

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.1255 OF 2009

1. Smt. Shamimbi Shaikh Gaffar,
Age:48 years, Occ. Nil,
2. Bilal Shaikh Gaffar,
Age:19 years, Occ. Education,
3. Seemaparvin Shaikh Gaffar,
Age:21 years, Occ. Education

All residents of c/o.
Shaikh Ahmed Shaikh Eusuf
Islampura Galli, Dondaicha,
Tq. Shindhkheda, Dist.Dhule

..Appellants

Vs.

1. East West Carrier (Truck owner's office),
LLT, G.R.D., F.L.R.,
Arihant Compound Shed 13,
Kopar Bus Stop,
Tq. Bhivandi, Dist. Thane
2. The New India Insurance Company Ltd.,
Dhule

..Respondents

Mr.Shrikant S. Patil, Advocate for appellants
Mr.V.N.Upadhye, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : NOVEMBER 23, 2021**

JUDGMENT :-

This is an appeal for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Dhule ("the Tribunal", for short) on account of death in a vehicular accident.

2. The appellants herein are legal representatives of deceased – Shaikh Gaffar, who died in the accident involving motor vehicle on 21.07.2006. The appellants are the widow and two children of the deceased.

3. Mr.Shrikant Patil, learned counsel for the appellants-claimants, would submit that the Tribunal considered take-home salary of the deceased for working out the amount of loss of dependency. No amount has been awarded on account of future prospects. A very meagre amount has been granted under the conventional heads. Learned counsel would, therefore, submit that the entire salary minus profession tax only, ought to have been considered by the Tribunal. According to him, the amount of compensation needs to be awarded in terms of the Apex Court judgments in the cases of (i) **National Insurance Company Ltd. Vs. Pranay Sethi and ors., (2017)16 SCC 680**; and (ii) **Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and ors., (2018)18 SCC 130**.

4. Mr.V.N.Upadhye, learned counsel for the respondent-insurance company, would, on the other hand, submit that the amount of compensation awarded by the Tribunal is just and

reasonable. No interference is, therefore, warranted with the impugned award.

5. The deceased was a Police Sub-Inspector. His salary certificate for the month of June, 2006, indicates that his monthly gross salary was Rs.10,596/-. The deductions therefrom are amounting to Rs.3,090/-. Except deduction of Rs.200/- on account of profession tax, rest are towards General Provident Fund, Group Insurance and festival advance. All these amounts were to be received by the deceased either in case of his death in harness or on his retirement. As such, for calculating the loss of dependency, a sum of Rs.10,396/- (Rs.10,596 – Rs.200) is to be considered. Since the deceased was 50 years of age, 15% of his actual salary is added thereto towards future prospects. Thus, the monthly salary of the deceased would come to Rs.11,955/- and his annual income would come to Rs.1,43,460/-. Since the claimants are three in number, one third thereof is deducted towards his personal and living expenses. This way, the annual income of the deceased would come to Rs.95,640/- (Rs.1,43,460 – Rs.47,820/-). For want of date of birth of the deceased, there is no evidence about his exact age. Considering his age to be 50 complete, multiplier of 11 is applied.

This way, the amount of loss of dependency would come to Rs.10,52,040/- (Rs.95,640 x 11). Moreover, the claimants are awarded Rs.40,000/- each on account of loss of love and affection and consortium besides a sum of Rs.30,000/- towards funeral expenses and loss of estate, totaling Rs.1,50,000/-. The amount of loss of dependency shall carry interest at the rate of 6% per annum from the date of the claim petition till payment/deposit thereof, while the amount of compensation awarded under the conventional heads to carry interest from the date of this order to the date of payment.

6. In the result, the appeal succeeds in terms of the following order :-

(i) The amount of compensation awarded by the Tribunal is enhanced from Rs.9,95,792/- to Rs.12,02,040/- with interest at the rate of 6% per annum from the date of claim petition till realisation thereof.

(ii) The sum of Rs.1,50,000/- granted towards loss of consortium, love and affection, loss of estate and funeral expenses shall not carry interest *pendente lite* (i.e. from the date of claim petition to the date of this order).

(iii) The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants with interest accrued thereon.

[R.G. AVACHAT, J.]

KBP