IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 929 OF 2018

Reliance General Insurance Co. Ltd.)
Through its Manager, Mr. Amit Ashwini)
Sharma)
Having its office at 4th floor Chintamani Avenue)
Off Western Express Highway,)
Near Virwani Industrial Estate,) ….Appellant
Goregaon (East), Mumbai-400063) (Ori. Opp. Party No.2)

Versus

1 Anjiladevi Santosh Dube,)
Aged: 30 years, Widow of deceased)

2 Neha Santosh Dube,)
Aged 09 years, Minor Daughter of deceased)

3 Nikhil Santosh Dube,)
Aged: 07 years, minor son of deceased)

4 Nitin Santosh Dube,)
Aged: 05 years, minor Son of the deceased)

5 Harishankar Zharkhande Dube,)
Aged: 63 years, Father of deceased)

6 Prema Harishankar Dube,)
Aged: 62 years, Mother of deceased,)
All residing at Bhagirathi Apartment,)
Plot no.401, ‘A’ Wing, Sector-9, Airoli,)
Navi Mumbai, Dist-Thane.)

7 Phulchand D. Mishra,)
Ramabai Welfare Association,)
B-9 Ramabai Nagar, Ghatkopar (E),)
Mumbai-400075)
(dismissed as against respondent No.7 as per)
Reg. (Jud.-II) order dated 27/3/2019))

...Respondents

Mr. Rajesh Kanojia i/b Res Juris, Advocate for the Appellant.

Ms. Ketki Gokhale i/b Mr. A. M. Gokhale, Advocate for the Respondent Nos. 1 to 6.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th JANUARY, 2024.

Oral Judgment :

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 monthly income of the deceased at Rs.8,000/- per month though deceased was electrician without any evidence on record, which is on higher side and, on that basis, compensation is awarded. Learned counsel further submitted that when notional income of deceased is considered by the Tribunal, future prospects should not have been awarded on notional income. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 6/claimants that deceased was doing business of electric fittings by obtaining contract under the name and style of "Lucky Electrical Works" and was earning Rs.25,000/- to Rs.30,000/- per month. Two years' Income Tax Returns were filed on record but considering the evidence on record, the Tribunal has considered Rs.8000/- as monthly income of deceased, which is proper. The order passed by the Tribunal is legal and valid. 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, Mumbai (for short "the Tribunal").

5. To prove the income of the deceased, the claimants have examined claimant No.1. She has stated that deceased was carrying business of electric fittings by way of obtaining contract under the name and style of "Lucky Electrical Works" and was earning Rs.25,000/- to Rs.30,000/- per month. She has produced the income tax returns of the deceased on record but these documents are not exhibited as these are not proved by proper evidence. Considering the evidence on record, the Tribunal has considered Rs.8000/- as notional monthly income of deceased. I do not find infirmity in it as at the time of accident, deceased was 31 year old and he was maintaining a family of six persons. As well as it has come on record that he was doing business.

6. It is the contention of learned counsel for appellant-Insurance Company that on notional income, the Tribunal should not have awarded future prospects. It is settled principle of law that if the Tribunal considers the notional income as per the view of Apex Court in ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC),*** the claimants are entitled for future prospects. In view of above, the appeal is devoid of merit and I pass following order :

O R D E R

1. The appeal is dismissed. No order as to cost.

2. The respondents Nos.1 to 6/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

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

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

(SHIVKUMAR DIGE, J.)