

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 746 OF 2018

Reliance General Insurance Co. Ltd.)
 4th Floor, Chintamani Avenue, Off)
 Western Express Highway, next to)
 Virwani Industrial Estate, Goregoan (E))
 Mumbai 400 063)Appellant

Versus

1 Kamalakar Laxman Vaykul)
 (since deceased his name is deleted))
 2 Shubhadra Kamalakar Vaykul)
 Age: 51 years)
 3 HARSHALA Kamalakar Vaykul)
 Age: 18 years)
 Residing at 301, Jagannath Apartment,)
 Near Shiv Shankar Plaza, Sector-09,)
 Airoli, Navi Mumbai)
 4 Ashwini Ashok Mundhe,)
 Adult Occupation: Business)
 Residing at Chamberlin, Post Mohapada,)
 Tal. Panvel, Dist. Raigad)Respondents

Ms. Poonam Mital, Advocate for the Appellant.

Mr. Rohan S. Darandale, Advocate for the Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th JANUARY, 2024.

Oral Judgment :

1. The issues involved in this appeal are deduction of amount for personal expenses and compensation awarded under various other heads are on higher side.

2. It is contention of learned counsel for the appellant-Insurance Company that the Tribunal has awarded Rs.4,75,000/- under the head of love and affection, loss of estate and funeral expenses, which is on higher side. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the respondents/claimants that Tribunal has considered all the aspects and on that basis, judgment and order is passed. Learned counsel further submitted that while calculating compensation, the Tribunal has deducted one-half income of the deceased for personal expenses, it should be one-third. He relied on **Sarla Verma & Ors vs Delhi Transport Corp.& Anr. (2009) 6 SCC 121**. Hence, requested to dismiss the appeal.

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

5. While calculating compensation, the Tribunal has awarded Rs.2,50,000/- for love and affection to claimant Nos.1 to 3, Rs. 2,00,000/- under the head of loss of estate and Rs.25,000/- under the head of funeral expenses. The total comes to Rs.4,75,000/-. It is on higher 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 three claimants. The total

comes to Rs.1,80,000/-. If this amount is deducted from Rs.4,75,000/- awarded by Tribunal, it comes to Rs.2,95,000/-. The appellant-Insurance Company is entitled for refund of this amount.

6. It is the contention of learned counsel for respondents/ claimants that while calculating compensation, the Tribunal has deducted one-half amount for personal expenses as deceased was a bachelor. The Hon'ble Apex Court in **Sarla Verma (Supra)** has held that where the family of the bachelor is large and dependent on the income of the deceased, as in the case where he has a widowed mother and large number of younger non-earning sisters or brothers, his personal and living expenses may be restricted to one-third and contribution to the family may be taken as two-third. In the present case, deceased was 23 year old and it is claimants' case that deceased was earning member of the family and she was not married, she had unmarried sisters and old parents. Considering this fact, the Tribunal should have deducted one-third amount for personal expenses, but the Tribunal has deducted one-half amount for personal expenses, which is not proper. As per the calculations, if 1/3rd amount is deducted from personal expenses instead 1/2 considered by the Tribunal, the amount awarded by the Tribunal on higher side under other heads, it matches. Hence, it is not necessary to award the enhanced amount to the claimants.

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

ORDER

1. The appeal is dismissed. No order as to cost.
 2. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 3. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)