/claimants that deceased was working as a Branch Manager in Kings Electronics Private Limited and he was getting salary of Rs.25,000/- per month. To prove the income of the deceased, his employer was examined. Documentary evidence is produced on record to prove the income of the deceased. On that basis, the Tribunal has considered monthly income of deceased, which is proper. The order passed by the Tribunal is legal and valid. No interference is required in it.

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, the claimants have examined claimant No.1 – Jyotsna Rao. She has stated that deceased was working as manager in Kings Electronics Private Limited and he was

getting monthly salary of Rs.25,000/- per month. In support of the evidence of PW-1, the claimants examined PW-2 Nikhil Mall, Accountant in M/s. Kings Electronics Private Limited. He has stated that deceased – Satish Rao was working in their company as Branch Manager, he was getting a salary of Rs.25,000/- per month. This witness produced Form No.16 on record, it is at Exhibit-47. In cross-examination, this witness admitted that pan number of the employee is required to be mentioned in Form No.16. This witness further stated that he has not brought documents to show that deceased was their permanent employee.

It is contention of learned counsel for the appellant-Insurance Company that copy of the ledger account produced on record, shows the amount of Rs.11,000/- and odd. In my view, the pages of ledger account are produced on record. On these pages PW-2 was not cross-examined by counsel for the appellant-Insurance Company, though it were produced on record. Form No.16 shows that deceased was getting monthly salary of Rs.25,000/-. Without, cross-examining the witness, the contention put up by the appellant in appeal cannot be considered. Hence, the salary of Rs.25,000/- considered by the Tribunal is proper.

It is contention of learned counsel for the appellant-Insurance Company that the Tribunal should not have awarded 50% future prospects, as PW-2 in cross-examination, has admitted that he has not brought documents to show that deceased was in permanent employment. In my view, in examination-in-chief, PW-2 has admitted that

deceased was working in their company as permanent employee. As per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700(SC)**, if deceased is permanent employee, he is entitled for 50% future prospects.

6. Considering the above reasons, the appeal is devoid of merit and I pass following order :

ORDER

1. The appeal is dismissed. No order as to cost.
2. The 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.
8. Learned counsel for the appellant-Insurance Company requested for stay of this order for eight weeks. The appeal is of the year 2016 and the accident is of the year 2009, hence, I am not inclined to stay the order. Request for stay is rejected.

(SHIVKUMAR DIGE, J.)