

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

FIRST APPEAL NO. 420 OF 2018

1] Bhagwan Onkar Nikumbh,
Age: 52 years, Occu. : Nil.

2] Sau. Chandrakalabai Bhagwan Nikumbh
Age: 49 years, Occu. : Nil,

Both r/o. Ashilgaon, Shri Ram Nagar,
Ulhasnagar, District : Thane.

.. APPELLANTS
[Original Claimants]

VERSUS

Maharashtra State Road Transport Corporation,
S.T. Depot, Shahada, Taluka : Shahada,
District : Nandurbar.

.. RESPONDENTS

...

Mr.Lalitkumar S. Mahajan, Advocate for the appellants.
Mr.D.S.Bagul, Advocate for respondent.

...

CORAM : S.G.DIGE, J.

DATE : 16.09.2022

ORAL JUDGMENT :

1] By this appeal, the appellants are seeking
enhancement of the compensation.

Brief facts of the case as under:

2] On 20th November, 2010 at about 12.00 noon the deceased was driving the motor bike on extreme left side of the road at moderate speed. At the relevant time, MSRTC bus bearing No. MH-20-8390 came from the backside in very high speed. The driver was driving the said vehicle rashly and negligently in complete ignorance of the traffic rules and dashed the motorcycle from behind. The deceased Vilas died on the spot. A crime was registered against the bus driver.

3] The appellants filed claim petition for getting compensation before the Motor Accident Claims Tribunal, Shahada, District Nandurbar. Considering the evidence on record and after hearing the parties, the Tribunal has awarded the compensation of Rs.7,86,000/-. Against the said judgment and award, this appeal for enhancement.

4] It is the contention of the learned counsel for the appellants that the Tribunal has not considered proper

monthly income of the deceased. No future prospects and consortium are considered while awarding the compensation. The deceased was 21 years old student. The deceased was second year student of Diploma in Electronics and Telecom Engineering. He was brilliant student. But this fact was not considered by the Tribunal, hence, requested to allow the appeal.

5] It is the contention of the learned counsel for the respondent that while awarding the compensation, the Tribunal has considered all the aspects and on that basis compensation is awarded. The learned counsel further submits that the Tribunal has considered the income of the deceased on higher side i.e. Rs.7,000/- per month. When the deceased was student, the income of Rs.7,000/- ought not to have considered. The judgment and order passed by the Tribunal is legal and valid.

6] I have heard both learned counsel. Perused the judgment and award. The issue involved in this appeal is the income of the deceased is considered on lower side,

future prospects and consortium amount are not awarded while awarding the compensation. The Tribunal has considered notional monthly income of the deceased at Rs.7,000/-. The Tribunal has observed that the deceased was Engineering student so he might have got job after completing education. The earning of Engineering students is considered as high. Hence, he has considered monthly income of Rs.7,000/- per month notionally. In my view, the Tribunal has considered the proper income of the deceased as he was Engineering students of second year, hence, no interference require in it.

7] While calculating the compensation, the Tribunal has not awarded future prospects. The Hon'ble Apex Court in case of **National Insurance Company Limited Vs. Pranay Sethi & others**, reported in [2017] 16 SCC 680 has held that if the person is self-employed and below 40 years of age; he is entitled for 40% income as additional income, hence, I am considering 40% income as additional income. The Tribunal has also not awarded consortium

amount to the appellants. The appellants are the parents of the deceased. As per the view of the Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram** reported in **2018 SCC OnLine SC 1546**, the appellants are entitled for consortium amount of Rs.40,000/- each. Hence, I am considering Rs.80,000/- as consortium amount. The Tribunal has awarded the amount of Rs.10,000/- as loss of estate, it should be Rs.15,000/-.

8] Considering the above calculations, the appellants are entitled for the following compensation:-

Monthly income	Rs.7,000/- per month
Future Prospects 40% Rs.7000/- + Rs.2800 = Rs.9800/-	Rs.9800/- per month
Deduction 50% Deceased was Bachelor	Rs.4900/- per month
Annual income Rs.4900 x 12 = Rs.58,800/-	Rs.58,800/-
Multiplier 18 Rs.58,800 x 18 = Rs.10,58,400/-	Rs.10,58,400/-
Filial consortium Rs.40,000 x 2 = Rs.80,000/-	Rs.80,000/-
Loss of Estate and funeral expenses.	Rs.30,000/-
Total	Rs.11,68,400/-

The Tribunal has awarded Rs.7,86,000/- as compensation to the appellants. In view of the above calculations, the appellants are entitled for Rs.11,68,400/-. If it deducts from Rs.7,86,000/-, it comes to Rs.3,82,400/-. The appellants are entitled for enhanced amount of Rs.3,82,400/-.

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

ORDER

i] The appeal is allowed.

ii] The appellants are entitled for enhanced compensation of Rs.3,82,400/- along with interest at the rate of 6% p.a. on enhanced amount from the date of filing of the applications till realization.

iii] The respondent is directed to deposit enhanced amount of Rs.3,82,400/- within eight weeks. The appellants are permitted to withdraw the deposited amount.

iv] Appeal is disposed of accordingly.

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