IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1055 OF 2018

Reliance General Insurance Co. Ltd. 4th Floor, Chintamani Avenue, Off Western Express Highway, Next to Virwani Industrial Estate, Goregaon (E), Mumbai-400 063	}	**...Appellant**
Versus		
1. Aasha Anil Bhoir Age-25 years, Widow of deceased	}	
2. Kumar Aniket Anil Bhoir Age-1 year, Son of the deceased	}	
3. Ramchandra Shivram Bhoir Age- 68 years Father of the deceased	}	
4. Sitabai Ramchandra Bhoir Age-62 years, Mother of the deceased All R/at Flat No.404, Shivam Apartment, Near Shivsena Shakha, Rahgunath Nagar, Wagle Estate, District-Thane.	}	
5. Radhakisan Dagadu Ghayat R/at Plot No.37, Suryawadi, Hatmali, Po. Naygvhan, District-Aurangabad (Owner of the tempo No.MH-20-BG-6892)	}	**...Respondents**

WITH
CROSS OBJECTION (ST) NO.12007 OF 2023

Reliance General Insurance Co. Ltd. }
Office at Anil Dhirubhai Ambani Group, }

Koparkhairane, Navi Mumbai, Taluka & District-Thane.	} }	**...Appellant**

Versus

1. Aasha Anil Bhoir Age-40 years, Occ : Housewife (Widow of deceased)	} }	
2. Kumar Aniket Anil Bhoir Age-16 year (Son of the deceased)	} }	
3. Shri.Ramchandra Shivram Bhoir Died on 1-2-2022 (Father of the deceased)	} } }	
4. Sitabai Ramchandra Bhoir Age-76 years, Mother of the deceased	} } }	
Respondent/Cross Appellant No.2 is minor, therefore, representing through his next friend, Applicant No.1, mother, natural guardian.	} } } } }	
All the above Cross Appellant/Respondent No.1,2 and 4 are R/at Flat No.404, Shivam Apartment, Near Shivsena Shakha, Rahgunath Nagar, Wagle Estate, District-Thane.	} } } } }	....Respondents/ Cross Appellants/ Original Applicants in FA No.1055 of 2018
5. Radhakisan Dagadu Ghayat R/at Plot No.37, Suryawadi, Hatmali, Po. Naygvhan, District-Aurangabad (Owner of the tempo No.MH-20-BC-6892)	} } } } }	**...Respondents**

Ms.Poonam Mital, for the Appellant in FA No.1055 of 2018 and for the Respondent in XOBST No.12007 of 2023.
Ms.Rina Kundu, for Respondent Nos.1 to 4 in FA No.1055 of 2018 and for Appellants in XOBST No.12007 of 2023.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th JANUARY 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is income of deceased considered on higher side. The Respondent-Claimant has also filed Cross-objection for enhancement of compensation.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the Tribunal has considered monthly income of deceased at Rs.8,000/- per month, without any evidence on record and on that basis compensation is awarded, which is not proper. The learned counsel further submitted that, the Tribunal has awarded amount under conventional head at Rs.3,25,000/-, which is on higher side. Hence requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the deceased was getting salary at Rs.25,000/- per month. But the Tribunal has considered monthly income of deceased at Rs.8,000/- per month, which is on lower side. The learned counsel further submitted that, the

Tribunal has not awarded future prospects, hence it be awarded.

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

5. To prove the income of deceased the Claimant No.1 examined herself. She has stated that the Applicant was doing business of bricks and from said business he was getting Rs.10,000/- per month. To support evidence of PW-1 the Claimant's have examined PW-2 Ashok Tembe, he has stated that, the deceased was supplying bricks to him and he would pay Rs.25,000/- monthly to the deceased. In cross-examination this witness admitted that, he has not produced bill or documentary proof in respect of the transaction's with the deceased. Considering the evidence on record the Tribunal has considered Rs.8,000/- per month as income of deceased.

6. In my view deceased was doing the business of bricks and he was 30 years old at the time of the accident. He was maintaining family of three persons, though PW-2 has stated that, he was paying Rs.25,000/- per month to the deceased, but no

evidence is produced on record. It has come in the evidence of PW-1 that, the deceased was earning Rs.10,000/- per month. There is no reason to disbelieve the evidence of PW-1. Hence, I am considering monthly income of deceased at Rs.9,000/- per month. The Tribunal has not awarded future prospects. As per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi***[1]***,*** the Claimant's are entitled for 40% future prospects. The Tribunal has awarded Rs.3,35,000/- under conventional head, it is on higher side. As per view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***[2]***,*** each Claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. Considering above calculations, the Claimant's are entitled for following compensation.

Particulars	**Amount**
Monthly Income	Rs.9,000.00
Future Prospects 40%	Rs.3,600.00

1 2017 ACJ 2700 (SC)

2 *2018 ACJ 2782 (SC)*

Total Income	Rs.12,600.00
3/4th Income	Rs.9,450.00
1/4th Deduction	Rs.3,150.00
Dependency Rs.9,450/- x 12 months x 12 factor	**Rs.19,27,800.00**
Consortium for four Applicants	Rs.1,92,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Total	Rs.21,55,800.00
Tribunal awarded	Rs.16,49,000.00
Enhanced Amount	**Rs.5,60,800.00**

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

ORDER

(i) Appeal is partly allowed.

(ii) Cross-objection is partly allowed.

(iii) The Claimants are entitled for enhanced compensation of Rs.5,60,800/- @ 7.5% per annum from the date of the filing of Claim Petition till realization of the amount.

(iii) The Appellant-Insurance Company shall deposit enhanced amount alongwith accrued interest thereon within six weeks after receipt of this order.

(iv) The Claimants are permitted to withdraw the deposited amount alongwith interest.

(v) The statutory amount along with interest be transferred to the Tribunal. Parties are at liberty to withdraw it as per Rule.

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

(SHIVKUMAR DIGE, J.)