Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 266 OF 2025

WITH

INTERIM APPLICATION NO. 38490 OF 2025

WITH

INTERIM APPLICATION NO. 1292 OF 2025

IN

FIRST APPEAL NO. 266 OF 2025

IFFCO TOKIO General Insurance Co. Ltd. Pune …Appellant
Versus
Suwarna Ishawar Thakur And Ors. …Respondents

Mr. Nikhil Mehta i/b KMC Legal Venture, for the Appellant.
Mr. Dnyandeo Shinde, for the Respondents.

CORAM: R. M. JOSHI, J.

DATED: 16th JANUARY 2026

PC:-

1. This Appeal filed by the Insurer takes exception to the Judgment and Award dated 4th July, 2024 passed in MACP No. 79 of 2016, whereby the Tribunal allowed death claim and granted compensation to the claimant to the extent of Rs.33,52,500/- with interest @ 9% per annum from the date of filing of the Petition till realization of the amount.

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2. The Appellant takes exception to the impugned Judgment and Award, essentially, on three counts i.e., firstly, the driver of the offending vehicle was not holding the valid and effective driving licence at the relevant time; secondly, the vehicle was plied without a valid permit and the involvement of the vehicle in the accident is also disputed and thirdly, the challenge is made to the amount of compensation granted by the Tribunal on the ground that the Tribunal accepted the income of the deceased on higher side.

3. Learned Counsel for the Appellant/Insurer submits that the insurer by filing Written Statement has raised all the aforestated grounds and in fact, substantiated the same by examining witness before the Tribunal. It is his further submission that the Tribunal ought to have taken into consideration the evidence led before it, which indicates that the driver of the offending truck was not holding valid licence nor there was a permit of the truck at the relevant time. It is his submission that the said fact was investigated into and the investigation revealed that both objections raised by the insurer are valid. As far as the computation of compensation is concerned, it is his submission that the Tribunal committed error in accepting the income of the deceased at the rate of Rs.13,000/- per month in absence of any documentary evidence. It is his submission that merely on the basis of salary certificate, the Tribunal could not have accepted the said income. He also took exception to the interest awarded by the Tribunal at the rate of 9% p.a. which, according to him, is excessive.

4. Learned Counsel for the original claimants, not only supported the impugned Judgment and Award but also, sought enhancement of the compensation by relying upon judgment in case of **Papu Deo Yadav vs. Nareshkumar and Ors.**[1] wherein it is held that without the filing of cross objections or appeal against the impugned Judgment and Award, enhancement can be sought by the claimant. It is his submission that the Tribunal ought to have accepted the agricultural income of the deceased for the purpose of computation of compensation. It is his further argument that the Tribunal has not granted compensation under the head of consortium. He, therefore, seeks enhancement of the compensation.

5. No doubt, the insurer raised plea with regard to the driver of offending vehicle not holding licence during the relevant time, so also, the vehicle being plied without permit. However, there is no evidence on record to indicate that the notice issued to the owner of the offending vehicle was received by him. Apart from this, though investigation was done by the insurer, the report of the investigation is not placed before the Tribunal. In such circumstances, the Tribunal was fully justified in rejecting the objection raised by the insurer in this regard.

6. As far as the computation of compensation on the basis of income of the the deceased is concerned, the claimant examined employer, who deposed about paying Rs.13,000/- per month as salary to the deceased. In the cross-examination nothing is

1 AIR 2020 SC 4424

elicited to discard the said testimony. This Court,however, finds substance in the contention of Counsel for the insurer that since the claimants failed to prove agricultural income of the deceased, no enhancement is entitled by the claimants on that count. This Court, therefore, is not inclined to interfere in the compensation granted by the Tribunal for loss of income / dependency.

7. The Tribunal, however, ought to have granted compensation under head of consortium in view of the judgment of Supreme Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram**[2].

8. As held in the case of **Papu Deo Yadav (supra)**, the claimants are entitled to receive enhancement of the compensation without filing of Appeal/Cross Objections. The claimants, therefore, would be entitled to receive additional compensation of Rs. 2,06,000/-.

9. Insofar as argument with regard to the higher interest being granted by the Tribunal is concerned, for want of any perversity in the said order, no interference is required. Hence, the following order.

ORDER

(a) The Appeal stands dismissed.

(b) The Claimants are entitled for additional compensation of Rs.2,06,000/- with interest @ 9%

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per annum from the date of claim till realization, which would be over and above compensation granted by the Tribunal.

(c) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(d) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

10. In view of dismissal of Appeal, pending Applications, if any, also stand disposed of.

(R. M. JOSHI, J.)