IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.704 OF 2008
WITH
CROSS OBJECTION (ST) NO.1511 OF 2009

The United India Insurance Co. Ltd.	}	
Stadium House, W.R.O., Veer Nariman Road, Mumbai-400 020	}	
Certificate No.375923	}	
Valid from 6/08/1996 to 5/9/1997	}	
Vapi DO Code No.180100	}	
Opp.Rahat Hotel, National Highway No.8, GIDC, Char Rasta, Vapi,	}	(Org.Insurer)
Dist-Valsad-396595	}	**...Appellants**

Versus

1. Shri.Prashant Gopinath Wadhavakar	}	
Age-37 years, Husband of the deceased	}	
R/at C/o.Mrs.Uma Shailesh Shringarpure, 7 Nugget Co-Operative House Society, 18th Road, Khar (West),	}	
2. Miss. Akansha Prashant Wadhavalkar	}	
Age-2 years, being minor, Daughter of deceased, Thr. Her father & Next friend i.e. Respondent No.1. above mentioned	}	
R/at As above	}	
3. Shri.Bawdne Balwant Shamrao	}	(R Nos.1 & 2 are Org. Applicants and R.No.3 Org. Opp. Party)
At & Post, Ghansoli, Belapur Road, District-Thane (The Registered owner of the M/Lorry No.MH-04-H-4159 as on 5.9.1997	}	**...Respondents**

Mr.Shubham Misar i/b Mr.H.G. Misar, for the Appellant.
Mr.T.J. Mendon, for Respondent Nos.1 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd APRIL 2024

ORAL JUDGMENT :-

. This Appeal is preferred by the Appellant-Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal (for short 'The Tribunal'), Mumbai. The Claimant's have also preferred Cross Appeal for enhancement of the compensation. As Appeal and Cross Appeal are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of the learned counsel for the Appellant-Insurance Company that it is the Claimants case that the deceased was partner in three firms and her main business was of house keeping of corporate house and she was earning Rs.6,000/- per month, but no evidence was produced on record. No Income Tax Returns were produced on record to prove her income. The documents in respect of the Partnership Deed

produced on record was prior to one year of accident. The Partnership firms were not registered firms. The share of partners were in loss and profit. All the Partnerships Firms were dissolved after one and half year after death of the deceased, but Tribunal has not considered this fact and has considered dependency of the deceased at Rs.3,000/- per month, which is on higher side in the year 1997. Hence, requested to allow the Appeal. He relied on ***Sunanda V/s. Surendra Ramdas Naik Nachinolkar Major & Ors***[1]

3. It is contention of the learned counsel for the Respondent-Claimants that the deceased was partner in three partnership firms. She was self employee and was earning Rs.15,000/- per month. The witnesses are examined to prove the income of the deceased, but this fact is not considered by the Tribunal and has considered her dependency at Rs.3,000/- per month, which is on lower side. The learned counsel further submitted that the Tribunal has observed that the income of the deceased should not be more than Rs.6,000/- but compensation is not awarded as per that income. The learned counsel further

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submitted that the Tribunal has deducted ½ amount for personal expenses, it should be 1/3rd as deceased was married. The consortium amount is awarded on lower side, it be awarded. Hence, requested to allow the Cross Objection and dismiss the Appeal filed by the Insurance Company. He relied on ***Vijay Kumar & Ors V/s. Nanag Ram & Ors***[2].

4. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

5. To prove the income of the deceased, the Claimant No.1 Prashant Wadavkar has examined himself at Exhibit-15. He has stated that he was doing service. His wife was partner in three firms, her main business was of house keeping of corporate houses. She was partner in firms by name M/s.Well Maintainers which was doing shampooing and floor polishing business, M/s. The Maintainers which was doing day to day housekeeping i.e. cleaning and M/s.Clean World Corporation which was doing periodical through cleaning. He further stated that he was in service till 6th August 1997 and he left job as his wife wanted his

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help in her business. He has produced copies of partnership deeds of two firms and dissolution deed of the third firm. He has stated that his wife Pradnyali was earning average income of Rs.16,500/- per month. He further stated that in M/s.Well Maintainers there were four partners and deceased Pradnyali had 1/4th share and in other two firms there were three partners and Pradnyali had 1/3 share. The income of Pradnyali was used for household.

6. In cross-examination he admitted that none of the Partnership firms were registered. The business of M/s. Well Maintainers was started on 21st August 1996. The business of M/s. The Maintainers was started on 27th February 1997. The business of Clean World Corporation was started on 1st March 1997. This witness admitted that all three firms are not in existence. The remaining partners dissolved the firms and started individual businesses. At the time of the dissolution, the share of Pradnyali in capital was paid to him. He further admitted that at present he is in service with M/s.D.N. Tavade and Company as a Supervisor.

7. In support of evidence of PW-1 the Claimant's have

examined PW-3 Bipin Sapale at Exhibit-28, who was one of the partner in the said three partnership firms. He has stated that the firm M/s.Well Maintainers Enterprises was started on 21st August 1996, the business of the Maintainers was started on 27th February 1997 and the business of M/s.Clean World Corporation was started on 1st March 1997. There were four partners in M/s.Well Maintainers Enterprises and each had 1/4th share and in other two firms there were three partners, each having 1/3rd share. He further stated that the firm had bank accounts. The copies of documents are produced on record to support the income of the deceased. He has stated that the profit of M/s.Well Maintainers for the financial years 1996-1997 and 1997-1998 were Rs.77,264.34/- and Rs.1,33,085.82/- respectively, the profit from M/s. The Maintainers for the said two years were Rs.75,990.55 and Rs.3,17,207.05/- respectively and the profit from M/s.Clean World Corporation for the financial year 1997-98 was Rs.67,132.11/-. He further stated that deceased had received profit, interest and remuneration for the financial year 1996-1997 and 1997-1998 to the extent of Rs.25,313/- and

Rs.54,691/- respectively from M/s. The Maintainers. He further stated that the deceased received profits, interest and remuneration for the financial year 1996-1997, 1997-1998 to the extent of Rs.19,316/- and Rs.16,230/- respectively from M/s.Well Maintainers Enterprises and she has received Rs.11,575/- from M/s.Clean World Corporation for the said year. He further stated that the deceased would earn Rs.16,000/- to Rs.17,000/- per month from all three companies. He further stated that after the death of the Pradnyali the firms were continued to function but at present all three firms are not in working condition. The remaining partners dissolved the firms and started individual business. They did not have account books as one of the partner namely Sanotsh Lokhade had collected their Income Tax files and books of accounts. In cross-examination he has admitted that all the partnership firms were not registered firms. The shares were in loss and profit. The books of accounts are not in his possession. All these firms were dissolved in the year 1998. He cannot produce papers of his individual returns or returns of the firms. He has no documents to show that the deceased was getting

Rs.15,000/- to Rs.16,000/- per month. All documents are with Santosh Lokhande. He further admitted that they did not take any action against Santosh Lokhande for taking away their documents. Pradnyali used to do marketing.

8. The Claimant's have examined PW-4 Pravin Shinde, Chartered Accountant at Exhibit-29. He has stated that he used to handle the Income Tax of the three partnership firms and he had submitted Income Tax Returns to the Income Tax Department. He further stated that from the books of accounts he came to know that deceased Pradnyali was getting 25% share of profit in the M/s.Well Maintainers because there were four partners and she was getting 1/3rd share in M/s.Clean World Corporation because there were three partners. In cross-examination he admitted that he returned original files to Santosh Lokhande long back. He further admitted that he has submitted return for deceased Pradnyali one year after her demise and two years for the firm. As per provision of law the legal heirs of the Pradnyali had signed on the Income-tax returns. He further admitted that besides accounts, the data was also not audited.

Beyond Rs.40 lakhs turnover the audit is compulsory. He had checked the account before the filing the returns. He further admitted that he does not have any acknowledgment signed by the Santosh Lokhande to show that the record was returned to him.

9. While dealing with the issue of income of the deceased the Tribunal has observed that the date of the accident is 5th September 1997 and all firms were dissolved in the year 1998. If really the partnership firms were running in profit as claimed, they would not have been dissolved immediately and no explanation is given why they were dissolved within 1 and ½ years. The witness Sapale specifically stated that M/s. Well Maintainers Enterprises was running for 1 and ½ years. He was not in a position to produce record regarding the customers or any other documents to support his statement regarding profit of the firms. The Tribunal further observed that whatever documents produced on record are prepared after the death of the Pradnyali. No Income Tax return or documents with Income Tax Returns were prepared during the lifetime of the Pradnyali. The

possibility of the exaggeration is to be borne in mind particularly when the partners are deliberately with holding the original record from the Court. The Tribunal further observed that it is necessary to raise such doubt particularly in this case as the Claimant's have not come with clean hand.

10. The Tribunal has observed that it is not explained why Santosh Lokhande was summoned or examined and why he was not produced all the record. There was no reason for dissolution of the profit making partnership firms. The Income Tax Returns of the Pradnyali were filed after her death. So the Tribunal has observed that income of the deceased must not be more than Rs.6,000/-. The Tribunal further observed that the Applicant No.1 cannot be said to be the dependent of the deceased and he is able body male person and head of the family, on that ground the Tribunal has considered Rs.3,000/- as monthly dependency, assuming that Pradnyali was doing some business in partnership. I do not find infirmity in it.

11. In my view, it appears from record that all partnership firms alleged to be existed prior to one year of the death of the

Pradnyali and dissolved after 1 and ½ year after the death of the deceased. These three partnership firms have not been registered. No documents in respect of partnership firm were produced on record. It is alleged that all documents were laying with Santosh Lokhande, who was not examined as a witness nor he was asked to produce documents. The Income Tax Returns were filed after the death of the deceased. It shows that the witnesses have examined to inflate the income of the deceased. The Tribunal has considered all the aspects on that ground the Tribunal has considered dependency of the deceased at Rs.3,000/-, which is proper. In my view, though the Tribunal has considered it as dependency, it should be considered as income.

12. The learned counsel for the Respondent-Claimant submit that the Tribunal has observed that the income of the deceased cannot be more than Rs.6,000/-, atleast the Tribunal should have considered monthly income of the deceased at Rs.6,000/- per month. In my view, no evidence produced on record to show that the deceased was getting income from partnership firm. In 1997 Rs.3,000/- was handsome amount.

Though the Tribunal has observed that income of the deceased should not be more than Rs.6,000/- as observed earlier no Income Tax Returns were filed in lifetime of the deceased and three partnership firms were not registered. No documents in respect of the partnership firms were produced on record. Hence, the income considered by the Tribunal at Rs.3,000/- is proper.

13. I have gone through the case law cited by the learned counsel for the Respondent-Claimant. The facts of the cited case and the case in hand are different. In the cited case, it was the case of the Claimant that deceased was housewife and in addition she was running typing school. In present case, it is claimants case that the deceased was self-employed, where her husband was also employed. While awarding compensation the Tribunal has deducted ½ amount for personal expenses, it should be 1/3rd as deceased was married. Hence, I am considering 1/3rd amount for personal expenses. At the time of the accident deceased was 33 years old. The Tribunal has applied multiplier of 13 it should be 16. 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[3]***,*** 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. Considering this calculations the Claimants are entitled for following compensation.

<u>**Particulars**</u>	<u>**Amount**</u>
Monthly Income	Rs.3,000.00
(+) Future Prospects (40%)	Rs.1,200.00
	Rs.4,200.00
Compensation on Dependency (Multiplier of 16) Rs.4,200 X 12 X 16	**Rs.8,06,400.00**
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Loss of Consortium (2 Applicants) (Rs.48,000 X 2)	Rs.96,000.00
Total Just Compensation Payable	**Rs.9,38,400.00**
Compensation awarded by Ld. MACT, Mumbai	Rs.5,70,000.00
Excess Amount Granted by the Tribunal	**Rs.3,68,400.00**

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

<u>**ORDER**</u>

(i) The Appeal is dismissed.

3 2018 ACJ 2782 (SC)

(ii) Cross Objection is allowed.

(iii) The Claimant is entitled for enhanced amount of Rs.3,68,400/- @ 7.5% interest per annum from date of the filing of the Claim Petition till realization of the amount. Out of this amount Rs.96,000/- is consortium amount, the Claimant is entitled @7.5% interest on this amount from 1st November 2017 till realization of the amount.

(iv) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 6 weeks after receipt of this order.

(v) The Claimant is permitted to withdraw the deposited amount alongwith interest.

(vi) In First Appeal No.704 of 2008, the statutory amount be transferred to the Tribunal, along with interest. The parties are at liberty to withdraw it.

(vii) The Claimant shall pay Deficit Court Fees on enhanced amount, if any, as per Rules.

(viii) Record and Proceedings be returned to the Tribunal.

(ix) All pending Civil/Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)