SHANTANU SHANKARSA DHUDUM Digitally signed by SHANTANU SHANKARSA DHUDUM Date: 2024.03.07 14:27:26 +0530

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

FIRST APPEAL N O. 440 OF 2023

1. Anita Vijaykumar Shahane)
Age: 47 years, Occ: Service)

2. Snehal Vijaykumar Shahane)
Age: 17 years, Occ: Education)
Petitioner No.2 being minor through)
her mother Petitioner No.1)

3. Vijaykumar Chanbasappa Shahane)
Age: 50 years, Occu: Auto Driver)
All R/o. 88/108, Bhavani Peth,)
Dhotrikar Vasti, Solapur.)….Appellants
(Original Claimants)

Versus

1. Mr. Hoshang H. Dastoor)
Age: Adult, Occ:- Business)
R/o. H. 11/8, Tadiwala Road,)
Camp, Pune – 411001.)
2. Bajaj Allianz General Insurance Co.)
Summons be served on its Divisional)
Office at City Pride, Solapur.)….Respondents
(Original Respondents)

Mr. Rajshekhar S. Alange, Advocate for the Appellant.
Mr. Dorman Dalal, Advocate for the Respondent No.1.
Mr. Sarthak S. Diwan, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 28th FEBRUARY, 2024.

Oral Judgment. :

1. By way of this appeal, the Claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellants that deceased was a lecturer in Dhole Patil Engineering College, Pune and he was getting salary at Rs.39,428/- per month but the Tribunal has considered his monthly income at Rs.30,805/- per month, which is on lower side. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded. Learned counsel further submitted that while calculating the compensation, the Tribunal has applied multiplier of parents of deceased, it should be as per the age of the deceased. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2/Insurance Company that while considering income of deceased, the Tribunal has deducted Income Tax amount, which is proper. Learned counsel further submitted that at the time of passing order the Tribunal has considered all the aspects hence, no interference is required in it.

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

5. To prove the income of deceased, the Claimants have examined Claimant No.1 mother of deceased. She has stated that the deceased was working as lecturer in Dhole Patil Engineering College, Pune and he was getting salary of Rs.39,428/- per month. The salary certificate is at Exhibit-42. Nothing elicited in the cross-examination of this witness. In support of evidence of PW-1, the claimants have examined PW-2 Mr. Vikas Waghmare, clerk of Dhole Patil Engineering College, Pune. He has stated that the deceased was working in their college as a lecturer and he was getting monthly income of

Rs.39,428/- per month. The salary certificate is at Exhibit-42.

6. While dealing with the issue of the income of the deceased, the Tribunal has observed that the deceased was getting gross salary at Rs.39,428/- per month and after deducting the Income Tax of 10%, it comes to Rs.30,805/-. On that basis, the Tribunal has considered the monthly income of deceased at Rs.30,805/-. The Tribunal has deducted Rs.5,000/- and income tax 10%, which is erroneous.

7. In my view, the Tribunal should have deducted Professional Tax of Rs.200/- from the Rs.39,428/- and 10% Income Tax, it would come to Rs.35,286/- hence, I am considering this amount as monthly income of the deceased. The Tribunal has awarded consortium on lower side. The Tribunal has applied multiplier on the basis of age of parents, it should be as per the age of the deceased. At the time of accident, deceased was 24 years old, so proper multiplier is 18. 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 Rs.48,000/- for consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

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

Monthly income	Rs.39,428/-
Less Professional Tax	Rs.200/-
Less Income Tax	Rs.3942/-
Total income monthly	Rs.35,286/-
Annual Income (Rs.35,286/- X 12)	Rs.4,23,432/-
Add: 50% future prospects	Rs.2,11,716/-
Total	Rs.6,35,148/-
Less deduction 50% for personal expenses	Rs.3,17,574/-
Multiplier X 18 (Rs.3,17,574/- X 18)	Rs.57,16,332/-
Consortium Rs.48,000/- X 3 (Claimants)	Rs.1,44,000/-
Loss of estate	Rs.18,000/-
Funeral expenses	Rs.18,000/-
Total Compensation	Rs.58,96,332/-
Less awarded by the tribunal	Rs.39,81,430/-
Enhanced amount	**Rs.19,14,902/-**

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

ORDER

i. Appeal is allowed.

ii. The Claimants are entitled for enhanced amount of Rs.19,14,902/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount Rs.1,80,000/- as consortium amount, the Claimants are entitled @ 7.5% interest on this amount from 1st November, 2017.

iii. The Respondent No.2/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within eight weeks after receipt of the order.

iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

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

(SHIVKUMAR DIGE, J.)