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

FIRST APPEAL NO. 1023 OF 2007

1. Smt. Sangitadevi W/o Late Rameshkumar Kesarwani
Age : 40 years, Occ : Household,
R/o 41-A/1, Phafamau Pratap Gargh Road,
Allahabad (UP).

2. Surajprasad S/o Late Ramkishore Kesarwani (Died)
Through his legal heirs who are already on
record as Appellant Nos.3 (i) (ii) (iii) (iv)

3. Smt. Gulabdevi W/o Surajprasad Kesharwani
(Died) through her legal heirs

3-i) Shri Bharatprasad S/o Surajprasad Kesharwani
(died) through his legal heirs
(Abated)

3-ii) Rambihari S/o Late Surajprasad Kesharwani
Age : 48 years, Occ : Business,
R/o 41-A/1, Phafamau Pratap Gargh Road,
Allahabad (UP).

3-iii) Shyambihari S/o Surajprasad Kesharwani
Age : 44 years, Occ : Business,
R/o 41-A/1, Phafamau Pratap Gargh Road,
Allahabad (UP).

3-iv) Mahendrakumar S/o Surajprasad Kesharwani
Age : 42 years, Occ : Business,
R/o 41-A/1, Phafamau Pratap Gargh Road,
Allahabad (UP).

. **..APPELLANTS**
(Original claimants)

VERSUS

1. Shaikh Nazir S/o Shaikh Imam
Age : 62 years, Occ : Retired Driver,
R/o Hadgaon, Tq. Hadgaon,
Dist. Nanded.

2. The Maharashtra State Road
Transport Corporation (MSRTC),
Through its Divisional Controller,
S.T. Depot, Nanded
Dist. Nanded.

3. The Depot Manager (MSRTC)
Hadgaon Bus Depot, Tq. Hadgaon,
Dist. Nanded.

. ..**RESPONDENTS**
(Orig. Respondents)

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Advocate for Appellants : Mr.N. Narayan Singh
Advocate for Respondent Nos.2 and 3 : Mr. M.K. Goyanka

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CORAM : S.G.DIGE, J.

RESERVED ON : 20.07.2022
PRONOUNCED ON : 21.09.2022

JUDGMENT :

Being aggrieved and dissatisfied with the judgment and award passed by the Member, Motor Accident Claims Tribunal, Nanded, the appellants – original claimants have preferred this appeal.

2. Brief facts of the case are as under :-

On 5th May, 1988 the deceased was proceeding in the Bus, the said bus collided with tree and caught fire. Around 55 persons including deceased died in the said fire. The offence was registered against the driver of the Bus.

3. The appellants filed claim petition for getting compensation before the Motor Accident Claims Tribunal, Nanded (For short, “the Tribunal”). Considering the evidence on record and after hearing the parties, the Tribunal has awarded compensation. Against the said judgment and order this appeal for enhancement of compensation.

4. It is the contention of the learned counsel for the appellants that the Tribunal has not considered proper income of the deceased. The deceased was contractor and he had carried out the contract work of Government, Semi-Government and for private parties, but this fact was not

considered by the Tribunal. The income tax returns of the deceased of the year 1980 to 1987 are not considered by the Tribunal. At the time of incident, the deceased was 26 years. The deceased was partner in the partnership firm by name M/s Ganga Construction Company. The future prospects are also not awarded. Hence requested to allow the appeal.

5. It is the contention of the learned counsel for respondent nos.2 and 3 that income of the deceased was not proved before the Tribunal. The Tribunal has granted compensation on the basis of the evidence led before the Tribunal. The respondent no.2 has satisfied the award and Rs.30,000/- was given by the respondent no.2 to the appellants, thus total Rs.1,00,000/- is given to the appellants. The Tribunal has for personal expenses deducted 1/3rd amount, it should be 1/2. The judgment and order passed by the Tribunal is legal and valid.

6. I have heard both the learned counsel. Perused

the judgment and order passed by the Tribunal. The Tribunal has awarded Rs.70,000/- compensation to the appellants.

7. The issues involved in this appeal are income of the deceased was not properly considered, the future prospects and consortium amounts are not awarded.

8. Firstly I would consider issue of income of deceased. The issue in respect of income of the deceased is concerned, the Tribunal has considered Rs.1500/- per month as income of the deceased on the ground that the father of deceased in his evidence has stated that the deceased was getting Rs.1500/- per month. The Tribunal has accepted that the deceased was paying income tax returns. In my view, father of the deceased has categorically stated that the deceased was earning Rs.1500/- per month, hence monthly income of deceased at Rs.1,500/- considered by the tribunal is proper as well as the Tribunal has observed that the income tax returns filed on record are of

partnership firm. So, it cannot be considered as individual income of the deceased.

9. The issue in respect of the future prospects is concerned, the Tribunal has not awarded future prospects. As per view of the Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680,*** the appellants are entitle for 40% additional amount as future prospects. As the deceased was 26 years of age at the time of his death, he was below 40 years of age and he was self employed. The Tribunal has applied the multiplier of age of parents of the deceased, it shall be age of the deceased at the time of accident he was 26 years old, hence, multiplier of 17 is applicable.

10. The Tribunal has not awarded the consortium amount. The appellants are dependents on the deceased. As per the view of the Hon'ble Apex Court in the case of ***Magma General Insurance Company Limited Vs. Nanu Ram***

alias Chuhru Ram and others reported in ***(2018) 18 SCC 130,*** the appellants are entitle for Rs.40,000/- each as consortium. The appellants are also entitle for Rs.30,000/- amount for funeral expenses and loss of estate.

11. I do not agree with contention of the learned counsel for respondent that half of amount from the income should be deducted for personal expenses of deceased, as claim petition was filed by three claimants viz:- widow, mother and father of the deceased. Award amount of Rs.70,000/- is paid to the appellants as well as amount of Rs.30,000/- is given to the appellants as ex-gratia amount by respondent, hence I am deducting that amount of Rs.1,00,000/- from enhanced amount. Though appeal is filed in the year 1995, it was pending for condonation of delay till year 2007. Delay for filing appeal is condoned in the year 2007, hence appellants are not entitle for interest for the period of these years i.e. till registration of appeal in 2007.

12. Considering the above calculations, the appellants are entitle for following compensation :-

Sr. No.	Head	Compensation awarded
1.	Monthly notional income	Rs.1,500/- per month
2.	Annual income	Rs.18,000/-
3.	1/3rd deduction (Rs.18,000/- - Rs.6,000/- = Rs.12,000)	Rs.12,000/-
4.	40% future prospects Rs.12,000/- + Rs.4800/-)	Rs.16,800/-
5.	Multiplier 17 (Rs.16,800 X 17)	Rs.2,85,600/-
6.	Consortium amount Rs.40,000/- each	Rs.1,20,000/-
7.	Non-pecuniary Heads	Rs.30,000/-
8.	Total	Rs.4,35,600/-
Rs.4,35,600/- - Rs.1,00,000/-, which is paid to the appellants by respondents = Rs.3,35,600/-. Hence the appellants are for enhanced amount of compensation of Rs.3,35,600/-		

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

ORDER

(i) The appeal is allowed.

(ii) The amount of compensation is enhanced from Rs.70,000/- to Rs.4,35,600/-.

(iii) The appellants are entitle to enhanced amount of Rs.3,35,600/- @ 6% from the date 13.08.2007 till realization of amount.

(iv) Respondent is directed to deposit enhanced amount within eights weeks.

(v) Appeal is disposed of in above terms.

[S.G.DIGE]
JUDGE

SGA/-