IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.3034 OF 2006

The New India Assurance Co. Ltd. Having Its Thane Divisional Office, At : Shivkripa Commercial Centre, Gokhale Road, Navpada, Thane.	} } } }	(Org. Opponent No.2) **….Appellant**
Versus		
1. Smt.Neela Anand Phadke Age-50 years, Occ : Household **2. Priti Anand Phadke** Age-24 years, Occ : Nil. **3. Akshay Anand Phadke** Age-15 years, Occ: Student (Applicant No.3 being the minor Represented through the next friend i.e. the Applicant No.1 being the mother and natural guardian of minor Applicant) All the Applicants R/at Flat No.A-22, 6th Floor, Kalpataru, Bhakti Mandir Road, Naupada, Thane.	} } } } } } } } } } } } } } } }	(Org. Applicants)
4. Shri.Eknath Daulati Bhargude Age-Adult, Occupation : Business, At & Post Palashi, Taluka-Khandala, District-Satar.	} } } }	(Org. Opponent No.1) **….Respondents**

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Ms.Poonam Mital , for the Appellant.
Mr.Rohan S. Darandale, for Respondent Nos.1 to 3.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 20th FEBRUARY, 2024.

ORAL JUDGMENT :-

. The issue involved in this Appeal is income of deceased is considered on higher side.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the deceased was Proprietor of one company but while awarding compensation the Tribunal has considered income of wife and daughter of deceased who were proprietor of other companies, which is erroneous. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for Respondent-Claimant's that, the deceased was Proprietor of one company and his wife and daughter were proprietor of other companies, but the deceased was looking after all the companies as his daughter was taking education at that time and his wife was housewife. It has come in the evidence of the Claimant No.1 that her husband was looking after business of companies. After his death all companies are closed down, on that basis Tribunal has considered income of all the companies as

income of the deceased, which is proper. The learned counsel further submitted that, the Tribunal has awarded consortium amount on lower side, which is not proper, it be awarded and requested dismiss the Appeal.

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 the deceased the Claimant No.1 Neela Phadke, wife of deceased examined herself at Exhibit-18. She has stated that the deceased was masters in Mechanical Engineering. He worked with Kirloskar, Qumatic, Voltas and Bharat Forge Companies. He started his own business in the year 1988. He was doing business of manufacturing and supplying packaging machines to the various companies in the name and style M/s.Akshay Consultant, M/s.Akshay Industries and M/s. Akshay Engineering. His income from all these business was around Rs.6 lakhs per annum. He was filing Income Tax Returns regularly. She further stated that Akshay Engineering Company was in the name of her daughter and Akshay Industry was in the name of this witness and Akshay Consultants was in

the name of her husband and her husband was looking after the daily business of all these companies. She further stated that on the date of the accident her daughter was taking education whereas she was housewife. All the Claimant's were dependent exclusively upon income of husband and he was the only earning member of their family. After the death of her husband she could not run business, therefore all the companies were closed down.

6. In cross-examination she has stated that her education qualification is B.A. Honors. She was not assisting her husband in his business. She has admitted that, she, her husband and her daughter Preeti were running three different companies separately in their Proprietor capacity. She further admitted that, there were Sales Tax Registration number of these three companies and Income Tax was being paid by each Proprietor separately in their name. She denied suggestions that her husband was not doing business in the name of Akshay Consultant also.

7. While dealing with the issue of income of the deceased the Tribunal has observed that, the deceased was looking after the business of three companies. The income tax returns of income of the deceased

are filed on record. After the death of the deceased the business of all three companies are closed. On these grounds the Tribunal has considered yearly income of the deceased at Rs.3,64,000/- per annum.

8. It is contention of the learned counsel for the Appellant-Insurance Company that the income of the wife of deceased i.e. Claimant No.1 and daughter of deceased i.e. Claimant No.2 cannot be considered as income of deceased. In my view, it has come on record that, the deceased was masters in Engineering and his wife was B.A. Honors and daughter of deceased was taking education. The Claimant No.1 has stated that, deceased was looking after the business of all three companies. I find substance in it, as before the starting his own companies the deceased had worked in various companies and it has come on record that after the death of the deceased business of all the companies are closed down. It shows that the deceased was looking after the business of the companies but the Proprietorship of two companies were vested with wife of deceased and daughter of deceased. The Income Tax returns and Sales Tax Returns were appearing in the name of wife of deceased and daughter of deceased. Though deceased was looking after the business of wife and daughter, the whole income

of these two companies cannot be considered as income of the deceased as these companies were standing in the name of wife and daughter of deceased. Hence, I am considering managerial loss for these two companies of 40%.

9. The Income tax Returns filed on record shows the income of wife of deceased Rs.80,000/- per annum and daughter of deceased of Rs.97,000/- per annum. The 40% of it comes to Rs.32,000/- and Rs.38,800/- respectively. The Appellant-Insurance Company has not disputed about income of deceased. It is Rs.1,87,034/- per annum. Considering 40% income as managerial loss the total comes to Rs.2,57,834/-. I am considering these income as annual income of the deceased. 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. Is is contention of the learned counsel for the Appellant that, the Tribunal has applied multiplier of 13. At the time of the accident the deceased was 52 years old, it should

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be 11. Hence, I am considering multiplier of 11. Considering these calculation's the Claimants are entitled for following compensation.

Particulars		**Amount**
Income of Deceased	Rs.1,87,034.00	
40%	Rs.32,000.00	
	Rs.38,800.00	
	------------------	Rs.2,57,000.40
1/3rd Deduction		Rs.2,83,617.40
personal expenses		(-)Rs.94,539.00

		Rs.1,89,078.40
Dependency	Rs.1,89,078 x 11	Rs.20,79,858.00
Consortium		Rs.1,44,000.00
Funeral Expenses		Rs.18,000.00
Loss of Estate		Rs.18,000.00
Pain & Suffering		Rs.25,000.00
Total Compensation		--------------------
		Rs.22,84,858.00
Awarded by Tribunal		(-)Rs.35,51,000.00
Excess Amount		**Rs.12,66,142.00**

10. The Appellant is entitled for refund of Rs.12,66,142/-.

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

ORDER

(i) The Appeal is partly allowed.

(ii) The Appellant is permitted to withdraw Rs.12,66,142/- alongwith proportionate interest out of the deposited amount.

(iii) The Claimant's are permitted to withdraw balance amount alongwith accrued interest thereon.

(iv) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

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

(SHIVKUMAR DIGE, J.)