IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 444 OF 2021

	The New India Assurance Col Ltd. Legal Cell, 3rd floor, Above Nehru Memorial Hall Camp, Pune – 411 001.	…	Appellant
	Versus		
1	Nilima Santosh Gulunjkar, Age – 29 years, Occu-Household.		
2	Kartiki Santosh Gulunjkar Age – 29 years, Occu – Education		
3	Dwip Santosh Gulunjkar Age – 2 years, Occu – Education		
4	Malan Kisan Gulunjkar, Age – 55 years, Occu-Household		
5	Kisan Govind Gulunjkar Age – 60 years, Occu – Business, Applicant Nos. 2 and 3 are minor, hence, through Applicant No.1 as a mother and natural guardian All are R/at Ganganivas S.N.113/10K Revet Walhekarwadi Road, Chinchwad, Pune -33.	...	Original Applicants
6	Kalpana Jagdishkumar Bhadra, Age Adult, Occupation -Business, R/o. Flat No.1, Ashirwad, Lodha Complex, Achole Road, Nalasopara East, Vasai Thane.	...	Opponent Respondents

Ms. Shalini Shankar, Advocate for the Appellant.
Mr. Rajesh More along with Mr. Soham Pawar, Advocate for the Respondent Nos.1 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st FEBRUARY, 2024.

SHUBHADA SHANKAR KADAM
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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 yearly income of the deceased at Rs.3,10,000/- per annum, which is on higher side. No evidence was produced on record to prove the income of the deceased. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos.1 to 5/claimants that the deceased was doing business of fabrication and electric work and he was earning Rs.3,97,930/- per annum. The witnesses were examined to prove the income of the deceased but the Tribunal has considered the income of the deceased at Rs.3,10,000/- per annum, which is on lower side. Learned counsel further submitted that the Tribunal has awarded consortium amount to only one claimant, there are five claimants, it be awarded. Hence, requested to dismiss the appeal.

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

5. To prove the income of the deceased, the claimants have examined father of the deceased, claimant No.5-Kishan Gulunjkar.

He has stated that, at the time of the accident, the deceased had completed the course of Diploma in Trade of Mechanic (Radio and Television). He further stated that the deceased had started his own business under the name and style of “Trushna Enterprises” and he was doing fabrication and electrical work. He was doing work for SKF (India) Limited at Chinchwad. He was getting profit of Rs.3,97,930/- per annum. He has further stated that all family members were dependent on the income of the deceased. In cross-examination, he has admitted that he is a vegetable vendor. In support of evidence of PW-1, the claimants have examined PW2- Manish Kulkarni, Finance Manager of SKF India Limited at Exhibit-44. He has stated that he knows Trushna Enterprises. The said company used to supply electrical items to their company and also used to render services to their company. He has further stated that in the year 2011-2012, his company had purchased good of Rs.29,57,091/- from Trushna Enterprises. He stated that in the said financial year, his company made payment of Rs.28,22,631/- to Trushna Enterprises by cheque. In cross-examination, this witness admitted that as per Government Rules, 2% TDS is deducted on services provided for Company. This witness denied the suggestion that his company did not pay the amount of Rs.28,22,631/-to Trushna Enterprises.

The claimants have examined PW3-Mandar Lombar, Branch Manager of Kalyan Janta Sahakari Bank at Exhibit-52. He has stated that

Trushna Enterprises had bank account with their bank. The statement of bank account of Trushna Enterprises is at Exhibit-53.

While dealing with the issue of income of the deceased, the Tribunal has observed that after going through the bank statement and several transactions in respect of withdrawal of money by ATM as well as evidence on record, the Tribunal has considered the yearly income of deceased at Rs.3,10,000/- per annum. I do not find infirmity in it. In my view, it has come in the evidence of PW2, the Finance Manager of SKF India Limited that their company had paid more than Rs.28,00,000/- to the company of the deceased in one financial year. It shows that the deceased was earning profit of more than Rs.3,00,000/- per annum.

It is contention of learned counsel for the respondent Nos.1 to 5/claimants that after the death of deceased, his company is closed down and there is no male member in the family of deceased to run the said company and claimant No.5 who is the father of deceased is a vegetable vendor. In my view, after the death of deceased, the business is closed as well as the Tribunal has awarded consortium amount on lower side, it would come more than Rs.2,00,000/-. This amount can be equated with the income of the deceased. Considering these facts, the income considered by the Tribunal is proper. I do not find any infirmity in it.

6. Learned counsel for the respondent Nos.1 to 6/claimants submitted that the claimants have already withdrawn the entire deposited amount along with accrued interest thereon.

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

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

(SHIVKUMAR DIGE, J.)