IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1372 OF 2016

1	Puranchand @ Puranchandra Lachharam Rathod, Age about 52 years, Occupation Service (Father of the deceased).		
2	Durgadevi Puranchand Rathod, age about 48 years, occupation – Housewif (mother of the deceased). Both are residing at : (Old address : - Nalanda Building, Room No.6, A Wing, Plot No.64, 6th Floor, Naigaon East, Dist. Thane.) New address : - Village Chanod, Mukam, Post Chanod, Dist. Palli, Rajasthan State.	…	Appellants (Original Applicant Nos.1 and 2)
	Versus		
1	Prashant Jaywant Raut, adult, occupation Business, Address at Maljipada, Post Sashu Navghar, Taluka Vasai, Bassein Road (Vasai Road), Dist. Thane 401202, Maharashtra (Owner of Motor Dumper No.MH-04-EY-95).	….	Respondent No.1 (Original Opponent No.1)
2	Bajaj Allianz General Insurance Company Limited, Through its Divisional Manager, having their office at Magnetica, 6th floor, Service Road, Luisewadi, near New R.T.O., Teen Hath Naka, Thane (Insurer of Motor Dumper No.MH-04-EY-95) Policy No.OG-11-1911-1811-00000044.) Valid from 08.12.2010 to 07.12.2011.	….	Respondent No.2/Original Insurer

Ms. Rina Kundu, Advocate for the Appellant.
Mr. Sarthak S. Diwan, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th APRIL, 2024.

Oral Judgment :

1. The issue involved in this appeal is exoneration of the insurance company from paying compensation.

2. It is contention of learned counsel for the appellant/claimants that the deceased was their only son. At the time of the accident, deceased was 25 year old. He was doing carpentry work for maintaining his family and was earning Rs.40,000/- per annum but the Tribunal has considered his income at Rs.15,000/- per annum, which is on lower side. Learned counsel further submitted that the Tribunal has observed that, at the time of the accident, the driver of the offending vehicle was not holding effective and valid driving license, on that ground, the Tribunal has exonerated the Insurance Company from paying compensation. Learned counsel further submitted that the Tribunal has not awarded future prospects, it be awarded.

3. Learned counsel for respondent No.2-Insurance Company strongly submitted that no evidence is produced on record to prove the income of the deceased. The deceased was carpenter, the Tribunal has rightly considered the yearly income of deceased at Rs.15,000/-. Learned counsel further submitted that it has been proved before the Tribunal that, at the time of the accident, the driver of the offending vehicle was not holding effective and valid driving license, there was breach of terms and condition of the insurance policy, the Tribunal has rightly exonerated the

Insurance Company from paying compensation, hence, no interference is required in the judgment and order passed by the Tribunal.

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

4.1. Though respondent No.1-owner of the vehicle is served through paper publication, no one appears on his behalf, hence, I am deciding this appeal on merit.

5. To prove the income of the deceased, claimant No.1-Puranchand Rathod examined himself. He has stated that the deceased was doing carpentry work and he was maintaining his family, he was earning Rs.40,000/- per annum. The deceased was working with various employers. While dealing with the issue of income of the deceased, the Tribunal has observed that no evidence regarding income of the deceased was produced on record. Though the claimants have stated that deceased was working with various employers but no one's evidence was produced on record to support the income of the deceased. On that basis, the Tribunal has considered the yearly income of the deceased at Rs.15,000/- as per the schedule. I am unable to understand the observations of the Tribunal as claimant No.1, in his evidence, has specifically stated that the deceased was carpenter and he was maintaining his family. At the time of the accident, the deceased was 25

year old, he was the only son of the claimants. The deceased was a skilled worker. Considering these facts, though the employers have not been examined, it cannot be said that the deceased was not doing any work. Hence, I am considering Rs.40,000/- as annual income of the deceased.

5.1. The Tribunal has not awarded future prospects. As per the 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.

5.2. The Tribunal has not 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.

5.3. While awarding compensation, the Tribunal has observed that as the driver of the offending vehicle was not holding effective and valid driving license at the time of the accident, the Insurance Company is not liable to pay the compensation. I am unable to understand the observations of the Tribunal as it is settled principle of law that if there is breach of terms and condition of the insurance policy, and if, at the time of accident, the offending vehicle is insured with the Insurance Company, the Insurance Company is liable to pay the compensation and recover it from the owner of the vehicle. Hence, I hold that Insurance Company shall pay the compensation and recover it from the owner of the offending vehicle.

5.4. In view of above, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Annual Income of the deceased	Rs.	40,000.00
40% future prospects	Rs.	16,000.00
Total	Rs.	56,000.00
½ th deductions towards personal expenses	Rs.	28,000.00
Total	Rs.	28,000.00
Rs.28000/- x 18(multiplier)	Rs.	5,04,000.00
Consortium (Rs.48000/- x 2 claimants)	Rs.	96,000.00
Loss of Estate	Rs.	18,000.00
Funeral Expenses	Rs.	18,000.00
Total Compensation.	**Rs**	**6,36,000.00**

The Tribunal has awarded Rs.2,16,500/-, if this amount is deducted from the amount of Rs.6,36,000/- considered by this Court, it comes to Rs.4,19,500/-. The claimants are entitled for this amount.

5.5. Learned counsel for the appellants/claimant submitted that respondent No.2-Insurance Company has not deposited any amount as they were exonerated by the Tribunal, hence, she requested that Insurance Company be directed to deposit the total compensation considered by this Court along with interest thereon.

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

O R D E R

1. The appeal is allowed.
2. The appellants/claimants are entitled for enhanced compensation of Rs.4,19,500/-@ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,32,000/- is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
3. Respondent No.2-Insurance Company shall deposit the total compensation amount of Rs.6,36,000/- along with accrued interest thereon within eight weeks from the receipt of this order.
4. The appellants/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
5. The appellants/claimants shall pay court fees on enhanced amount as per Rules.
6. Respondent No.2-Insurance Company is at liberty to recover the total compensation amount along with interest from the owner of the offending vehicle.

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

(SHIVKUMAR DIGE, J.)