

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1968 OF 2010

1. Saidabi Shaikh Nathu Mansuri,
Age : 50 years, Occu. : Household,
2. Shahinbano Nathu Mansuri,
Age : 31 years, Occu. : Household,
3. Masud Ahmed Sk. Nathu Mansuri,
Age : 25 years, Occu. : Education,
4. Altaf Husain Sk. Nathu Mansuri,
Age : 19 years, Occu. : Education,
5. Sadiq Husain Sk. Nathu Mansuri,
Age : 15 years, Occu. : Education,
(Minor under guardianship of Natural
guardian mother – appellant No.1)
6. Sayarabi Sk. Nathu Mansuri,
Age : 21 years, Occu. : Education,
7. Khatunbi Yakub Mansuri,
(Appellant No.7's name is deleted as
per the order dated 21.12.2005) ... **APPELLANTS**

VERSUS

1. Shaikh Bhikan Shaikh Alam,
Age : 46 years, Occu. : Driver,
R/o. : Dondaicha, Tq. Sindhkheda, Dist. Dhule,
2. Shaikh Shabbir Shaikh Bhikan Mansuri,
Age : major, Occu. : Business,
R/o. : Shahapura, Udhana, Surat,
Tq. & Dist. Surat, Gujarat,
(Dismiss against respondent No.2 as per
order dated 13.01.2010)

3. The United India Insurance Co Ltd.,
Notice to be served on the Branch
Manager, United India Insurance
Company Ltd., Branch Dhule, Dinesh
Complex, Old Agra road,
Deopur, Dhule

... RESPONDENTS

...
Mr. S.N. Suryawanshi - Advocate for Appellants
Mr. M.R. Deshmukh - Advocate for Respondent No.3

....

CORAM : S.G. DIGE, J.
DATE : 12th October, 2022

JUDGMENT :

. Learned Counsel for appellants filed pursis stating that, appellant No.1 namely Saidabi Shaikh Nathu Mansuri is died during the pendency of appeal. Appellant Nos.2 to 6 are her heirs and legal representatives of deceased. Their names are already on record.

2. The pursis along-with death certificate is taken on record and marked as 'X' for identification.

3. By this appeal appellants - original claimants are seeking enhancement of the compensation.

4. **Brief facts of the case are as under :-**

Deceased Shaikh Nathu was working as Primary

Teacher in Zilla Parishad Urdu Primary School No.11 of Dondaicha. His monthly salary was Rs.9093/- p.m. On 8th July, 2000 he was going to Shahada by Dondaicha-Shahada road in the offending vehicle i.e. Ambassador Car bearing No. GJ-1-PP-3806. The driver was driving the vehicle in reckless manner due to which he could not control the vehicle and it dashed against the road side tree in which Shaikh Nathu sustained serious injuries and succumbed to the death. The offence was registered against the driver of car. The claimants filed Claim Petition before the Member, Motor Accident Claims Tribunal, Dhule at Dhule (*for short "the Tribunal"*) for getting compensation. The Tribunal has awarded compensation of Rs.1,65,150/-. Against the said judgment and order this appeal for enhancement of compensation.

5. It is contention of learned Counsel for appellants that, the Tribunal has not considered monthly income of the deceased properly. He was Primary Teacher working in the Government Aided school, he was drawing salary of Rs.9093/- p.m. but the Tribunal has considered Rs.1053/- as

monthly salary and on that basis calculations are done.

6. Learned Counsel further submits that, the Tribunal has not awarded future prospects and consortium amount to the claimants, the compensation awarded under the head of non pecuniary damages is also at lower side. Hence, requested to allow the appeal.

7. It is contention of learned Counsel for respondent No.3 that, the Tribunal has considered take home salary of the deceased. The Tribunal has considered all the aspects and evidence produced before the Tribunal. Appellants are failed to prove their case before the Tribunal. The order passed by the Tribunal is legal and valid.

8. I have heard both the learned Counsel. Perused judgment and order passed by the Tribunal.

9. Issues involved in this appeal are :

- i. Monthly income of the deceased was not properly considered,
- ii. Future prospects and compensation awarded under non pecuniary heads are considered on lower side.

10. Firstly, I deal with the income of deceased. It has come

in the evidence of claimant No.1 Saidabi Shaikh Nathu Mansuri that, her husband was working as Primary Teacher and earning Rs.9093/- p.m.. He was about 53 years of age. In support of her contention one witness Kishor Gulab Sonar is examined who was Clerk in Municipal Council, Dondaicha at Exh.37. He has stated that, deceased was getting salary of Rs.9093/- p.m. The Tribunal has observed that, there were deductions from the monthly salary of the deceased and take home salary was Rs.1513/- and on that basis the Tribunal has considered monthly salary of the deceased Rs.1513/-. In my view, the Tribunal has erred while considering monthly salary of deceased at Rs.1513/- when it has come on record that, he was getting salary of Rs.9093/-. The Hon'ble Apex Court in the case of ***Manasvi Jain Vs. Delhi Transport Corporation Ltd and Others in Civil Appeal No.7642 of 2009*** decided on 23 April, 2014, held that, after deduction of income tax the remaining whole salary shall be considered as the income of the deceased. After deducting income tax and other provisional taxes, the monthly salary of the deceased comes to Rs.7263/-. Hence, I am considering this amount as monthly salary of the

deceased.

11. The Tribunal has not considered the future prospects while awarding compensation. As per the view of the Hon'ble Apex Court in the case of ***National Insurance Company Ltd Vs. Pranay Sethi in Special Leave Petition (civil) No.25590 of 2014*** decided on 31 October, 2017, appellants are entitle for 15% future prospects as deceased was above 50 years of age and he was in Government service.

12. The Tribunal has not awarded non-pecuniary damages. Appellants are entitle for non-pecuniary damages of Rs.1,00,000/- as per the view of ***Hon'ble Apex Court in the case of Magma General Insurance Company Ltd Vs Nanu Ram Alias Chuhru Ram in Civil Appeal No.9581 of 2018*** decided on 18 September, 2018. In view of the above calculations appellants are entitle for following compensation :-

Sr.No.	Heads	Amount
1.	Monthly salaried income after permissible deductions	Rs.7,263/-
2.	Age above 50 years future	Rs.1,089/-

	prospects 15% since Govt service	
3.	Monthly income after addition of future prospects	Rs.8,352/-
4.	Deduction of 1/5th amount for personal and living expenses : (7 dependants)	Rs.1,670/-
5.	Monthly dependency after deduction :	Rs.6,682/-
6.	Annual dependency (Rs.6,682 x 12)	Rs.80,184/-
7.	Multiplier (11) Age - 53, Rs.80,184 x 11	Rs.8,82,024/-
8.	Non-pecuniary i. Funeral : Rs.15,000/- ii. Estate : Rs.15,000/- iii. Consortium : Rs. 70,000/-	Rs.1,00,000
Total		Rs.9,92,024/-

13. The Tribunal has awarded amount of Rs.1,65,150/-, if it deducts from amount of Rs.9,92,024/-, it comes to Rs.8,26,874/- and appellants are entitle for this amount. In view of the above, I pass the following order :-

ORDER

- (a) Appeal is allowed.
- (b) Appellants are entitle for enhanced amount of Rs.8,26,874/- along-with @ 6% interest thereon from the date of filing of Claim Petition till its

realisation.

- (c) Respondents shall deposit the enhanced amount along-with accrued interest thereon within five (05) weeks before the Tribunal.
- (d) Appellants are permitted to withdraw deposited amount.
- (e) Appeal is disposed of, accordingly.

[S.G. DIGE, J.]