

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

FIRST APPEAL NO. 1369 OF 2017

United India Insurance Company Limited
 Motor Third Party Claims Hub
 5th Floor, Union Cooperative
 Insurance Building
 Sir, P. M. Road, Fortl
 Mumbai-400 001

)
)
)
)
)
)....Appellant
 Orig. Opponent No.2

Versus

1. Seema Sachin Gole
 Age: 24 years, Occ: Household

)
)...Original
)Applicant No.1

2. Hanumant Bhau Gole
 Age: 50 years

)
)...Original
 Applicant No.2

3. Sunanda Hanumant Gole
 Age: 47 years

)
)...Original
 Applicant No.3

All R/at Pam C. H. S. Bldg. 21/703
 Sec. 11, Bonkode, Koparkhairane
 Navi Mumbai

)
)
)

4. Madhavi Logistics
 Office at Lakhraja, HS 22, Sector No.7
 Sanpada, Navi Mumbai

)
)
)

Dist. - Thane, PIN: 400 703

)

(Owner of Truck No. MH-43-E-4323).

)...Orig. Opp. No.1
Respondents

Mr. Rahul Mehta i/b KMC Legalk Venture, Advocate for the Appellant.
M. S. Sushma Poyekar, Advocate for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th JANUARY, 2024.

Oral Judgment. :

1. The issues involved in this appeal are income of deceased is considered on higher side and the amount awarded under the conventional head is on higher side.

2. It is contention of learned counsel for the Appellant that the Tribunal has considered monthly income of deceased at Rs.10,000/- per month without any evidence on record, which is on higher side. Learned counsel further submitted that the Tribunal has awarded Rs.2,25,000/- under the conventional head, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that deceased was working at Mathadi

worker in Grocery Markets and shops Board at Vashi-Danabunder and was earning Rs.10,000/-, the evidence was produced to prove the income of deceased. Considering the evidence on record, the Tribunal has considered monthly income of deceased at Rs.10,000/-, which is proper. Learned counsel further submitted that the Tribunal has considered all the aspect and on that basis, judgment and award passed, no interference is required in it.

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

5. It is claimant’s case that deceased was serving as Mathadi worker in Grocery Markets and shop Board at Vashi-danabunder and was earning Rs.10,000/- per month. To prove the income of the deceased, the claimants have examined PW-2 Ramchandra Patil, who was Inspector in the office of Grocery Markets and shop Board, Mumbai. He has stated that deceased was working as worker in Toli No.4118 with worker code being 49281 since July 2009 and his average salary was Rs.9604.93/- . The salary statement of deceased is

at Exhibit-62.

6. Considering the evidence on record, the Tribunal has considered monthly salary of deceased at Rs.9,605/-, I do not find infirmity in it. The Tribunal has awarded Rs.1,00,000/- for consortium Rs.1,00,000/- for loss of love and affection and Rs.25,000/- for funeral expenses, total of it comes to Rs.2,25,000/- in my view, it is on higher 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/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are three claimants. The total comes to Rs. 1,80,000/-, if this amount deducts from the amount awarded by the tribunal, it comes to Rs.45,000/- it is excess amount.

7. In view of above, i pass following order.

ORDER

- i. Appeal is partly allowed.
- ii. Appellant/Insurance Company is permitted to withdraw Rs.45,000/- along with proportionate interest.

- iii. The Respondents/Claimants are permitted to withdraw the balance amount along with proportionate interest.
 - iv. 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. All pending applications stand disposed of.

(SHIVKUMAR DIGE, J.)