

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1794 OF 2009

WITH

CROSS OBJECTION STAMP NO.10362 OF 2010

The Oriental Insurance Company Limited,)
Motor Third Party Claims Hub,)
Mumbai Regional Office No.II,)
SBI Building, Annexe, 3rd Floor,) (Original Opponent
Bank Street, Fort,) No.2)
Mumbai – 400 023.) ...Appellant

versus

- 1 Anita Sukhdeo Thorat)
Age 36 years, Occ. Household)
- 2 Supriya Sukhdeo Thorat)
Age 15 years, Occ. Education)
- 3 Sayali Sukhdeo Thorat)
Age 8 years, Occ. Education)
- 4 Dhanashree Sukhdeo Thorat)
Age 5 years, Occ. Education)
- 5 Dhanesh Sukhdeo Thorat)
Age 2 years, Occ. Education)
All Residents of Khadak Alley,) (Original
Taluka Khalapur, District Raigad) Applicants)
- 6 Dnyaneshwar Jayprakash Patil,)
Age 45 years, Occ : Transport,) (Original Opposite
Resident of 280, Avdhan, Dist. Dhule) Party No.1)
....Respondents

Mr. Rahul Mehta i/b. KMC Legal, Advocates for the Appellant.

Mr. V. B. Rajure, Advocate for Respondent Nos.1 to 5/claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd JANUARY, 2024.

Oral Judgment :

1. This appeal is preferred by appellant-Insurance Company against the judgment and order passed by Motor Accident Claims Tribunal, Raigad at Alibaug (for short "the Tribunal"). The respondents/claimants have filed cross-objection for enhancement of compensation. As the appeal and cross-objection are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned counsel for the appellant-Insurance Company that the Tribunal has considered monthly income of the deceased at Rs.7500/- without any evidence on record. Learned counsel further submitted that the Tribunal ought not to have awarded future prospects but it is awarded, which is not proper. Learned counsel further submitted that the Tribunal has awarded compensation on higher side under other heads. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.1 to 5/claimants that deceased was working as Production Supervisor in Paladin Paints and Chemicals Private Limited and he was getting a salary of Rs.7500/- per month. Learned counsel further submitted that while awarding consortium, the Tribunal has awarded it on lower side, it be awarded. Learned counsel requested to dismiss the appeal of the Insurance Company and allow the cross-objection filed by the claimants.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. To prove the income of the deceased, the claimants have examined claimant No.1. She has stated that at the time of accident, deceased was 44 year old. He was working as Production Supervisor in Paladin Paints and Chemicals Private Limited. He was getting salary of Rs.7,500/- per month. In support of the evidence of PW-1, the claimants have examined PW-2 Dhondugre, Manager of Paladin Paints and Chemicals Private Limited. He has stated that the deceased was working in their company. In May 2007, his salary was Rs.7500/-, the salary certificate is at Exhibit-40. Considering the evidence on record, the Tribunal has considered the monthly income of deceased at Rs.7,500/-. I do not find infirmity in it. In my view, deceased was working as Production Supervisor in Paladin Paints and Chemicals Private Limited and he was getting salary of Rs.7,500/- per month. Salary certificate is produced on record to prove his salary.

It is contention of learned counsel for the appellant-Insurance Company that future prospects ought not to have been awarded. As per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC,** the claimants are entitled for future prospects. The deceased was working as permanent employee, hence, 50% future prospects considered by the Tribunal is proper. I do not find infirmity in it.

The Tribunal has awarded consortium amount of Rs.15,000/-, which is on lower side. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18000/- for funeral expenses and Rs.18,000/- for loss of estate. There are five claimants, so total comes to Rs.2,76,000/-. If this amount is deducted from amount of Rs.15000/- granted by the Tribunal, it comes to Rs.2,61,000/-. The claimants are entitled for this amount.

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

O R D E R

1. First Appeal No.1794 of 2009 is dismissed. No order as to cost.
2. Cross-Objection filed by the respondents/claimants is allowed.
3. The claimants are entitled for enhanced compensation of Rs.2,61,000/-@ 7.5% interest per annum from 1st November 2017 till realisation of the amount.
4. Appellant-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
5. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

6. The statutory amount be transferred 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.)