IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 806 OF 2018

Reliance General Insurance Co. Ltd., Thr. Its Corporate Office, 4th Floor, Chintamani Avenue Off Western Express Highway, Goregaon (E), Mumbai.	}	**...Appellant**

Versus

1. Smt.Pushpa Ankush Suryawanshi Age-32 years, Occ : Housewife	}	(Org.Pt. No.1)
2. Kum.Diksha Ankush Suryawanshi Age-18 years, Occ : Student	}	(Org.Pt. No.2)
3. Kum.Adiyta Ankush Suryawanshi Age-10 years, Occ : Student	}	(Org.Pt. No.3)
4. Kum.Piyush Ankush Suraywanshi Age-7 years, Occ: Student	}	(Org.Pt. No.4)
All R/at C-10, Prasudham, Opp. Aditya Birla Hospital, Thergaon, Pune-411 033.	}	
Nos.3 and 4 being minor thr. Their Legal Guardian Mother Applicant No.1 above	}	
5. Mr.Anant Pandurang Chor Age-Adult, Occ : Business R/at-Gawadi, Post-Sindh, Tal. Bhor, District-Pune.	}	(Org. Opp. No.2)

6. Baban Pandurang Suryawanshi Age-60 years, Occ : Nil, R/at Post Jiregaon, Taluka-Daund, District-Pune.	} } } }	
7. Mr.Ansar Akbar Shaikh Age-27 Occ. : Driver R/at Patil Nagar, House of Ajij Shaikh Chikhali, Taluka-Haveli, District-Pune-411 033	} } } } }	(Org. Res. No.3)
8. Mr.Ashpak Abdul Shaikh Age-Adult, Occ: Driver R/at Patil Nagar, House of Ajij Shaikh, Chikhali, Taluka-Haveli, District-Pune-411 033.	} } } } }	(Org. Res. No.4) **....Respondents**

Mr.Rahul Mehta i/b KMC Legal Venture, for the Appellant.
Ms.Ruchita Kadam a/w Ms.Bhakti Wast i/b Mr.Sanjiv Sawant, for the Respondents

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CORAM : SHIVKUMAR DIGE, J.

DATE : 26th APRIL 2024.

ORAL JUDGMENT :-

. The issues involved in this Appeal are that accident occurred due to negligence of the deceased and income of the deceased is considered on higher side.

2. It is contention of learned counsel for the Appellant that, the accident occurred due to negligence of the deceased, as

deceased dashed to the door of the car, due to which he fell down. But this fact is not considered by the Tribunal. The learned counsel further submitted that the Tribunal has considered annual income of the deceased at Rs.1,95,790/-, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, Income Tax Returns about income of the deceased were filed on record and on the basis of the average income, the Tribunal has considered income of the deceased which is proper. The learned counsel further submitted that deceased was proceeding on the motorcycle, the driver of the offending car stopped his car abruptly and open the door, the deceased dashed the door as he did not except that door would be opened by the driver. The offence was registered against the car driver. Moreover, the car driver did not step into witness box to prove the negligence of the deceased. The Tribunal has considered all the aspects while passing judgment and order, no interference is required in it. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Pune.

5. To prove the income of the deceased the Claimant No.1 Pushpa Suryawanshi examined herself. She has stated that deceased was Engineer and was doing private business job work. He was Income tax payee. In support of evidence of PW-1, the Claimant's have examined PW-2 Surya Kumar Dey, Inspector of Income tax Department, Akurdi, Pune. He has stated that deceased had filed Income Tax Return for financial years 2007 to 2010. His annual income for the financial years 2007-2008, 2008-2009 and 2009-2010 were Rs.1,95,970/-, Rs.90,390/- and Rs.2,21,650/- respectively.

6. While dealing with the issue of income of deceased the Tribunal has observed that the Income Tax Returns of 2010 cannot be considered as it is filed after the demise of deceased. The Tribunal has considered that Income tax Returns of Assessment Year 2008-2009 and 2009-2010 can be taken into consideration for ascertaining income of the deceased.

Considering the annual average income of these two years, it comes to Rs.1,43,189/- and after adding 25% future prospects in it, as per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi***[1]***,*** the Tribunal has considered annual income of deceased at Rs.1,95,875/-, I do not find infirmity in it.

7. It is contention of the learned counsel for the Appellant that, the Tribunal should have considered yearly income of income mentioned in the last year Income Tax Return's and Tribunal should not have awarded future prospects. In my view, it is settled principle of law that Court has to consider average income of the deceased as per Income Tax Returns produced on record. As per view of the Hon'ble Apex Court in the case of ***Pranay Sethi,*** the Claimant's are entitled for future prospects.

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

ORDER

(i) The Appeal is dismissed.

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(ii) The Respondent's-Claimant's are permitted to withdraw deposited amount along with accrued interest thereon.

(iii) The Appellant-Insurance Company shall deposit enhanced amount within eight weeks after receipt of the order.

(iv) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)