SHANTANU SHANKARSA DHUDUM
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 205 OF 2017

1. Rupali Prabhakar Tekale)
   Age: 30 years, Occ: Housewife)

2. Prathamesh Prabhakr Tekale)
   Age: 8 years, Occ: Education)

3. Vatsalabai Pralhad Tekale)
   Age: 58 years, Occ: Housewife)

Appellant No.2 is a minor, hence)
through Appellant No.1 as mother)
and natural guardian.)

All residing at C/o. Smt. Meena R. Chand,)
Gawane Wasti, Near Krushna Hospital,)
Bhosari, Pune.) ….Appellants

Versus

1. Devidas Pandurang Bolge,)
   Age: Adult, Occ: Business)
   R/at – At post Andhalgaon,)
   Tal: Shrigonda, Dist: Ahmednagar)

2. The Oriental Insurance Co. Ltd.)
   DO – Legal Cell, Mayfair Towers,)
   Wakdewadi, Pune – Mumbai Road)
   Shivaji Nagar, Pune – 411 005)

3. Pralhad Eknath Tekale)
   Age – 63 years, Occ: Nil)

   R/at: Ruikhed Tekale, Post – Warvand,)

Tal & Dist – Buldana, Maharashtra)….Respondents

WITH
FIRST APPEAL NO. 206 OF 2017

Krushna Hariba Lendave)
Age: 55 years, Occ-Nil)
R/at: At Post Gonewadi, Post)
Nandeshwar, Tal – Mangalvedha,)
Dist: Solapur)

Presently residing at C/o. Gangadhar B.)
Suryawanshi, S. No.2/1/B,)
Ramchandranagar, Dhankawadi,)
Pune.)….Appellant

Versus

1. Devidas Pandurang Bolge,)
   Age- Adult, Occ- Business,)
   R/at – At Post Andhalgaon,)
   tal- Shrigonda, Dist – Ahmednagar)

2. The Oriental Insurance Co. Ltd.,)
   DO- Legal Cell, Mayfair Towers,)
   Wakdewadi, Pune – Mumbai Road)
   Shivaji Nagar, Pune – 411 005.)….Respondents.

Ms. Ketki Gokhale i/b A. M. Gokhale, Advocate for the Appellant.
Mr. N. V. Bhhutekar, Advocate for the Respondent No.1 in both Appeal.
Mr. Sandeep S. Jinsiwale, Advocate for the Respondent No.2 in both Appeal.

CORAM : SHIVKUMAR DIGE, J.

DATE : 27th MARCH, 2024.

Oral Judgment. :

1. Both these appeals are against the judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short "the Tribunal"). As both these appeals are against the same judgment and order, out of the same accident hence, I am deciding it by this common judgment.

2. It is contention of learned counsel for the Appellant in both appeals that while awarding the compensation Tribunal has not awarded future prospects and while considering the monthly income of the deceased the Tribunal has deducted conveyance allowance. It is settled principle of law that income tax and professional tax should be deducted while considering the income. Learned counsel further submitted that the consortium amount is awarded on lower side. Learned counsel further submitted that the Tribunal has held that there was breach of terms and conditions of insurance policy and the Tribunal has directed the owner of offending vehicle to pay the compensation and insurance company has been exonerated from paying compensation, which is erroneous. The Tribunal should have passed pay and recovery order. Hence, requested to allow the Appeals.

3. It is contention of learned counsel for the Respondent No.2/Insurance Company that the interest awarded by the Tribunal on compensation amount is on higher side. Learned counsel further

submitted that there was breach of terms and conditions of insurance policy as driver of the offending vehicle was holding driving licence of Light Motor Vehicle whereas, he was driving Heavy Motor Vehicle. The Tribunal has considered this fact and on that ground judgment and order is passed. Learned counsel further submitted that Tribunal has considered all the aspects while passing the judgment and order and no interference is required in it.

4. Learned counsel for the Respondent No.1/owner submitted that at the time of accident, the offending vehicle was insured with the Respondent No.2/Insurance Company. There was no breach of terms and conditions of insurance policy as driver of offending vehicle was holding driving licence of Light Motor Vehicle. The responsibility should be fixed on the insurance company hence, requested to fix liability of payment of compensation on Respondent No.2/Insurance Company and exonerate the driver and owner of the offending vehicle from paying compensation.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short "the Tribunal").

6. It has come on record that at the time of accident, the driver of offending vehicle was holding driving licence of Light Motor Vehicle

whereas, he was driving Heavy Motor Vehicle. On that ground, the Tribunal has observed that there was breach of terms and conditions of insurance policy and the Tribunal has exonerated insurance company from paying compensation and has fixed liability on the owner of the offending vehicle. In my view, it is settled principle of law that if there is breach of terms and conditions of insurance policy. The insurance company is liable to pay the compensation and recover it from the owner of the offending vehicle. Hence, I hold that insurance company shall pay the compensation as fixed by the Tribunal and recover it from the owner of offending vehicle.

7. While considering the income of both the deceased in both claim petitions, the Tribunal has deducted conveyance amount. As per view of Hon'ble Apex Court in the case of ***Fakir Chand Taneja and Ors. Oriental Insurance Co. Ltd. & Ors. 2023 ACJ 338***, the conveyance allowances is part of the salary hence, I am considering the conveyance allowances as income of the deceased. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48,000/- consortium amount and Rs.18,000/- for funeral expenses and Res.18,000/- for loss of estate.

8. Considering the above calculations, the claimants are entitled for following compensation.

Chart in First Appeal No.205 of 2017

Monthly income	Rs.8,825/-
Annual Income	Rs.1,05,900/-
Add: 50% future prospects	Rs.52,950/-
Total income	Rs.1,58,850/-
1/4th deductions towards personal expenses	Rs.39,712/-
Total	Rs.1,19,138/-
Multiplier 17	Rs.20,25,337/-
Consortium Rs.48,000/- 4 (claimants)	Rs.1,92,000/-
Loss of estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total compensation	**Rs.22,53,337/-**
Less amount awarded by the Tribunal	Rs.11,59,280/-
Enhanced amount	**Rs.10,94,057/-**

Chart in First Appeal No.206 of 2017

Monthly income	Rs.7,325/-
Annual Income	Rs.87,900/-
Add: 50% future prospects	Rs.43,950/-
Total income	Rs.1,31,850/-
1/2 deductions towards personal expenses	Rs.65,925/-
Total	Rs.65,925/-
Multiplier 18	Rs.11,86,650/-
Consortium Rs.48,000/-	Rs.48,000/-
Loss of estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total compensation	**Rs.12,70,650/-**
Less amount awarded by the Tribunal	Rs.6,50,100/-

Enhanced amount	**Rs.6,20,550/-**

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

ORDER

i. Both appeals are allowed.

ii. In FA/205/2017 the claimants are entitled for enhanced amount **Rs.10,94,057/-** @ 7.5% interest per annum from the date of filing claim petition till realization of the amount. Out of this amount Rs.2,28,000/- is consortium amount, the claimants are entitled @ 7.5% interest on this amount from 1st November, 2017, till realisation of the amount.

iii. In FA/206/2017 the claimant is entitled for enhanced amount **Rs.6,20,550/-** @ 7.5% interest per annum from the date of filing claim petition till realization of the amount. Out of this amount Rs.84,000/- is consortium amount, the claimant is entitled @ 7.5% interest on this amount from 1st November, 2017, till realisation of the amount.

iii. In both appeals the Respondent/Insurance Company shall deposit enhanced amount along with accrued interest thereon, within eight weeks after receipt of the order

iv. The Respondent/Insurance Company shall pay the amount fixed by the Tribunal along with enhanced amount with proportionate interest to the claimants with liberty to recover it from the owner of the offending vehicle.

v. The Claimants in both appeals are permitted to withdraw the deposited amount along with accrued interest thereon.

vi. The Claimants in both appeals shall pay deficit Court fees on enhanced amount as per Rule.

10. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)