IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1728 OF 2008

1.	Bageshree Abhay Kontamwar, Age-40 years, Occ : Household.		
2.	Kunal Abhay Kontamwar Age-16 years, Occ : Education.		
3.	Shashank Abhay Kotamwar Age-08 years, Occ : Education, (Appellant Nos.2 and 3- Minors, Through Their Natural Guardian & Mother-Appellant No.1)		
4.	Keshavrao Gagaganna Kontamwar Age-90 years, Occ: Nil		
5.	Smt.Suprabha Keshavrao Kontamwar Age-82, years, Occ : Nil All R/at Vrindavan Housing Complex, Sector-D ‘B” Wing, Flat No.12, Paud Road, Pune-411 038.		(Org. Applicants) ….Appellants
	Versus		
1.	Prassanna M. Tamhankar, Age-Adult, Occ : Service, R/at : C-7, Shivneri State Bank Colony, Paud Road, Pune-411 038.		
2.	The New India Assurance Co. Ltd., Wakadewadi D.O., 15-A Bhale Estate, Mumbai-Pune Road, Wakadewadi, Pune-411 003.		(Org. Opponents) ….Respondents

Mr. Yogesh Pande, Advocate for the Appellant.
Ms. Poonam Mital, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th APRIL, 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 the deceased was working as Sales Manager in Polechem India and he was getting gross salary of Rs.16169/- per month. The Tribunal has considered the salary income of the deceased but while calculating the compensation, the Tribunal has deducted allowances from the said salary, which is erroneous. Learned counsel further submitted that the Tribunal should have deducted professional tax and income tax from the salary amount. Learned counsel further submitted that, at the time of the accident, the deceased was 42 year old, so the proper multiplier is 14 but the Tribunal has applied multiplier of 13. Learned counsel further submitted that the Tribunal has deducted 1/3rd amount for personal expenses, there are five claimants, it should be 1/4th. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded and requested to allow the appeal.

3. It is contention of learned counsel for Respondent No.2-Insurance Company that the Tribunal has considered all the aspects while passing the judgment and order. Income tax and professional tax needs to be deducted from the salary of the deceased. The allowances cannot be termed as income of the deceased. The order passed by the Tribunal is legal and valid, no interference is required in it.

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

5. While dealing with the issue of income, the Tribunal has considered monthly income of the deceased at Rs.16169/- but while calculating compensation, the Tribunal has deducted allowances of Rs.4875/- towards house rent, Rs.2000/- towards conveyance, Rs.1000/- towards medical allowance and Rs.300/- towards educational allowance and Rs.1181/- as deductions. The Tribunal has observed that the amount of house rent, conveyance and medical allowance are perks and these amounts cannot be considered as salary. On that basis, the Tribunal has considered monthly income of the deceased at Rs.7294/-. I am unable to understand the observations of the Tribunal regarding deductions of the allowances from salary income. The Hon'ble Apex Court in the case of ***Fakir Chand Taneja and ors. Versus Oriental Insurance Co.Ltd. 2023 ACJ 338*** has held that the allowances are part of the salary and they cannot be deducted from the salary income of the deceased. Hence, I am deducting Rs.200/- as professional tax. It appears from the salary slip that there is deduction of income tax, hence, I am deducting only professional tax. After deducting Rs.200/- towards profession tax, the salary of the deceased comes to Rs.15869/-. I am considering this amount as monthly income of the deceased.

5.1. While awarding compensation, the Tribunal has deducted 1/3rd amount for personal expenses. There are five claimants, it should be 1/4th amount. Hence, I am considering 1/4th amount for personal expenses.

5.2. At the time of the accident, the deceased was 42 year old. The Tribunal has applied multiplier of 13, it should be 14.

5.3 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. There are five claimants, it comes to Rs.2,76,000/-.

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

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.15869/- pm x 12)	Rs.	1,90,428.00
40% future prospects	Rs.	76,171.00
Total	Rs.	2,66,599.00
¼ th deductions towards personal expenses	Rs.	66,650.00
Total	Rs.	1,99,949.00
Rs.1,99,949/- x 14 (multiplier)	Rs.	27,99,286.00
Consortium (Rs.48000/- x 5 claimants)	Rs.	2,40,000.00
Loss of Estate	Rs.	18,000.00
Funeral Expenses	Rs.	18,000.00
Total Compensation.	**Rs.**	**30,75,286.00**

The Tribunal has awarded Rs.7,65,000/-, if this amount is deducted from the amount of Rs.30,75,286/- considered by this Court, it comes to Rs.23,10,286/-. The claimants are entitled for this amount.

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.23,10,286/- @ 7% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.2,76,000/- 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. The appellants/claimants are not entitled for interest for the delayed period of 3 years and 119 days.
4. Respondent No.2/Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
5. The appellants/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
6. The appellants/claimants shall pay court fees on enhanced amount as per Rule.

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

(SHIVKUMAR DIGE, J.)