

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 49 OF 2017

1	Savita Ramesh Wadekar, Age : 52 Yeas, Occ : Household.		
2	Ramesh Sambhaji Wadekar, Age : 55 years, Occ : Teacher, Both R/o. Wada, Telewadi, Tal. Devghad, District : Sindhudurg.		Appellants (Org. Claimants)
	Versus		
1	Ashish Appasaheb Desai, Age : Adult, Occ : Business, R/o. New Kashikilwada, Sawantwadi, Tal. Sawantwadi, Dist : Sindhudurg.		
2	Umesh Ramesh Wadekar, Age : Adult, Occ : Agriculturist, R/o. Wada, Teliwari, Tal. Devghad, District : Sindhudurg.		
3	Cholamandalam M.S.General Insurance Company Ltd., 203, 2 nd Floor, Dempo Trade Centre, Patto Goa.		
4	The Old Insurance Company Ltd., 16, Chintamani Park, Basement, In front of Gango Mandir, Mumbai, Goa Highway, Kankawali, District : Sindhudurg.		Respondents

Mr. Jayant J. Bardeskar, Advocate for the Appellants.
 Mr. Rajesh Kanjia i/b. Res Juris, Advocates for Respondent No.3.
 Mr. Rahul Mehta i/b. KMC Legal Venture, Advocates for Respondent No.4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th MAY, 2024.

Oral Judgment :

1. The issues involved in this appeal are that the income of the

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deceased is considered on lower side, future prospects has not been awarded and consortium amount is awarded on lower side.

2. It is contention of learned counsel for the appellants/claimants that the deceased was working as mango trader and he was earning Rs.23,000/- to Rs.24,000/- per month. The evidence was produced on record showing the income of the deceased but the Tribunal has considered monthly income of the deceased at Rs.5,000/-, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount is awarded on lower side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos.3 and 4 that no evidence is produced on record to show the income of the deceased. Learned counsel further submitted that the agreement which was produced on record was false and bogus. The Tribunal has observed that the agreement is false and bogus. The Tribunal has considered proper income of the deceased. Learned counsel further submitted that the Tribunal has considered all the aspects while passing the judgment and order. No interference is required in it.

4. I have heard all learned counsel, perused the judgment and order dated 2nd February 2016 passed by Motor Accident Claims Tribunal, Oras in M.A.C.P. No.28 of 2011 (for short "the Tribunal").

5. It is claimants' case the the deceased was doing Mango business and he used to take truck on rent from opponent No.2. To prove the income of the deceased, claimant No.1- Savita Wadekar, has examined herself. She has stated that the deceased was doing the business of Mango Transport and he had taken truck of respondent No.2 on rent and in off-season, he would use the said truck for supplying goods and he was earning Rs.23,000/- to Rs.24,000/- per month. She has produced the driving license of the deceased – Rakesh Wadekar, on record. Nothing elicited in the cross-examination of this witness. In support of evidence of PW1, the claimants have examined PW2- Uday Tawade. He has stated that the deceased was doing mango business and he was doing transport of goods business by taking truck of respondent No.2 on rent. Considering the evidence on record, the Tribunal has considered the monthly income of the deceased at Rs.5,000/- on the basis of Minimum Wages Act. I am unable to understand the observations of the Tribunal as it has come on record that the deceased was doing mango business and he used to take truck on rent for transport business and transport of goods. During mango season, he used to transport the mangoes. He possessed driving license. It shows that he was a skilled worker but the Tribunal has not considered this fact.

5.1. It is contention of learned counsel for the appellants/claimants that at least Rs.20,000/- be considered as monthly income of the

deceased. Learned counsel for respondent Nos.3 and 4 submitted that the income of Rs.20,000/- per month of the deceased cannot be considered as no evidence has come on record in that regard. Considering the submissions of all learned counsel as well as evidence on record and considering the fact that the deceased was skilled worker and he was carrying business of mango, I am considering the monthly income of the deceased at Rs.6,000/- per month.

5.2. The Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC) ,** the claimants are entitled for 40% amount of total income as future prospects.

5.3. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses.

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

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.6000/- x 12)	Rs.	72,000.00
1/2th deductions towards personal expenses	Rs.	36,000.00
TOTAL	Rs.	36,000.00
Rs.36000/- x 18 (multiplier)	Rs.	6,48,000.00
40% Future prospects	Rs.	2,59,200.00

TOTAL Income	Rs.	9,07,200.00
Consortium (Rs.48000/- x 2 claimants)	Rs.	96,000.00
Loss of Estate	Rs.	18,000.00
Funeral Expenses	Rs.	18,000.00
Total Compensation.	Rs.	10,39,200.00

The Tribunal has awarded Rs.5,49,500/-, if this amount is deducted from the amount of Rs.10,39,200/- considered by this Court, it comes to Rs.4,89,700/-. The claimants are entitled for this amount.

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

ORDER

1. The first appeal is allowed.
2. The claimants are entitled for enhanced compensation of Rs. 4,89,700/-@ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs. 1,32,000/- is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
3. Respondent No.3 shall deposit 50% of the enhanced amount along with accrued interest thereon and Respondent No.4 shall deposit 50% of the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.

4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
5. The claimants shall pay deficit court fees on enhanced amount as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)