IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 719 OF 2010
WITH
CROSS OBJECTION (ST) NO. 15684 OF 2010

National Insurance Co. Ltd.)
12, J. Tata Road, Churchgate, Mumbai)
Through its Mumbai Regional Office – II,)
5th Floor, Sterling Cinema Building,)
Murzban Street, Fort, Mumbai 400 001)
….Appellant
(Orig. Opponent No.2)

Versus

1. Smt. Leena Neeraj Phaterpekar)
   Aged: 27 years,)
   ..(Org. Applicant No.1)

2. Smt. Sunanda Suresh Phaterpekar)
   Aged: 59 years,)
   ..(Org. Applicant No.2)

Both are residing at R-8/9.)
Jai Shreedhan Society, Bangur Nagar)
Goregaon, (West), Mumbai – 400 090.)

3. Rajan Manohar Mehta)
   P. O. Kherdi, Chiplun,)
   Ratnagiri – 415 604)
   ..(Orig. Opp. No.1)
   ….Respondents

Ms. Harshada Rane, Advocate for the Appellant.

Ms. Ketki Gokhale i/b A. M. Gokhale, Advocate for the Respondent Nos. 1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th FEBRUARY, 2024.

Oral Judgment. :

1. This appeal is preferred by Appellant/Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short "the Tribunal").

2. The Claimants have filed cross objection for enhancement of amount. As appeal and cross-objection are against the same judgment and order passed by the Tribunal hence, I am deciding it by this common judgment.

3. It is contention of learned counsel for the Appellant/Insurance Company that at the time of considering monthly income of the deceased, the Tribunal has not deducted tax amount, it be deducted.

4. It is contention of learned counsel for the Respondents/Claimants that while awarding compensation, the Tribunal has not awarded future prospects and consortium amount is

awarded on lower side. Learned counsel further submitted that the Tribunal has not applied proper multiplier, if it applied properly the compensation amount would be enhanced. Hence, requested to allow the cross objection and dismiss the appeal filed by the insurance company.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal (for short “the Tribunal”).

6. It is Claimant’s case that deceased was marketing executive in Cyber Media India Limited and he was earning Rs.9,587.50/- per month. To prove the income of the deceased, the Claimants have examined Claimant No.1, wife of deceased and witness Sameer Vinerkar, senior marketing executive in Cyber Media India Limited. Considering the evidence on record, the Tribunal has considered monthly income of deceased at Rs.9,587.50/- but the Tribunal has not deducted taxes hence, after deducting the tax, the income of deceased comes to Rs.8,737.50/- and after deducting the tax annual income of the deceased comes to Rs.1,01,594.1440/-, I am considering this income as yearly income of the deceased. While awarding compensation, the Tribunal has not awarded future prospects.

Deceased was the permanent employee. As per view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)***, the Claimants are entitled for 50% future prospects. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48,000/- consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

7. Considering the above calculations, the Claimants are entitled for following compensation.

Income per Annum	Rs.1,15,044.0000/-
Less income Tax	Rs.13,449.856.00/-
Gross Total	Rs.1,01,594.1440/-
Add: 50% future prospects	Rs.50,797.0720/-
Total	Rs.1,52,391.2160/-
Less 1/3rd personal expenses	Rs.50,797.0720/-
Net Income	Rs.1,01,594.1440/-
Multiplier 17	Rs.17,27,100.4480/-
Funeral Expenses	Rs.18,000.0000/-
Loss of estate	Rs.18,000.0000/-
Consortium amount Rs.48,000 X 2 (Claimants)	Rs.96,000.0000/-
Total amount	**Rs.18,59,100.4480/-**
Decreetal amount deposited	Rs.12,17,628.0000/-
Total	**Rs.6,41,472.4480/-**

The Claimants are entitled for enhanced amount of Rs.6,41,472.4480/-

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

ORDER

i. Appeal is partly allowed.

ii. Cross objection is allowed.

iii. The Claimants are entitled for enhanced amount of Rs.6,41,472.4480/- @ 7.5% interest from 7th December, 2004, till realisation of the amount. Out of this amount consortium amount is Rs.1,32,000/-, the Claimants are entitled @ 7.5% interest per annum from the 1st November, 2017 till realisation of the amount.

iv. The appellant/insurance company shall deposit the enhanced amount along with accrued interest thereon, within eight weeks after receipt of the order.

v. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

vi. The Claimants shall pay deficit Court's fee on enhanced amount.

vii. The statutory amount in First Appeal No. 719 of 2010 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

9. All pending applications, if any, stand disposed of

(SHIVKUMAR DIGE, J.)