IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1184 OF 2011

The Oriental Insurance Co. Ltd. Regional Office No.II, Oriental House, 6th Floor, J.T. Road, Churchgate, Mumbai-400 020	}	**....Appellant** (Ori. Insurer No.1)

Versus

1. Smt.Lataben Mahendra Parmar Widow of the deceased, Aged-31 years	}
2. Kumar Vishal Mahendra Parmar Minor Son of deceased, Aged-7 years.	}
3. Kumar Hardik Mahendra Parmar Minor son of deceased Aged-5 years	}
4. Shri.Lakhamshi Manshi Parmar Father of the deceased, Aged-64 years	}
5. Smt.Mulbai Lakhamshi Parmar Mother of deceased, Aged-62 years. Applicant Nos.2 and 3 minors through their Mother and Nex friend Applicant No.1 Smt.Lataben M. Parmar, All R/at Vithal Nagar, Opp. Ravi Apartments, Sevaram Lalwani Road, Mulund (W), Mumbai-400 080.	}
6. Shri.Ramkumar Mehariya C/o. M/s. New Kumar Transport Corporation, Rawalapindi Garden, Opp. Telephone Exchange, Ghaziabad (Owner of Vehicle No.HR-38-H-9419)	}

7. Shri.Manishbhai Varjlal Patel B-5, Rang Avdhut Society, Parvat Patir, Surat, Gujrat. (Owner of Vehicle No.GJ-5-AR-8580)	}	
8. National Insurance Co. Ltd. WRO, Roayal Insurance Blodg., J.T. Road, Churchgate, Mumbai-20 Policy No.300605/31/03/6100868 Valid from 29-4-03 to 28-04-04	}	**....Respondents** (Respondent Nos.1-5 are the Org. Applicants and Respondent Nos.6,7 and 8 are Org. Opp. No.1,2 and Insurers No.2 Resply.)

WITH
FIRST APPEAL NO.19 OF 2014

1. Smt.Lataben Mahendra Parmar W/o Mahendra Lakhamshi Parmar	}	
2. Kumar Vishal Mahendra Parmar Minor Son of deceased	}	
3. Kumar Hardik Mahendra Parmar Minor son of deceased	}	
4. Shri.Lakhamshi Manshi Parmar Father of the deceased, Aged-64 years	}	
5. Smt.Mulbai Lakhamshi Parmar Mother of deceased, Aged-62 years. Applicant Nos.2 and 3 minors through their Mother and Nex friend Applicant No.1 Smt.Lataben M. Parmar, All R/at Vithal Nagar, Opp. Ravi Apartments, Sevaram Lalwani Road, Mulund (W), Mumbai-400 080.	}	**....Appellants**

Versus

The Oriental Insurance Co. Ltd. Regional Office No.II, Oriental House, 6th Floor, J.T. Road, Churchgate, Mumbai-400 020	}	....(Ori. Insurer No.1)
2. Shri.Ramkumar Mehariya C/o. M/s. New Kumar Transport Corporation, Rawalapindi Garden, Opp. Telephone Exchange, Ghaziabad (Owner of Vehicle No.HR-38-H-9419)	}	
3. Shri.Manishbhai Varjlal Patel B-5, Rang Avdhut Society, Parvat Patir, Surat, Gujrat. (Owner of Vehicle No.GJ-5-AR-8580)	}	**....Respondents**

Mr.Saumen Vidyarthi a/w Ms.Ishita Bhole and Mr.Mohit Turakhie, for the Appellant in FA No.1184 of 2022 and for Respondent No.1 in FA No.19 of 2014.
Ms.Ketki Gokhale i/b Mr.A.M. Gokhale, for the Appellant in FA No.19 of 2014 and for Respondents in FA No.1184 of 2011.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th JANUARY 2024

ORAL JUDGMENT :-

. First Appeal No.19 of 2014, it is not on board, taken on board. As connected matter is on board, both the matters are taken up for hearing together.

2. This Appeal is preferred by the Appellant-Insurance

Company against the judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Mumbai

3. The Respondents-Claimants have also preferred Cross Appeal for enhancement compensation as, Appeal and Cross Appeal are against the same judgment and order. Hence, I am deciding it by this common judgment.

4. It is contention of the learned counsel for the Appellant-Insurance Company that, the Tribunal has considered monthly income of deceased at Rs.7,000/- without any evidence on record, which is not proper and on that basis compensation is awarded, which is on higher side. Hence, requested to allow the Appeal.

5. It is contention of the learned counsel for the Respondents-Claimants that, the deceased was working as a Sales Manager and he was earning Rs.10,000/- per month. The employer was examined to prove the income of the deceased, but the Tribunal has considered monthly income of the deceased at Rs.7,000/- per month, which is on lower side. The learned counsel further submitted that, the Tribunal has not awarded

future prospects and consortium amount is awarded on lower side. Hence, requested to allow the Cross Appeal and dismiss the Appeal .

6. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

7. It is Claimant's case that, deceased was working as a Sales Manger with Suraj Metal and drawing Rs.10,000/- per month at the time of the accident. To prove the monthly salary of the deceased, the Claimant's examined PW-2 Sanjay Rana, Proprietor of the Suraj Metal, he has stated that the deceased was working with him as a Sales Manger, since 2002, initially salary of the deceased was Rs.4,000/- per month. At the time of the salary of the accident deceased was Rs.10,000/- per month. The Salary Certificate is at Exhibit-29. In cross-examination he has admitted that he has not filed any documents in respect of the service of the deceased and the documents regarding payment of the deceased. Considering the evidence on record the Tribunal has considered monthly income of the deceased at Rs.7,000/- per month. I do not find infirmity in it.

8. In my view, PW-2 has categorically stated that, the deceased was serving with him. The deceased was maintaining the family of five persons. Hence, I hold that monthly salary considered by the Tribunal is proper. It is not necessary to increase in the said salary nor reduce it as pleaded by the learned counsel's of the Appellant and the Claimant.

9. While awarding compensation the Tribunal has not awarded future prospects. As per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi***[1]***.*** The Claimant's are entitled for future prospects. As monthly income of the deceased considered on notional basis the Claimant's are entitled for 40% future prospects, hence, I am considering 40% future prospects.

10. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***[2]***,*** each claimant is entitled for Rs.48,000/- as consortium amount. There are five Claimants it comes to Rs.2,40,000/-, Rs.18,000/- for funeral

1 2017 ACJ 2700 (SC)
2 2018 ACJ 2782 (SC)

expenses and Rs.18,000/- for loss of estate. Considering these calculation's the Claimants are entitled for following compensation.

Particulars	**Amount**
Annual Income (Rs.7000/- per month)	Rs.84,000.00
(+) Future Prospects (40%)	Rs.33,600.00

	Rs.1,17,600.00
1/4th Deduction	Rs.29,400.00
Net Income	**Rs.88,200.00**
Multiplier 16	**Rs.14,11,200.00**
Loss of Consortium	Rs.2,40,000.00
Loss of Estate	(+) Rs.18,000.00
Funeral Expenses	(+) Rs.18,000.00
Total Just Compensation Payable	**Rs.16,87,200.00**
Awarded by Tribunal	Rs.10,38,000.00
Enhanced Amount	**Rs.6,49,200.00**

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

ORDER

(i) The First Appeal No.1184 of 2011 is dismissed.

(ii) The First Appeal No.19 of 2014 is partly allowed.

(iii) The Claimants are entitled for enhanced compensation of Rs.6,49,200/- @ 7.5% per annum from the date of the filing of Claim Petition till realization of the amount. Out of this amount Rs.2,76,000/- is consortium amount. The Claimant's are entitled for 7.5% interest on this amount from 1st November 2017 till realization of the amount.

(iv) The Appellant-Insurance Company shall deposit enhanced amount along with interest within six weeks, after receipt of the order.

(v) The Claimants are permitted to withdraw the deposited amount alongwith interest.

(vi) The statutory amount along with interest in Appeal No.1184 of 2011 be transferred to the Tribunal. The parties are at liberty to withdraw it.

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

(SHIVKUMAR DIGE, J.)