

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 390 OF 2022

Reliance General Insurance Co. Ltd.
570, Naigaum Cross Road, Next TO
Royal Industrial Estate, Wadala (E),
Mumbai – 400 031.

....Appellant

V/s.

1.Kishor Muljibhai Kothari
Age:- 60 years, Father of Deceased

2. Illa Kishore Kothari,
Age:- 55 years, Mother of Deceased
Residing at Saptashruni CHSL,
R.No.14, Plot No. 260, Near Parsi
Ground, Gorai- 2 Borivali (W),
Mumbai – 400 092.

....Respondents
(Respondent
Nos. 1 to 2-
Org. Applicants)

3. Ashtech India Pvt. Ltd.
At Gut No. 278, 311 and 312
Kondala Village, Near Pratibha
Pipe Factory, Kudus Wada,
Thane – 421 303.

Respondent
No.3 is Org.
Opp. Party.

Mrs. Shalini Shankar, for the Appellant.
Ms. Kavita Anchan, for Respondent Nos. 1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th FEBRUARY, 2024

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 that the Tribunal has considered monthly income of the deceased at Rs.8,000/- p.m., without any evidence on record, which is on higher side. Learned counsel further submitted that the Tribunal has applied multiplier as per the age of the parents of the deceased. It should be as per age of the deceased. Learned counsel further submitted that the Tribunal has awarded consortium amount on higher side. Learned counsel further submitted that the Tribunal has awarded interest @ 9% per annum, which is on higher side. It should be reduced. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimants that the Tribunal has applied multiplier as per the age of the parents of deceased. It should be as per the age of the deceased. Learned counsel further submitted that while passing the order, the Tribunal

has considered all the aspect. On that basis, the judgment and order is passed, which is legal and valid. No interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai [“The Tribunal” for short].

5. To prove income of the deceased, the Respondent No.1-Claimant has examined himself. He has stated that at the time of accident deceased was 21 years old and he used to earn Rs.8,000/- per month by serving in Pragati Construction Building Material Supplier, Dahisar (E), Mumbai. In support of his contention, Claimant’s examined PW-2 Dharmendra Thakur, Employer of the deceased. He has stated that deceased-Yashraj Kishor Kothari was working with him as Collecting Agent for collecting cheques and cash from the Customers of his Company. He was paying Rs.8,000/- p.m. salary to him. The salary certificate is at Exhibit 22. Considering evidence on record, the Tribunal has considered monthly income of deceased at Rs.8,000/-.

I do not find infirmity in it. While passing the order, the Tribunal has applied multiplier as per the age of parents of the deceased as he was bachelor. It is settled principle of law that multiplier should be applied as per the age of the deceased. At the time of accident the deceased was 21 years old. Hence, I am considering multiplier of 18. The Tribunal has awarded consortium amount of Rs.2,25,000/-. It is on higher side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*¹, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are two Claimants. The total of it comes to Rs.1,32,000/-. If this amount is deducted from Rs.2,25,000/-. It comes to Rs.93,000/-. Considering these calculations the Claimants are entitled for following compensation.

Particulars	Amount
Monthly Salary of Deceased (Rs.8,000 x 12)	Rs.96,000.00

1 2018 ACJ 2782 (SC)

Future Prospects (40%)	
Rs.96,000 x 40% = 38,400/-	1,34,400/-
Deduction Personal Expenses $\frac{1}{2}$	Rs.67,200.00
(2 Dependents)	
Net Monthly Income	Rs.5,600.00
Rs.5600 X 12 X 18 Multiplier	Rs.12,09,600.00
	(+)
Consortium : 48,000.00 x 2	
Funeral Expenses : 18,000.00	
Loss of Estate : 18,000.00	Rs.1,32,000.00
Compensation Entitled	Rs.13,41,600.00
Awarded by Tribunal	(-) Rs.6,57,000.00
Enhanced Amount	Rs.6,84,600.00

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

ORDER

- i. The Appeal is partly allowed;
- ii. The Respondent-Claimants are entitled for enhanced amount of Rs.6,84,600/- @ 7.5% interest per annum from the date of filing of Claim Petition till realization of the amount.
- iii. The Appellant-Insurance Company shall deposit enhanced amount along with accrued interest thereon within six weeks after receipt of the order.

- iv. The Claimants are permitted to withdraw deposited amount alongwith accrued interest thereon.
- v. The statutory amount alongwith interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.
- vi. All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)