

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

**FIRST APPEAL NO. 398 OF 2010**

1. Sumitrabai W/o Namdeo Satao  
Age : 34 years, Occ : Household,  
R/o Masod, Tq. Kalamnuri,  
Dist. Hingoli.
2. Ku. Pallavi D/o Namdeo Satao  
Age : 6 years minor under guardianship  
real mother applicant no.1  
R/o as above.
3. Prajot S/o Namdeo Satao  
Age : 4 years minor under guardianship  
Real mother applicant no.1  
R/o as above.
4. Tukaram S/o Bhagoji Satao  
Age : 55 years, Occ : Agri.,  
R/o Masod, Tq. Kalamnuri,  
Dist. Hingoli (Deleted)

**..APPELLANTS**  
(Original Claimants)

**VERSUS**

1. Sahaji S/o Shivajirao Suryawanshi  
Age : 40 years, Occ : Luxury Bus Owner,  
R/o Dati, Tq. Kalamuri,  
Dist. Hingoli
2. The Branch Manager,  
United India Insurance Co. Ltd.,  
“Dayawan Complex”, Station Road,  
Parbhani, Dist. Parbhani.

**..RESPONDENTS**  
(Original Respondents)

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Advocate for Appellants : Mr.Sachin S. Deshmukh  
Advocate for Respondent No. 1 : Mr. S.R. Bagal  
Advocate for respondent no.2 : Mr. S.V. Kulkarni

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**CORAM : S.G.DIGE, J.**  
RESERVED ON : 19.08.2022  
PRONOUNCED ON : 07.09.2022

**JUDGMENT :**

The challenge in this appeal is to the income of the deceased considered by the Motor Accident Claims Tribunal, Hingoli.

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

On 9<sup>th</sup> February, 2004, the deceased Namdeo along with Subhash were proceeding to Kalamnuri from Hingoli. At that time, offending Luxury Bus came in rash and negligent manner and gave dash to the motorcycle. As a result, Namdeo and Subhash succumbed on the spot on the account of injuries sustained. The Claim Petition was filed by the appellants for getting compensation before the learned Member, Motor Accident Claims Tribunal, Hingoli (For short, "the Tribunal"). The Tribunal has awarded

compensation. Against the said judgment and order, this appeal for enhancement of compensation.

3. The limited issue involved in this appeal is the notional income of deceased of Rs.1,500/- considered by the Tribunal is proper or not ?

4. It is contention of the learned counsel for the appellants that deceased Namdeo was working as Manager in the Hotel and was earning Rs.3,500/- per month, but the Tribunal has considered notional income of Rs.1,500/- per month, as well as the Tribunal has not granted consortium amount and future prospects. Hence requested to allow the appeal.

5. It is the contention of the learned counsel for the respondents that the Tribunal has considered all the aspects while awarding the compensation. The appellants could not prove the income of the deceased, hence the income considered by the Tribunal is legal and valid.

6. I have heard both the learned counsel. Perused the judgment and order.

7. The Tribunal has considered Rs.1,500/- income of the deceased. The Tribunal has observed that the evidence of PW-2 – Baliram Karande is not sufficient to prove that the deceased was earning Rs.3,500/- per month as Shri Baliram has no knowledge about the income, loss and expenses of the hotel, salary of the employees of the hotel, therefore, in these circumstances, the notional income of the deceased will have to be taken into consideration. In my view, the Tribunal has not considered the evidence of Shri Baliram Karande in proper perspective. The evidence of Shri Baliram is at Exhibit-33. In affidavit in examination in chief, he has stated that the deceased was working as a Manager in hotel of the deceased son of this witness. This witness was giving Rs.3,500/- per month to deceased Namdeo. In cross-examination, this witness admitted that the said hotel was looking after by his son

Subhash. It has come on record that Subhash is died. From evidence of this witness, it shows that the deceased was working in the hotel of this witness and salary certificate given by this witness shows that the deceased was getting Rs.3,500/- per month. The deceased was maintaining his family consisting of five persons on his income. It shows that he was getting Rs.3,500/- per month. Hence, I am considering the income of the deceased of Rs.3,500/- per month.

8. The Tribunal has not considered the future prospects of the deceased. The Hon'ble Apex Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680 has held that in case the deceased was self-employed or on a fixed salary, and was below 40 years of age, an addition of 40% of the established income should be granted towards future prospects. The future prospects is to be awarded on the basis of (i) the nature of the deceased's employment and (ii) the age of the deceased. Hence I am considering 40%

i.e. of Rs.3,500/- as future prospects.

9. The Tribunal has not awarded consortium to each family member. There are four family members of the deceased. In the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram*** reported in ***2018 SCC Online SC 1546***, the Hon'ble Apex Court has held that in legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, and aid of the other in every conjugal relation." Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection,

affection, society, discipline, guidance and training.”

10. In view of the above observations of the Hon’ble Apex Court, the appellants are entitle for consortium. These appellants are the family members of the deceased, hence they are entitled for consortium amount of Rs.40,000/- each i.e. Rs.1,60,000/-.

11. In view of the above discussion, the appellants are entitled for following compensation amount :-

| Sr. No. | Head                                                            | Compensation awarded                                |
|---------|-----------------------------------------------------------------|-----------------------------------------------------|
| 1.      | Notional income                                                 | Rs.3500/- per month                                 |
| 2.      | Future Prospects                                                | Rs.1,400/- (i.e. 40% of the income)                 |
| 3.      | Deduction towards personal expenditure (There are 4 dependents) | Rs.1225/- (i.e. 1/4th of 3,500 + 1,400)             |
| 4.      | Total Income (Rs.4,900 – Rs.1225/-)                             | Rs.3,675/- per month                                |
| 5.      | Multiplier (Deceased Age 32)                                    | 16                                                  |
| 6.      | Loss of Future Income                                           | Rs.7,05,600/- (Rs.3,675 x 12 x 16)                  |
| 7.      | Funeral Expenses                                                | Rs.5,000/-                                          |
| 8.      | Loss of Estate                                                  | Rs.25,000/-                                         |
| 9.      | Consortium amount.                                              | Rs.1,60,000/- (Rs.40,000/- payable to 4 dependents) |
| 10.     | Total compensation awarded                                      | Rs.8,95,600/-                                       |

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

**ORDER**

- (i) The appeal is partly allowed.
- (ii) The amount of compensation is enhanced from Rs.2,25,000/- to Rs.8,95,600/-. Appellants are entitle to enhanced amount of Rs.6,70,600/- @ 6% from the date of filing claim petition till realization of amount.
- (iii) Appellants are permitted to withdraw enhanced amount.
- (iv) Appeal is disposed of in above terms.

**[S.G.DIGE]  
JUDGE**

SGA/-