IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1421 OF 2024
WITH
CROSS OBJECTION (ST) NO.25481 OF 2024
WITH
FIRST APPEAL NO.1420 OF 2024
WITH
CROSS OBJECTION (ST) NO.25321 OF 2024

Cholamandalam M.S. General Insurance Co. Ltd., Thr. Its Manager, Neha S. Hake
Having Regional Office at 3rd Floor, Oberoy Tower, Jalna Road, Amarprit Chowk, Aurangabad,
Thr. Its Branch Manager and also having address at Dastor House, 2nd Floor,
Above Union Bank of India, Perin Nariman Street, P.M. Road, Fort, Mumbai-400001 } **...Appellant**

Versus

1. Kum. Simran Arif Pathan }
Age-12 years, Occ: Education }

2. Tabassum Ekbal Shaikh }
Age-29 years, Occ: Household }
R.No.2 for herself and for R. No.1 being aunt of minor }
Both R/at. Yugantar Co. Op. Housing Society, Bunglow No.48/B, Vinay Nagar, Nashik }

3. Abedabi Gulshan Pathan (Since dead) }

4. Shri.Lakhvirsing Harmohansing Manju }
Age-Major, Occ: Vehicle Owner, }
R/at 20, Ranchod Nagar, Makarpuragam, }
Makarpura, Vadodara, Gujarat }

Mr.Rajesh Kanojia a/w Ms.Prachi Pawar, for the Appellant in both FA.
Mr.Yogesh Pande i/b Mr.R.S. Pawar, for Respondent Nos.1 and 2 in FA No.1421 of 2024 and for Respondent Nos.1 and 2 in FA No.1420 of 2024.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th DECEMBER 2024

ORAL JUDGMENT :-

. These two Appeals are preferred by Insurance Company against judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Nashik. The Respondents-Claimants have also preferred Cross Appeal for enhancement of compensation as, Appeals and Cross Appeals are against the same judgment and order and out of the same accident as also the issue involved in these Appeals is same. Hence, I am deciding it by this common judgment.

2. The issue involved in these Appeals is income of the deceased is considered on higher side.

3. It is contention of the learned counsel for the Appellant that, the Tribunal has considered income of the deceased on the basis of the Income Tax Returns produced on record. But contents of these returns were not proved before the Tribunal. The Claimant's have not produced any evidence to prove the said Income Tax Returns. The Tribunal has considered Income of the deceased on that basis of these income return's, which is erroneous. The learned counsel further submitted that, the deceased were parents of the Claimant (sole survivor). At the time of the passing the judgment and order only one Claimant i.e. daughter of deceased was alive, so the Tribunal should have deducted 1/2 amount for personal expenses. But the Tribunal has deducted 1/3 amount for personal expenses, which is erroneous. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondents-Claimants that, the Income Tax Returns of the deceased were filed on record. These Income Tax Returns were not disputed by the counsel of the Appellant and are duly exhibited. The Income Tax Return is statutory document no

need to prove it. While exhibiting Income Tax Return it was not objected by the Appellant. Hence in appeal the Appellant can't challenge it. The learned counsel further submitted that, the Tribunal has not considered exempted amount which is mentioned in Income Tax Returns as income of the deceased be considered as per Chapter-IV of the Income Tax Act. He relied on the following judgments.

(i) Saroj Devi & Ors V/s. Balbir Singh & Ors.[1]
(ii) Anjali V/s Lokendra Rathod & Ors[2]*.*
(iii) Fakir Chand Taneja & Ors V/s. Oriental Insurance Co. Ltd. & Anr.[3]
(iv) Kirti & Ors. V/s. Oriental Insurance Co. Ltd.[4]

5. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

6. While dealing with the issue of income of both the deceased, the Tribunal has considered monthly income of both the deceased on the basis of the Income Tax Returns filed on record as they were Income Tax payee.

7. It is contention of the learned counsel for the

1 2023 ACJ 2678
2 2023 ACJ 637
3 2023 ACJ 338
4 2021 ACJ 1

Appellant that, no witness was examined to prove the Income Tax Returns. Hence, income mentioned in the said returns cannot be considered as the income of the deceased. In my view, the Income Tax Return is statutory document. The said returns are accepted before the Tribunal. While exhibiting these Income Tax Returns objection was not taken by the learned counsel for the Appellant. Once document is exhibited, it has to considered. Moreover, Hon'ble Apex Court in the case of *Anjali & Ors (Supra)* has held that being statutory document the Income Tax Returns shall be considered as a proof of income. Hence, I do not see merit in the contention that the income of both the deceased considered by the Tribunal is not proper.

8. It is contention of the learned counsel for the Appellant that, the Tribunal should have deducted ½ amount for personal expenses.

9. In my view, at the time of filing Claim Petition it was filed by grand mother and daughter of the deceased, during pendency of the Claim Petition grand-mother died. As at the time of the filing Petition two Claimant's were there. Hence, the

Tribunal has rightly deducted 1/3rd amount for personal expenses.

10. While considering the income of the deceased the Tribunal has not considered the amount deducted under Chapter-VI-A of the Income Tax Act. In my view, the Tribunal should have considered this amount as income of the deceased and I am considering the said amount as income as per view of Hon'ble Apex Court in the case of *Saroj Devi & Ors (Supra).*

11. Considering the above calculations, the Claimants are entitled for following compensation:-

FIRST APPEAL NO.1421 OF 2024

Particulars	**Amount**
Yearly Income of Samina Pathan as per ITR	Rs.4,36,261/-
Deducted 1/3 Personal Expenses	-Rs.1,45,420/-

	Rs.2,90,811/-
(+) Future Prospects(40% -Rs.116324/-)	Rs.1,16,324/-
Multiplier Applicable is 16 X 4,07,135/-	**Rs.65,14,160/-**
Loss of Dependency	**Rs.65,14,160/-**
Consortium (Rs.48,000 x 1)	Rs.48,000/-
Compensation Entitled	**Rs.65,62,160/-**
Less : Compensation Awarded	Rs.42,21,920/-

Additional Compensation Entitled	**Rs.23,40,240/-**

FIRST APPEAL NO.1420 OF 2024

Particulars	**Amount**
Yearly Income of Arif Pathan as per ITR	Rs.3,99,230/-
Deducted 1/3 Personal Expenses	-Rs.1,33,077/-

	Rs.2,66,153/-
(+) Future Prospects(25% -Rs.66538/-)	Rs.3,32,691/-
Multiplier Applicable is 14 X 3,32,691	**Rs.46,57,674/-**
Loss of Dependency	**Rs.46,57,674/-**
Consortium (Rs.48,000 x 1)	Rs.48,000/-
Compensation Entitled	**Rs.47,05,674/-**
Less : Compensation Awarded	Rs.31,54,662/-
Additional Compensation Entitled	**Rs.15,51,012/-**

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

ORDER

(i) Both Appeals are dismissed.

(ii) Both Cross Objections are allowed.

(iii) The Claimant's in FA No.1421 of 2024 are entitled for enhanced amount of Rs.23,40,240/- alongwith interest @ 7.5% interest from the date of the filing of the Claim Petition till realization of the amount.

(iv) The Claimant's in FA No.1420 of 2024 are entitled for enhanced amount of Rs.15,51,012/- alongwith interest @ 7.5% interest from the date of the filing of the Claim Petition till realization of the amount.

(v) The Appellant-Insurance Company in both Appeals shall deposit entire enhanced amount within six weeks.

(vi) The Respondents-Claimants in both Appeals shall pay deficit Court fees, if any.

(vii) The statutory amount in both Appeals filed by Insurance Company alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(viii) Record and Proceedings in both Appeals be sent back to the Tribunal.

(ix) All pending Civil and Interim Applications in both Appeals are disposed of.

(SHIVKUMAR DIGE, J.)