

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD  
FIRST APPEAL NO.677 OF 2004**

1. Smt. Ushabai Suryabhan Bhand,  
Age: 30 years, Occ. Nil.
2. Subhash Suryabhan Bhand,  
Age: 13 years, Occ. Education.
3. Manisha Suryabhan Bhand,  
Age: 11 years, Occ. Education.
4. Vikas Suryabhan Bhand,  
Age: 9 years, Occ. Nil.

All R/o Dhangarwadi,  
Tq. & Dist. Ahmednagar ..Appellants  
(Orig. Claimants)

Appellant No.1 is legal guardian of Appellant  
Nos.2 to 4

Versus

1. Machindra Maruti Gawali  
Age: 36 years, Occ. Driver.  
R/o. Dhangarwadi,  
Tq. and Dist. Ahmednagar.
2. Bhaskar Madhav Lahamage,  
Age: Major, Occ. Owner,  
R/o. Dasre Nagar, in front of  
Aurangabad Naka, Nagar-Aurangabad Road.
3. United India Insurance Co. Ltd  
(Summons be served on its Branch Manager,  
Ahmednagar).
4. Rambhau Malu Bhand,  
Age: 69 years, Occ. Nil,  
R/o. Dhangarwadi,  
Tq. and Dist. Ahmednagar.

..Respondents  
(Respondent Nos.1 to  
3 Orig. Opponents and  
Respondent No.4 is  
Orig. Claimant No.4)

...

Mr. R. K. Temkar, Advocate for the Appellant.  
Mr. M. L. Paithane h/f Mr. A. S. Golegaonkar,

Advocate for Respondent No.1.

Mr. A. B. Gatne, Advocate for Respondent No.3.

...  
CORAM : S. G. DIGE, J.

RESERVED ON : 07.09.2022.

PRONOUNCED ON : 04.10.2022.

**JUDGMENT (Per: S. G. Dige, J.):**-

1. By this appeal the appellants/Orig. claimants are seeking enhancement of compensation.

2. It is contention of the learned counsel for the appellants that, the deceased was working as a cleaner on the offending truck and he was getting monthly salary of Rs.2000/- alongwith Bhatta of Rs.20/- per day, but Tribunal has considered Rs.1000/- as monthly salary. It is on lower side. The Tribunal has not awarded future prospects and consortium amount to the appellants. Hence, requested to allow the Appeal.

3. It is the contention of the learned counsel for the respondents that, initially the appellants have mentioned in the claim petition that the pay of deceased was Rs.1000/- per month plus Rs.20/- per day as Bhatta. Thereafter, amendment was carried out and it enhanced to Rs.2000/- per month. No evidence was produced on record to show that the deceased was getting Rs.2000/- per month as salary and Rs.20/- per day as Bhatta. Hence, income considered by the Tribunal is proper. The learned counsel further submits that, the compensation awarded by the Tribunal is proper as it is awarded on the basis of

the evidence laid before the Tribunal. Hence, requested to dismiss the Appeal.

4. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal.

5. The issues involved in this Appeal are monthly income of the deceased was not properly considered, future prospects and consortium amount are not awarded. The Tribunal has considered Rs.1000/- as monthly income of the deceased. The deceased was working as cleaner on the offending truck. When the truck was proceeding from the area of Chinchodi-Patil Shivar, some branches of the trees were leaning towards the road. Therefore, the driver of the offending truck insisted the deceased to look whether said branches could touch the top of the truck. The driver should have stopped the vehicle and asked the deceased to look towards the branches of the tree, when deceased leaned outside of the truck, all of a sudden the driver applied brakes and due to which deceased fell from the offending truck on the road and sustained injuries. In the claim petition, initially the income of the deceased was mentioned as Rs.1000/-. Thereafter, by way of amendment, it was mentioned as Rs.2000/-. The Tribunal has observed that, no evidence is produced on record to show that, the deceased was getting Rs.2000/- per month as salary as a cleaner. I do not find infirmity in the observation of the Tribunal. The

monthly income of the deceased at Rs.1000/- is proper. The Tribunal has awarded total sum of Rs.1,50,000/- (inclusive of NFL).

6. 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 below 40 years of age and self employed.

7. The Tribunal has not awarded the consortium amount. The appellants are dependents on the deceased. Hence, the appellants are also entitled for consortium amount of Rs.40,000/- each as per the view of the Hon'ble Apex Court in case of **Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others** reported in (2018) 18 SCC 130.

8. In view of the above, the appellants are entitled for the following compensation:

|                                                          |                |
|----------------------------------------------------------|----------------|
| Monthly income of deceased                               | = Rs.1000/- pm |
| Yearly income to as                                      | = Rs.1000 x 12 |
|                                                          | = Rs.12,000/-  |
| The deceased was 27 yrs old,<br>so the multiplier is 15  |                |
| 1/3 <sup>rd</sup> deduction towards personal<br>expenses | = Rs.09,000/-  |
| Loss of Dependency is 9000 X 15                          | = 1,35,000/-   |
| future prospects i.e. 40% of<br>1,35,000/-               | = 50,000/-     |

|                                                                        |               |
|------------------------------------------------------------------------|---------------|
| Loss of Consortium of wife                                             | = 15,000/-    |
| Loss of love and affection i.e.<br>parental compensation to 3 children | = 1,20,000/-  |
|                                                                        | -----         |
|                                                                        | = 3,20,000/-  |
| Amount Awarded                                                         | - 1,50,700/-  |
|                                                                        | -----         |
|                                                                        | Rs.1,69,300/- |

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

**ORDER**

- (i) The appeal is allowed.
- (ii) The appellants are entitled for enhanced compensation of Rs.1,69,000/- @ 6% interest on the enhanced amount from the date of filing of the petition till its realization.
- (iii) The appellants are not entitled for interest on the 40% future prospects i.e. Rs.50,000/- and consortium amount of Rs.1,20,000/- i.e. total Rs.1,70,000/- till 31<sup>st</sup> December 2009. The appellants are entitled for interest on these amounts from 1<sup>st</sup> January 2010.
- (iv) The respondents are directed to deposit enhanced amount alongwith interest within six weeks from receipt of the order.
- (v) The appellants are permitted to withdraw deposited amount.

(vi) Deficit Court fees, if any, be paid.

(vii) Appeal is disposed of in above terms.

**(S. G. DIGE)**  
**JUDGE**

Devendra/October-2022