

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

FIRST APPEAL NO. 835 OF 2022

1. Bhatu Lakdu Karve
Age : 50 years, Occ : Nil,
2. Savita Bhatu Karve
Age : 22 years, Occ : Nil,
3. Samadhan Bhatu Karve
Age : 20 years, Occ : Education,
4. Dipali Bhatu Karve
Age : 19 years, Occ : Nil,

All R/o Akkalpada,
Tq. Sakri, Dist. Dhule.

APPELLANTS
(Original Claimants)

VERSUS

1. Bhaurao Nana Karve
Age : 32 years, Occ : Driver,
R/o Akkalpada, Tq. Sakri,
Dist. Dhule.
2. Santosh Bhaga Karve
Age : 32 years, Occ : Vehicle Owne,
R/o Akkalpada, Tq. Sakri,
Dist. Dhule.
3. The Bajaj Allianz General Insurance
Company Ltd.,
Through its Branch Manager,
Having office at 1st Floor,
Shree Ganesh Plaza,
New Mahamarg Bus Stand,
Kute Marg, Nasik 422 001.

...RESPONDENTS
(Original Respondents)

...

Advocate for Appellants : Mr. Shrikant S. Patil

Advocate for Respondent No. 3 : Mr. S.G. Chapalgaonkar

CORAM : S.G.DIGE, J.

RESERVED ON : 15/07/2022

PRONOUNCED ON : 22/08/2022

JUDGMENT :

Being aggrieved and dissatisfied by the judgment and award passed by the Member, Motor Accident Claims Tribunal, Dhule, the appellants – original claimants have preferred this appeal for enhancement of compensation.

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

On 2nd January, 2017 at about 6:00 p.m. deceased Dagubai Bhatu Karve was proceeding towards her house from the field on offending motorcycle as a pillion rider. The driver of the motorcycle gave dash to the pedestrian. Due to said dash, the deceased thrown away from the offending motorcycle, in which she sustained

grievance injuries over her person and passed away. The crime was registered against the driver of the motorcycle.

3. The heirs and legal representatives of the deceased i.e. appellants filed claim petition before the Motor Accident Claims Tribunal, Dhule (for short, “the Tribunal”) for getting compensation. After considering the evidence on record and hearing the parties, the Tribunal has awarded Rs.7,78,750/- as compensation. Against the said order, this appeal for enhancement of compensation amount.

4. It is the contention of the learned counsel for the appellants that the Tribunal has not considered the income of the deceased properly and has not awarded the consortium as per the law laid down by the Hon’ble Apex Court.

5. It is the contention of the learned counsel for respondent no.3 that the appellants did not produce any

evidence in respect of income of the deceased before the Tribunal. Hence, the notional income considered by the Tribunal is proper and correct. The Tribunal has granted adequate consortium. The judgment and order of the Tribunal is legal and valid.

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

7. The issue involved in this appeal is, the income of the deceased is not properly considered by the Tribunal and the Tribunal has not properly awarded the amount of consortium.

8. It is the contention of the appellants that the deceased was cultivating her own agricultural land thereby earning Rs.2,00,000/- per annum and apart from agriculture work, she used to do the milk business, distribute/supply the milk, thereby earning Rs.15,000/- per month and maintaining her family. The Tribunal has

observed that there is no evidence on record showing the income of the deceased, hence the Tribunal has considered the income of the deceased at Rs.150/- per day i.e. the wages given to the female agricultural labourer in the year 2017. Accordingly, the Tribunal has considered the notional income of Rs.4,500/- and has made calculations on the basis of it. It appears from the evidence of PW-1 Shri Bhatu Karve Exhibit-18 that the deceased used to cultivate irrigated agricultural land and her annual earning excluding expenditure was Rs.2,00,000/-. Besides that she was doing milk business and was earning Rs.15,000/- per month. The Tribunal has not considered agricultural income and milk income of the deceased on the ground that agricultural land is standing in the name of husband of the deceased and it can not be said that because of death of Dagubai income of claimant no.1 from agricultural land is shut down. In respect of income from milk business, the Tribunal has observed that after death of deceased the cattle can be said as it is, it is open for claimants to produce milk from that cattle and earn something. In my view, the Tribunal has not

considered the evidence on record in proper perspective. The Tribunal has forgotten that the evidence in cases of Motor Vehicle Act is to be seen on preponderance of probability and not as per evidence, beyond reasonable doubt like criminal trial. In the present case, the complaint is lodged after the accident, in the said complaint Exhibit-19/C, it is stated that the deceased had gone to her field for cultivation of onion after completing her work about 6 p.m. she was returning home on motorcycle as pillion rider then accident was occurred. This complaint shows that the deceased was cultivating onion's in her field at that time her husband was not present, it shows that she was cultivating land. It has come on record that there was cattle in the house of the deceased, so income from milk is also necessary to be considered. Though the appellants are stating that she was earning Rs.20,000/- per month from agricultural income and milk business but there is no evidence in that regard, hence in my view, notional income of Rs.6000/- per month should be considered as income of deceased.

9. At the time of accident deceased was 45 years age. She was self employed. In case of ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680***, it has been held by the Hon'ble Supreme Court that if the deceased is not self employed or on fixed salary, addition of 25% of established income is necessary in case age of deceased in between 40 to 50 years.

10. The Tribunal has granted consortium of Rs.40,000/-. There are four appellants. The Tribunal has not considered consortium of three appellants, hence it needs to be taken into consideration as per the view taken by the Hon'ble Supreme Court in the case of ***Magma General Insurance Company Limited Vs. Nanu Ram alias Chuhru Ram and others*** reported in ***(2018) 18 SCC 130***. Hence, consortium for three children comes to Rs.40,000/- X 3 = Rs.1,20,000/-.

11. Considering the notional income of the

deceased at Rs.6,000/- per month and additional consortium of Rs.1,20,000/-, the appellants are entitled for the following compensation.

Sr. No.	Head	Compensation awarded
1.	Notional income	Rs.6000/- per month
2.	Annual income (Rs.6000/- X 12)	Rs.72,000/- per year
3.	After 1/4th deduction towards personal expenses	Rs.54,000/-
4.	Additional 25% future prospects	Rs.18,500/-
5.	As the age of deceased was 45 years, hence multiplier is to be applied is 14 Rs.54,000/- + Rs.18,500/- = Rs.10,15,000/- Rs.72,500/- X 14 For pecuniary loss, estate and funeral expenses Consortium : For Children Rs.40,000/- X 3	Rs. 70,000/- Rs.1,20,000/-
6.	Total	Rs.12,05,000/-
7.	Enhanced amount (Rs.12,05,000-Rs.7,78,750/-)	Rs.4,26,250/-

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

ORDER

(i) The appeal is allowed.

(ii) The appellants are entitle to enhance amount of Rs.4,26,250/- @ 9% from the date of filing claim petition till realization of amount.

(iii) Appeal is disposed of in above terms.

[S.G.DIGE]
JUDGE

SGA/-