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

FIRST APPEAL NO. 358 OF 2022

Bajaj Allianz General Insurance Co. Ltd.)
Shri. Ganesh Plaza, Shrihari Kute Marg,)
Near Hotel Sandip, Mumbai Naka, Nashik)....Appellant
(Orig. Insurer)

Versus

1. Amruta Gopal Asrani)
   Age: 45 years, Occ: Household,)
2. Punit Gopal Asrani)
   Age: 22 years, Occ: Not known.)
3. Mohit Gopal Asrani)
   Age: 13 years, Occ: Education,)
4. Meena Purushottam Asrani)

(**Deleted before Tribunal as per Exh. 16)**)

Res. No.3 being minor through mother)
natural guardian Res. No.1)
All r/at Flat No.18, Gayatri Apartment,)
Near Nandanvan Lawns, Savarkar Nagar,)
Gangapur Road, Nashik.)

5. M/s. Buyer Cropscience Ltd.)
Registered under the Indian Companies Act)
Flat No.1 & 7, Gulmohar Archids, 37/49,)
Sujan Park, Near Gera Junction,)
Market Yards Road, Luliya Nagar, Kondwa,)
Pune - 411040)….Respondents

(Res. 1 – 4 Org. Claimants
Res. 5 Org. Opp. Party)

Mr. Devendranath S. Joshi, Advocate for the Appellant.
Mr. Satyajeet P. Dighe, Advocate for the Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th APRIL, 2024.

<u>Oral Judgment. :</u>

1. The issue involved in this appeal is income of the deceased is considered on higher side.

2. It is contention of learned counsel for the Appellant/Insurance Company that the Tribunal has considered income of the deceased on higher side. The Tribunal should have considered managerial loss as after death of the deceased. The business of the deceased is continued by his wife but this fact is not

considered by the Tribunal. Learned counsel further submitted that accident occurred due to sole negligence of the deceased but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has awarded compensation of Rs.2,25,000/- under non pecuniary heads, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/ Claimants that after the death of deceased, the business of deceased has been closed and his wife has started new business so, it cannot be said that the same business is continued. The deceased was filing income tax returns. On the basis of the income tax returns filed by the deceased. The Tribunal has considered income of the deceased it is proper. Learned counsel further submitted that the Tribunal has considered all the aspects while passing the judgment and order. Learned counsel further submitted that driver of offending vehicle has not been examined to prove the negligence of the deceased. Hence, requested to dismiss the appeal.

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

5. It is Claimants' case that on 6th December, 2012 deceased was riding on his scooter. At the relevant time, Toyota car bearing registration No.MH-12-HL-9871 which was driven by driver of the said car in rash and negligent manner and in high and excessive speed gave dash to the scooter of the deceased. Due to dash, the deceased sustained injuries and died while taking treatment. The offence was registered against the driver of offending car. The Claimants have relied on police papers. The driver of offending car did not step into witness box to prove the negligence of the deceased.

6. While dealing with the issue of negligence, the Tribunal has observed that the dash given to the scooter of the deceased was from front side. The offence was registered against the driver of car. The spot panchanama produced on record supports the contention of Claimants hence, the Tribunal has considered that accident occurred due to sole negligence of the driver of offending car. I do not find infirmity in it.

7. The contents of F.I.R. shows that when deceased was going on scooter, the offending car came from opposite direction and gave dash to the scooter and after giving dash it dashed to road side tree. The spot panchaname and sketch of accident spot produced on

record shows that the accident spot is on left side of the divider lane. It shows that by going on wrong side the car had dashed to the scooter. Moreover, to prove the negligence of the deceased, witness is not examined. Hence, I do not see merit in the contention that accident occurred due to negligence of the deceased. To prove the income of the deceased, the Claimant No.1 Amruta Asrani has examined herself. She has stated that deceased was doing business of selling electronic items and he was earning Rs.1,62,450/- per year. The income tax returns is filed on record. She has stated that after the death of the deceased said business was closed. Considering evidence on record and income tax returns produced filed on record the Tribunal has considered income of the deceased at Rs.1,62,000/-. I do not find infirmity in it.

8. In my view, no evidence came on record that after the accident same business is continued by his wife. The Tribunal has awarded 30% future prospects. At the time of accident, the deceased was 46 years old, it should be 25% future prospects. The Tribunal has awarded compensation under non pecuniary heads of Rs.2,25,000/-. In my view, it is on higher side. As per view of Hon'ble Apex Court in the case of ***Magma General Insurance Co.***

Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC), each Claimants is entitled for Rs.48,000/- for consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

9. Considering the above calculations, the claimants are entitled for following compensation.

Monthly Income	Rs.13,500/-
Annual Income	Rs.1,62,000/-
Add: 25% future prospects	Rs.40,500/-
Total income	Rs.2,02,500/-
Less: 1/3rd Personal Expenses	Rs.67,500/-
Total	Rs.1,35,000/-
Multiplier 13	Rs.17,55,000/-
Medical expenses	Rs.1,10,000/-
Consortium Rs.48,000/- X 3 (Claimants)	Rs.1,44,000/-
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs.18,000/-
Total Compensation	Rs.20,45,000/-
Less awarded by the Tribunal	Rs.21,60,200/-
Excess amount	**Rs.1,15,200/-**

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

ORDER

i. Appeal is partly allowed.

ii. The Appellant/Insurance Company is permitted to withdraw the excess amount at Rs.1,15,200/- along with proportionate interest.

iii. The Claimants are permitted to withdraw the balance amount along with proportionate interest.

iv. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

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

(SHIVKUMAR DIGE, J.)