**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 61 OF 2024**

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| | Reliance General Insurance Company Ltd.<br>Kalpataru Prime, 1st Floor, Unit No.3, Road No.16, Wagale Industrial Estate,<br>Thane (W) 400604. | … | Appellant |
| | versus | | |
| 1 | Sarojben Rasikbhai Bhalodia<br>Aged 52 Years, Occu – Housewife. | | |
| 2 | Akhil Rasikbhai Bhalodia<br>Aged 24 Years, Occu -Student., | | |
| 3 | Neha Rasikbhai Bhalodia<br>Aged 15 Years, Occu -Student<br>(Since the Applicant No.3 is minor through Petitioner No.1 being mother as a natural guardian all R/o. 304 Nikhil CHS Western Express Higway ,<br>Thakur Complex, Kandivili (E), Mumbai. | … | Original Applicants |
| 4 | Jayesh S. Vaghasia<br>R/o.: 3-19, Mithila Chawl, D Montee Lane, Orlem, Malad (E), Mumbai – 400064. | … | Respondent (Res. No.1 to 3 are Org. Applicant & Res. No.4 is Orig. Opp. Party) |

Ms. Shalini Shankar, Advocate for the Appellant.
Ms. Rina Kundu, Advocate for Respondent Nos.1 to 3.

**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 8th FEBRUARY, 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 deceased was doing business of electric wireman and was earning more than Rs.5,00,000/- per annum and after death of the deceased, his business is continued, so the Tribunal should have considered managerial loss but the Tribunal has considered yearly income of deceased, which is erroneous. Hence, requested to allow the appeal.

3. Learned counsel for respondent Nos.1 to 3/claimants submitted that deceased was as an electric wireman, he had completed the course of wireman and after his death, the business was closed, so the income considered by the Tribunal is proper and no interference is required in it and requested to dismiss the appeal.

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

5. To prove the income of deceased, the claimant No.1-Sarojben, wife of the deceased, examined herself. She has stated that her husband was doing business of electric wireman and was earning Rs.5,15,900/- per year. Her evidence is supported by PW2-Income Tax Inspector – Shri Jadhav. He has stated that the Income Tax Return of the deceased for the Assessment Year 2015-2016 was filed, it is at “Exhibit-32”. Considering the evidence on record and after deducting the income tax

and professional tax, the Tribunal has considered monthly income of deceased at Rs.4,91,288/-. I do not find infirmity in it.

It is contention of learned counsel for appellant – Insurance Company that the Tribunal should have considered manegerial loss. In my view, it has come in the evidence of PW1-Sarojben, wife of the deceased, that after death of the deceased, the business which was done by her husband is closed down. Moreover, it has come on record that license of wireman was issued in the name of the deceased and after death of the deceased, the business is closed, so after death of the deceased, business is not continued. No evidence is produced on record by the Insurance Company to prove that after death of deceased, the said business is continued. Hence, managerial loss cannot be considered.

While awarding compensation, the Tribunal has not awarded compensation for loss of estate. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, the claimants are entitled for Rs.18,000/- for loss of estate.

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

**O R D E R**

1. The appeal is dismissed. No order as to cost.
2. The claimants are entitled for enhanced amount of Rs.18,000/- @ 7.5% interest per annum from 1st November 2017 till realisation of the amount.

3. The appellant/Insurance Company shall deposit the enhanced amount along with accrued interest thereon within four weeks from the the receipt of this order.

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

5. 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.)**