IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1790 OF 2007

	The New India Assurance Co. Ltd. Cooperage Road, Kirloskar Building, Mumbai Policy No. 141700/31/99/23513 Validity 30-10-1999 to 29-10-2000	))))…	Appellant
	versus		
1	Ronak Sunil Murarka Aged 6 years, son of the deceased Through his uncle and natural guardian Vinod S. Murarka, Aged 38 years, R/at : 101, Sundaram Mishri Complex, Om Nagar, Andheri (E), Mumbai – 400 069	))))))	
2	Surendra Manohar Nandoskar C/13, CCI.4, Sector 7, CBD, Navi Mumbai, Dist. Thane (Owner of Vehicle No. MWT-5645)	))))	
3	Girdharlal S. Murarka Aged 65 years, Father of the deceased **(Amendment carried out as per order dated 25/01/2010 and 13/08/2019 passed by this Hon’ble Court).**	)))))	
4	Geetadevi Girdharlal Murarka Aged 60 years, Mother of the deceased Both R/at :101, Sundaram Mishri Complex, Om Nagar, Andheri (E), Mumbai- 400 069	)))))…	Respondents

WITH
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SHUBHADA SHANKAR KADAM
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	R/at : 101, Sundaram Mishri Complex, Om Nagar, Andheri (E), Mumbai – 400 069	))	
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Mr. Devendranath S. Joshi a/w. Mr. Pradyumna Thakurdesai, Advocates for the Appellant in both Appeals.
Ms. Ketki Gokhale i/b. Mr.Avinash M. Gokhale, Advocate for Respondent Nos. 1 and 3 in FA/1790/2007 and for Respondent Nos. 1 and 4 in FA/1789/2007.

CORAM : SHIVKUMAR DIGE, J.

DATE : 2nd MAY, 2024.

Oral Judgment :

1. The issues involved in both these appeals are same, hence, I am deciding these appeals by this common judgment.

2. It is contention of learned counsel for the appellant-Insurance Company that the Tribunal has considered income of deceased in both appeals on higher side. Learned counsel further submitted that in first appeal No.1789 of 2007, the Tribunal has considered income of deceased at Rs.10000/- per month without any evidence on record. The income tax returns produced on record shows that deceased was earning less

amount. Learned counsel further submitted that in first appeal No.1790 of 2007, the income of deceased is considered at Rs.5,000/-per month without any evidence on record. It is stated that deceased was co-director in the company. Her income is considered on higher side. Hence, requested to allow the appeals.

3. It is contention of learned counsel for respondents/claimants that deceased – father of the claimant was a director in the company. He used to file income tax returns and his monthly income was more than Rs.10,000/- but the Tribunal has considered it at Rs.10,000/- per month. Learned counsel further submitted that deceased- mother of the claimant was co-director in the company and she was also earning handsome amount. Learned counsel further submitted that the Tribunal has not awarded future prospects. If the income considered by the Tribunal is along with future prospects, it is proper. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded.

4. I have heard both learned counsel, perused the judgment and order dated 21st January, 2006 passed by Motor Accident Claims Tribunal, Mumbai (for short "the Tribunal") in Application Nos. 2670 and 2671 of 2000.

5. To prove the income of the deceased, the claimant has examined Vinod Morarka at Exhibit-13. He has stated that deceased

Sunil and his wife were doing business of toys through Ronak Toys Private Limited. The company was registered on 11th August 1995. The deceased were filing income tax returns. The income tax returns for Financial Year 1999-2000 and 2000-2001 are produced on record, which are at Exhibit-9. He further stated that deceased – Sunil as a director of the company was taking salary of Rs.1,08,000/-per annum. The salary certificate is at Exhibit-10. The deceased purchased own premises for factory and residence and he was having his own car and profit running business. In support of evidence of PW1, the claimants have examined PW2-Ashok Jain, Chartered Accountant at Exhibit-21. He has stated that he knew deceased Sunil and his wife Priti. They were running the business in the name of Ronak Industries. Priti and Sunil were directors of their company. He has produced income tax returns of deceased for the year 2000-2001 and 2001-2002, which are at Exhibit-24. He further stated that deceased had taken loan of Rs.25,00,000/- from Vidya Sahakari Bank by mortgaging their factory premises. While dealing with the issue of income of both deceased, the Tribunal has observed that deceased Sunil was getting salary of Rs.1,08,000/- per annum and deceased Priti was director in the company. Considering the evidence on record, the Tribunal has considered income of deceased Sunil at Rs.10,000/- per month and income of deceased Priti at Rs.5,000/- per month. I do not find infirmity in it. In my view, deceased Sunil was running the company and he had obtained loan of Rs.25,00,000/- for his company business. It shows that his company was in form. Moreover, deceased Priti was co-director of the Company. The Tribunal has considered her monthly income at Rs.5,000/-, which is proper. Moreover, the Tribunal has not awarded future prospects and if amount of future prospects is added in the income considered by the Tribunal, the amount considered by the Tribunal is proper. Hence, I do not find merit in the contention that the Tribunal has considered monthly income of deceased on higher side.

5.1. The Tribunal has awarded consortium amount on lower 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. Claimant is the son of deceased and Original Respondent Nos.1 and 2 are the mother and father of deceased. They are entitled for consortium amount of Rs.1,80,000/-. The Tribunal has awarded Rs.25,000/- for funeral expenses in both appeals. If this amount is deducted from Rs.1,80,000/-, it comes to Rs.1,55,000/-. The claimant and original respondent Nos.1 and 2 are entitled for Rs.1,55,000/- as consortium amount in each appeal.

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

O R D E R

1. Both the appeals are dismissed. No order as to cost.

2. The claimant and original respondent Nos.1 and 2 are entitled for enhanced compensation of Rs.1,55,000/-@ 7.5% interest per annum from 1st November 2017 till realisation of the amount in each appeal.

3. The appellant-Insurance Company shall deposit the enhanced amount of Rs.1,55,000/- along with accrued interest thereon in each appeal within eight weeks from the receipt of this order.

4. The claimant and original respondent Nos.1 and 2 are permitted to withdraw the deposited amount along with accrued interest thereon.

5. The statutory amount in both the appeals be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

6. The claimant shall pay deficit court fees on enhanced amount as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)