Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1545 OF 2024
WITH
CROSS-OBJECTION (ST.) NO.3886 OF 2025
IN
FIRST APPEAL NO.1545 OF 2024

Reliance General Insurance Company Limited, Pune. …Appellant

Versus

Saifuddin Fakhruddin Shakir and ors. …Respondents

Mr. Avesh Ghadge (through V.C.) i/by Mr. Akshay Kulkarni, for the Appellant.
Mr. Amol Gatne, for the Respondents.

CORAM: R. M. JOSHI, J.

DATED: 2nd FEBRUARY, 2026.

PC:-

1. By consent of both sides, heard finally at the stage of admission.

2. This appeal is filed by the Insurer taking exception to the impugned judgment and award dated 2nd April, 2024 passed by M.A.C.T., Pune, whereby the claim filed by the Claimants came to be allowed with direction to pay compensation of Rs.1,44,91,700/- with interest at the rate of 9% p.a. from the date of petition till realization of entire amount.

PRIYA RAJESH SOPARKAR

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3. Insurer filed the appeal on the ground that the Tribunal has erred in not considering the negligence on the part of unknown vehicle in occurrence of the accident. Similarly, challenge is raised to the quantum of compensation granted by the Tribunal contending that evidence on record does not justify it. Learned counsel for the Appellant submits that here in this case deceased was appointed as Manager in the company and it is not probable that within a period of two years, he would be made Director of the company.

4. The Claimants on the other hand while filing cross-objection taking enhancement of the compensation, claim.

5. Learned counsel for Insurer submits that the Tribunal ought to have held the negligence on the part of the unknown vehicle. It is his further submission that the evidence of the employer is not sufficient to prove the employment of income of the deceased for the purpose of computation of the compensation. Exception is also taken by him to judgment on the ground that the interest awarded at the rate of 9% is excessive in nature.

6. Learned counsel for the Claimants supported the impugned judgment and award. It is his contention that in fact the Tribunal has erred in not considering the amount of bonus paid to the deceased while computing the compensation. It is his submission that the witness No.2-Parikshit Prakash Parmar has led evidence specifically stating that the depending upon the profits of the company bonus ranging Rs.3,00,000/- and Rs.6,00,000/- per annum was paid. In support of said statement, he relied upon two ledger accounts filed on record. It is his submission that one ledger account which deals with the salary and the other deals with the expenses. It is his submission that in the salary ledger amount Rs.97,021/- and Rs.12,90,828/- is reflected. This according to him, should be read as bonus. To support his contention he placed reliance upon the judgment of the Division Bench of this Court in the case of ***Reliance General Insurance Company Limited Vs. Rajeshree Sanjaykumar Kadam and ors. reported in 2017 SCC Online Bom 8731***. He referred to paragraphs Nos.17 and 18 of the said judgment. It is argued that even if the amount of bonus is not reflected in income tax returns filed on record, in view of the judgment of the Supreme Court in the case of ***National Insurance Company Limited Vs. Indira Srivastava and ors. reported in (2000)2 Supreme Court Cases 763***, it deserves to be taken into account.

7. Though the Insurer has taken a plea with regard to the negligence of the unknown vehicle in the occurrence of the accident, admittedly no evidence was led to substantiate the said claim. The Claimants on the other hand have proved their contention with regard to the negligence on the part of the driver of the offending vehicle in occurrence of the accident on the basis of police papers on record.

8. As far as the employment and income of the deceased is concerned, the Claimants led evidence of Parikshit Prakash Parmar at Ex.33. He not only deposed on oath with regard to the employment of deceased as Director with the company, but the same is supported by the documentary evidence on record in the nature of Form-16, income tax returns as well as ledger accounts.

The learned Tribunal has accepted the income of the deceased as reflected in the income tax returns.

9. The Claimants at this stage is calling upon this Court to consider the amount of Rs.97,021/- and Rs.12,90,828/- to be made it as bonus. Learned counsel for the Claimants attempted to convince the Court on the basis of documents on record, more particularly, two ledgers stating that the said amounts must be taken as bonus, though it is shown under the head of “Expenses”.

10. The judgment relied upon by the Division Bench of this Court in case of ***Reliance General Insurance Company Limited*** (supra) the Tribunal has failed to take into consideration the bonus on the ground that it is linked with the performance. In this backdrop, the Division Bench of this Court has held that if not entire amount, at least some amount should have been income considered from the bonus while determining the amount annual income of the deceased. Whereas in the instant case the witness examined by the Claimants does not state that the amount indicated in the ledger accounts towards expenses in fact is a bonus amount. Even though it is accepted that the strict rules of evidence would not apply to present case. The Court cannot assume something the absence of evidence, i.e. to read the expenses as reflected in ledger as bonus. It was for Claimant to lead evidence through employer to make this contention acceptable. In absence of any evidence to that effect, this Court finds no reason to accept the submissions of learned counsel for Claimants in this regard.

11. In the instant case, the Tribunal has accepted the income of the deceased as appeared in the income tax returns. Though the Claimants are unjustified in relying upon the judgment of the Hon'ble Supreme Court in the case of ***Indira Srivastava*** (supra) but the same deals about certain perks to be non-taxable and still could be considered. However, to hold that the amounts reflected in ledger as bonus, there has to be some evidence on record, which is absent.

12. From the above discussion, this Court finds no merits in the appeal and cross- objection.

13. Hence, both stand dismissed.

14. In view of the above, interim applications, if any, also stand disposed of.

(R. M. JOSHI, J.)