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

FIRST APPEAL NO. 1303 OF 2009

1. Smt. Radhabai w/o Ramkishanji Bhutada)
Age: 53 years. Occu: Household)
R/o. Bhavanipeth, Solapur)

2. Nikesh S/o. Ramkishanji Bhutada)
Age: 33 years. Occu: Business,)
R/o. Bhavanipeth, Solapur)....Appellants
(Orig. Applicants)

SHANTANU SHANKARSA DHUDUM Digitally signed by SHANTANU SHANKARSA DHUDUM Date: 2024.01.09 15:23:53 +0530

Versus

1. Mr. Mohiuddin s/o Mustage Patakewale,)
Age: Major, Occu: Business,)
R/o. Hiremath Colony, Near Navary,)
Talkies, Basvakalyan, Dist – Bidar.)

2. National Insurance Co. Ltd. Through its.)
Branch manager, Solapur)....Respondents

Mr. Shyam Kalyankar, Advocate for the Appellants.
Mr. Sandesh Deshpande, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th JANUARY, 2024.

<u>Oral Judgment. :</u>

1. By way of this appeal, the Appellants/Claimants are seeking

enhancement of compensation.

2. It is contention of learned counsel for the Appellants/Claimants that Tribunal has considered monthly income of deceased on lower side. It has come on record that deceased has filed Income Tax Returns but Tribunal has considered monthly income of deceased at Rs.5,000/- , which is not proper. Learned counsel further submitted that at the time of accident deceased was 61 year old. The multiplier should be 7 but Tribunal has applied 5, which is not proper. Learned counsel further submitted that Tribunal has awarded consortium amount on lower side.

3. Learned counsel for the Respondent No.2/Insurance Company submitted that while passing the order, the Tribunal has considered all the aspects and, on that basis, judgment and order is passed. No interference is required in it.

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

5. To prove the income of the deceased, the Claimants have examined Applicant No.2. He has stated that his father was working as commission agent in cloth business market and his father had paid

Income Tax in the years 2003-04 and 2004-05 which are at Exhibits-33 and 34. Considering the evidence on record, the Tribunal has considered monthly income of deceased at Rs.5,000/- per month. I am unable to understand the observations of the Tribunal, as the Tribunal has not considered average income of the Income Tax Returns filed by the Claimants. It is settled principle of law that, if Income Tax Returns are filed on record, the average income of the Income Tax Returns should be taken while considering the income of deceased. The average income as per Income Tax Returns comes to Rs.7,000/- per month. Hence, I am considering Rs.7,000/- per month as income of the deceased.

The Tribunal has applied multiplier of 5. At the time of accident, deceased was 61 year old. As per the view of Hon'ble Apex Court in the case of ***Sarla Verma & Ors. vs Delhi Transport Corp.& Anr. AIR 2009 SC 3104*** the proper multiplier is 7. Hence, I am considering this multiplier.

The Tribunal has awarded consortium amount 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/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

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

Monthly Income	Rs.7,000/-
Annual Income Rs.7,000/- X 12	Rs.84,000/-
Multiplier Rs.84,000/- X 7	Rs.5,88,000/-
Deduction towards personal expenses	Rs.1,96,000/-
Loss of Income of family	Rs.3,92,000/-
Loss of consortium for Petitioner No.1	Rs.48,000/-
Loss of consortium for Petitioner No.2	Rs.48,000/-
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs.18,000/-
Total Compensation	Rs.5,24,000/-
Less amount awarded by the Tribunal	Rs.2,10,000/-
Enhanced amount	Rs.3,14,000/-

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

ORDER

i. Appeal is allowed.

ii. The Claimants are entitled for enhanced compensation Rs.3,14,000/- @ 7.5 interest per annum from the date of filing of the Claim Petition till the realisation of the amount.

iii. Respondent No.2/Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks after receipt of the order.

iv. The tribunal has directed to pay the entire amount to Applicant No.1 only. The enhanced amount be paid to Applicant No.1.

v. Applicant No.1 is permitted to withdraw the deposited amount along with accrued interest thereon.

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

7. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)