IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.544 OF 2024
WITH
CROSS OBJECTION (ST) NO.7678 OF 2024

NILAM SANTOSH KAMBLE
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Date: 2024.05.10 18:59:08 +0530

The New India Assurance Co. Ltd.	}	
North Lanes Shopping Complex,	}	
B-Wing, 2nd Floor, Vartak College Road,	}	
Near Vasai Railway Station, Platform No.2,	}	
Vasai, Taluka & District-Palghar-401 202	}	
	}	
Present Address :	}	
	}	
The New India Assurance Co. Ltd.,	}	
Mumbai Legal Hub	}	
Ground Floor, Head Office, 87, M.G. Road,	}	
Fort, Mumba-400 001.	}	**...Appellant**

Versus

1. Alka Vijay Bhoir	}	
Age-31 years, Occ : Household	}	
2. Miss Nakshtra Vijay Bhoir	}	
Age-05 years, Occ : Student	}	
3. Mrs.Jaywanti Navshya Bhoir	}	**(R/Nos.1 to 3**
Age-58 years, Occ : Household	}	**are Org.**
	}	**Applicant)**
All R/at Ganesh Nagar, Behind Jogmaya,	}	
Kirana Store, Lokmanya Pada No.3, Thane	}	
(W).	}	

4. Doshi Travel LLP	}	(R/No.4 Org.
R/at 164/B, Ram Nivas, Dr.Ambedkar Road,	}	Opponent)
Opp. Parsi Gymkhana, Dadar,	}	
Mumbai-400 014.	}	**...Respondents**

Ms.Jyoti Bajpayee, for the Appellant.
Mr.Shirshak Chavanke, for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd MAY 2024

ORAL JUDGMENT :-

. 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), Palghar.

2. The Claimant's have also preferred Cross Objection for enhancement of the compensation. As Appeal and Cross Objection are against same judgment and order, I am deciding it by this common judgment.

3. It is contention of the learned counsel for the Appellant-Insurance Company that, the net pay of the deceased was Rs.55,925/-, but the Tribunal has considered monthly income at Rs.62,620/- without any evidence on record. The

Tribunal has not deducted Income Tax and Professional Tax from the said income and on that basis compensation is awarded, which is on higher side. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondent's-Claimant's that, the deceased was Police Constable. He was permanent employee and his gross salary was at Rs.99,270/- per month. After deduction of Income Tax and Professional Tax, the Tribunal has considered his monthly income at Rs.62,620/-, which is proper. The learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded. Hence, requested to dismiss the Appeal.

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

6. Admittedly, the deceased was Police Constable. While considering his income, the Tribunal has considered his income at Rs.62,620/-. Salary slip is at Exhibit-44. The salary slip shows the net salary was Rs.55,925/-, after deduction of the Income Tax and TDS. I am considering this salary as income of the deceased.

The Tribunal has not awarded funeral expenses and loss of estate. 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***[1]**,** each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. The Tribunal has awarded interest @ 6% on compensation amount, it should be 7.5%. Hence, I am considering @ 7.5% interest on compensation amount awarded by the Tribunal. Considering this calculation the Claimants are entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.55,925.00
Add : 50% Future	Rs.83,888.00
Less: 1/3rd Deduction	Rs.55,926.00
Rs.55,925 x 12 x 15	Rs.1,00,66,680.00
Add: Consortium Rs.48,000/- x 3	Rs.1,44,000.00
Add : Loss of Estate	Rs.18,000.00
Add : Funeral Expenses	Rs.18,000.00
Total Just Compensation	**Rs.1,02,46,680.00**

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Less : Compensation awarded by the Tribunal	Rs.1,12,71,600.00
Excess Amount	**Rs.10,24,920.00**

7. The Appellant is entitled for excess amount of Rs.10,24,920/-.

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

ORDER

(i) The Appeal is partly allowed.

(ii) The Cross-objection is allowed.

(iii) The Appellant-Insurance Company is permitted to withdraw excess amount of Rs.10,24,920/- with proportionate interest, out of the deposited amount.

(iv) The Claimant's are entitled for balance compensation @ 7.5% interest on it from date of filing of Claim Petition till realization of amount instead of 6%. The additional interest amount be adjusted in the excess amount.

(v) The statutory amount in First Appeal No.544

of 2024 be transferred to the Tribunal. The parties are at liberty to withdraw it.

(vi) In the operative order in Clause (iv), the Tribunal has observed that out of payable amount to Applicant's, an amount of Rs.25 lakhs each be kept in the Fixed Deposit in the Nationalised Bank, but period is not mentioned. This Clause No.4 in order passed by the Tribunal in respect of the Fixed Deposit is set aside.

(vii) The Claimant shall pay Deficit Court Fees on enhanced amount, if any, as per Rules.

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

(SHIVKUMAR DIGE, J.)