IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1243 OF 2022

United India Insurance Co. Ltd., Divisional Office 914/915, Gurudhan Mansion, Tapal Naka, Netaji Subhaschandra Bose Road, Panvel-410206, District-Raigad, Thr. Its Regional Manager, United India Insurance Co. Ltd., Mumbai Regional Office-III, T.P. Hub, 4th Floor, Union Co. Op. Insurance Bldg, Sir P.M. Road, Fort, Mumbai-400 001	}	**...Appellant**

Versus

1. Sarita Jayanta Jitekar Age-46 years, Occ : Housewife	}	
2. Mr.Aashish Jayanta Jitekar Age-26 years, Occ: Nil	}	
3. Miss. Vishakha Jayanta Jitekar Age-19 years, Occ : Education	}	
4. Mrs.Hausabai Rama Jitekar Age-65 years, Occ : Nil	}	(No.1 to 4 Org. Claimants)
5. Mr.Arvind Laxman Patil Patkar Age-Major, Occ : Nil R/at-Anantakrupa, Rana Pratap Road, Panvel, District-Raigad.	}	**...Respondents**

Mr.Amol A. Gatne, for the Appellant.
Ms.Sandhya A. Mailagir i/b Ms.Neesa A. Mailagir, for the Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd APRIL 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is income of the deceased is considered on higher side.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the Tribunal has considered yearly income of the deceased at Rs.86,310/- without any evidence on record. The learned counsel further submitted that it is Claimant's case that deceased was Labour Contractor and his Income Tax Returns prior to four years i.e. 2004-2005 of accident date was filed on record. On relying Income Tax Returns, the Tribunal has considered yearly income of the deceased, which is erroneous. Hence, requested to allow the Appeal.

3. The learned counsel for the Respondent's-Claimant's

submitted that deceased was doing business of Labour Contractor. He was earning Rs.94,138/- per year and Income Tax Returns were filed to prove the income, but Tribunal has considered yearly income of the deceased at Rs.86,310/-. The learned counsel further submitted that the Tribunal has awarded consortium amount to only one Claimant, it be awarded to other Claimants.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Raigad-Alibag.

5. To prove the income of the deceased the Claimants have examined Claimant No.1 Sarita. She has stated that at the time of the accident the deceased was earning Rs.17,000/- per month by doing business of Labour Contractor. She has produced the copy of the Ration Card at Exhibit-19, copy of Pan Card of deceased at Exhibit-20, copy of the Income Tax Returns of the year 2002-2003 at Exhibit-21, copy of the Income Tax Returns for the year 2003-2004 at Exhibit-22, copy of the bank account at Exhibit-23 and copy of the Income Tax Returns for

the year 2005-2006 at Exhibit-24.

6. While dealing with the issue of income of the deceased, the Tribunal has considered income for the year 2005-2006 at Rs.94,138/-. Considering the evidence on record the Tribunal has considered average yearly net income of the deceased at Rs.86,310/-. I do not find infirmity in it. In my view, the Tribunal has considered income of the deceased on the basis of Income Tax Returns, which is proper. Moreover, it is case of the Claimant that deceased was earning Rs.17,000/- per month, but Tribunal has considered at around Rs.7,000/- per month. The deceased was Labour Contractor and he was filing Income tax Returns, it shows that, he was earning sufficient amount at Rs.17,000/-, but the Tribunal has considered Rs.7,000/- per month, which is proper. Moreover, The Tribunal has awarded consortium amount for only one Claimant. Considering these facts, the compensation awarded is proper. No interference is required in it and I pass following order.

ORDER

(i) The Appeal is dismissed.

(ii) The Claimant is permitted to withdraw deposited amount alongwith accrued interest thereon.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)