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

FIRST APPEAL NO. 346 OF 2019

The Assistant Divisional Controller)
Uttar Pradesh State Road)
Transport Corporation)....Appellant
(Ori. Opp. Party)

Versus

1.Smt. Saeeda Ahalavali Shaikh)
Aged 25 years, Occu: Household)

2. Soheel Ahalavali Shaikh)
Aged 9 years, Occ: Education)

3. Saheel Ahalavali Shaikh)
Aged 7 years, Occu: Education)

4. Alfia Ahalavali Shaikh)
Aged 2 years, Occ: Nil)

5. Shri. Fakir Mohammad Jafar Shaikh)
Aged 60 years, Occ: Nil)

6. Chandbi Mohammad Fakir Shaikh)
Aged 55 years, Occ: Household)

All residents of Pandavalene,)
Near Phalke Samarak, Nashik)....Respondent

(Orig.Applicants)

Ms. Karishma Jhaveri i/b Mr. Navdeep Vora Asso., Advocate for the Appellant.
Mr. Pritesh K. Bohade, Advocate for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th JANUARY, 2024.

Oral Judgment. :

1. The issues involved in this appeal are contributory 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 accident occurred due to negligence of bus driver in which deceased was travelling but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered income of deceased at Rs.1,05,740/- per annum, which is on higher side. No evidence was produced on record to prove the said income. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that the deceased was travelling in the bus so no question of contributory negligence of the deceased arises. Learned counsel further submitted that deceased was running garage and doing the business of purchasing and selling cars and was earning Rs.2.9 Lakh per annum. The Income Tax Returns were filed on record to prove the income of deceased but the Tribunal has considered yearly income of deceased at Rs.1,05,740/-, which is proper. The Judgment and order passed by the Tribunal is legal and valid.

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

5. To prove the income of deceased, the Claimants have examined, the Claimant No.1 Smt. Saeeda Shaikh, she has stated that her husband was running garage and doing the business of purchasing and selling cars and was earning

Rs.2.9 Lakh per annum. The Income Tax Returns of year 2008-09 was filed on record, it shows total income of deceased of that year was Rs.2,89,670/-. In support of evidence of PW-1 the Claimants have examined Anil Kulkarni officer of Income Tax Office at Exhibit-17, he has stated that Income Tax Returns for the assessment year 2008-09 of the deceased was submitted in Income Tax Office, it is at Exhibit-19. Considering the evidence on record and after deducting the taxes, the Tribunal has considered Rs.1,05,740/- as income of the deceased. I do not find infirmity in it.

6. In respect of the issue of contributory negligence the deceased was travelling in bus, so no question of his contributory negligence arises. While awarding compensation the Tribunal has awarded consortium amount of Rs.37000/-, which 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/- for consortium and Rs. 18,000/- for

loss of estate and Rs.18,000/- for funeral expenses, total of it comes to Rs.3,24,000/-, if amount of Rs.37,000/- awarded by the tribunal is deducted from this amount. it comes to Rs.2,87,000. The Claimants are entitled for this amount.

7. It is contention of learned counsel for the Appellant that Tribunal has awarded 50% future prospects, it should be 40%. In my view, the deceased was self employed and as per view of Hon'ble Apex Court in the Case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC),*** the claimants are entitled for 40% future prospects.

8. Considering above calculations, the Claimants are entitled for following compensation.

Annual Income	Rs.1,05,740/-
Multiplier Rs.1,05,740/- X 15	Rs.15,86,100/-
Less ¾ amount	Rs.3,96,525/-
Total Income	Rs.11,89,575/-
Add: 40% Future Prospects	Rs.4,75,830/-
Loss of consortium Rs.48,000/- X 6 (Claimants)	Rs.2,88,000/-
Loss of Estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total	**Rs.19,89,405/-**
Less awarded by the Tribunal	Rs.18,21,400/-
Enhanced amount	**Rs.1,68,005/-**

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

ORDER

i. Appeal is partly allowed.

ii. The Claimants are entitled for enhanced amount of Rs.1,68,005 @ 7.5% per annum from the 1st November, 2017 till realisation of the amount.

iii. The Appellant shall deposit enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.

iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

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

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

(SHIVKUMAR DIGE, J.)