IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1277 OF 2012

1. Yashoda Satyanarayan Gupta Age about 44 years, Occupation – Household widow of the deceased 2. Pummi Satayanarayan Gupta Age about 20 years, Occupation Student, daughter of the deceased 3. Ajit Kumar Satayanarayan Gupta Age about 17 years, Occupation Student Son of the deceased 4. Pappu Kumar Satyanarayan Gupta Age about 19 years, Occupation Student Son of the deceased. Appellant no.3 is minor therefore, claiming through his natural guardian, mother, applicant no.1. All appellants are residing at Divekar Chawl, Room No.1, Virar (W), Dist. Thane	…	Appellants/ Original Applicants
versus		
1. Harikesh D. Singh Adult, Occ. Business R/at. Post Palsana, Dist. Surat, Gujrat (Owner of Tempo No. GJ-05-YY-8387) 2. The Reliance General Ins. Co. Ltd. Through its Divisional Manager, having their (Previous office address at 10th Floor, Unit 2,3,4, Agarwal Trade Centre, Wing-A, Sector-11, Navi Mumbai – 400614) Present address Rectifier House, Naigaum Cross Road, Wadala, Mumbai – 400 031 (Insurer of Motor Tempo No.GJ-05-YY-8387) Cover Note No. 200700409792 valid from 3.7.2007 to 2.8.2008.	….	Respondent/ Original Opponents.

SHUBHADA SHANKAR KADAM
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Ms. Rina Kundu, Advocate for the Appellant.
Ms. Kalpana R. Trivedi, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st FEBRUARY, 2024.

Oral Judgment :

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

2. It is the contention of learned counsel for the appellants/claimants that deceased was vegetable vendor and he was earning Rs.10,000/- per month but the Tribunal has considered monthly income of the deceased at Rs.4,000/-, which is on lower side. Learned counsel further submitted that the Income Tax Returns of the deceased were filed on record, which shows the income of the deceased, but it was not considered by the Tribunal. Learned counsel further submitted that the Tribunal has deducted 1/3rd amount for personal expenses. There are four claimants, it should be 1/4th. Learned counsel further submitted that Tribunal has awarded consortium amount on lower side, it be awarded. Hence requested to allow the appeal.

3. It is contention of learned counsel for respondent-Insurance Company that only one year Income Tax Returns were filed on record. A witness from Income-Tax Office has stated that there is no signature of any person on the said Income Tax Returns from their office. It creates

doubt about the filing of Income Tax Returns. Learned counsel further submitted that the income considered by the Tribunal is proper. The Tribunal has considered all the aspects while passing the order. Hence, no interference is required in it.

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

5. To prove the income of the deceased, the Tribunal has examined claimant No.2-Mrs. Pammi Gupta, daughter of the deceased. She has stated that her father was earning more than Rs.10,000/- per month from his vegetable business, he was income-tax payer. His income shown in Income Tax Return is Rs.1,04,510/-. After the death of Satyanarayan Gupta, business of vegetables is closed. Nothing elicited in cross-examination of this witness to disbelieve her evidence. In support of evidence of PW-1, the claimants have examined Sanjay Bakare, Inspector in Income Tax Office, Thane at Exhibit-35. He has stated that as per the Income Tax record of his office, deceased Satyanarayan Gupta had filed Income Tax Returns for the Assessment Year 2007-2008, it is at Exhibit-36. In cross-examination, this witness admitted that there is no signature on Exhibit-36 showing the receipt of the same by the Income-Tax Department, he has not personally received the said Income Tax Returns and he has not brought previous

assessment record of Satyanarayan Gupta. Considering the evidence on record, the Tribunal has considered notional monthly income of the deceased at Rs.6,000/-. In my view, it is on lower side. As Income Tax Returns of the deceased is filed on record. It is statutory document. As per the view of Hon'ble Apex in case of ***Anjali and ors. Versus Lokendra Rathod and ors. 2022 SC LiveLaw SC 1012***, the income mentioned in one year Income Tax Returns can be considered as income. The Income Tax Returns at Exhibit-36 shows the income of deceased at Rs.1,04,510/-. hence, I am considering Rs. 1,04,510/- as yearly income of the deceased. At the time of accident, deceased was 45 year old, the Tribunal has applied multiplier of 8, it is wrong, it should be 14. Hence, I am considering multiplier of 14.

The Tribunal has not awarded future prospects. As per the 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 25% 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. (supra),*** each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- towards funeral expenses. There are four claimants.

Considering the above calculations, the claimants are entitled for following compensation :

Annual Income	Rs.	104510.00
Income Tax	Rs.	460.00
Total	**Rs.**	**104050.00**
Future Prospects 25%	Rs.	26,012.00
Total	**Rs.**	**130062.00**
less 1/4th personal expenses	Rs.	32516.00
Total	**Rs.**	**97546.00**
Rs.97,546/- x 14 (multiplier) Age 45	**Rs.**	**1365644.00**
Consortium Rs.48000/- x 4 (claimants)		192000.00
Loss of estate and funeral expenses		36,000.00
Total Compensation Payable	**Rs.**	**1593644.00**

The Tribunal has awarded Rs.4,00,000/-, if this amount is deducted from the amount of Rs.15,93,644/- considered by this Court, it comes to Rs.11,96,644/-. The claimants are entitled for this amount.

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

O R D E R

1. The appeal is allowed.
2. The appellants/claimants are entitled for enhanced amount of Rs. 11,96,644/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs. 2,28,000/- is towards consortium, the claimants are entitled for interest @ 7.5% on this amount from 1st November 2017 till realisation of the amount.

3. Respondent No.2-Insurance Company is directed to deposit the enhanced amount along with accrued interest thereon within eight weeks from receipt of this order.

4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)