

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.528 OF 2016

1. Vikas Kubade,)
Adult, Indian Inhabitant,)
Occupation: Labourer)
2. Vidya V. Kubade,)
Adult, Indian Inhabitant)
Occupation: Housewife)
3. Minal V. Kubade,)
Adult, Indian Inhabitant)
Occupation: Housework)
4. Siddhivinayak V. Kubade,)
Adult, Indian Inhabitant)
All residing at Talebazar,)
Tal. Devgad, Dist. Sindhudurg.)

...Appellants
(Orig. Claimants)

Versus

1. Tata AIG General Insurance Co.)
Ltd. Peninsula Corporation Park)
Nicholas Piramal Tower, 9th Floor)
Ganpatrao Kadam Marg,)
Lower Parel Mumbai – 400 013)
2. Siddhesh A. Shirsat)
Residing at Talebazar,)
Tal. Devgad, Dist. Sindhudurg.)
3. Oriental Insurance Co. Ltd.)
Branch Kudal, Pan Bazar,)
Tal. Kudal, Dist. Sindhudurg.)
4. Chandrakant B. Sapale)
R/at Kankavli Bazar Peth,)
Tal. Kankavli, Dist. Sindhudurg)

...Respondents
(Org. Respondents)

Mr. Kaushal Tamhane i/by. Dhanuka & Partners for the Appellants.
Mr. Devendranath S. Joshi for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATED : 10th APRIL, 2023

Judgment:

1. By way of this Appeal, the claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellant that deceased was working as a Manager in Transport Company and he was getting salary of Rs.13,000/- per month, but the Tribunal has considered his salary at Rs.4,500/- per month which is on lower side. Learned counsel further submits that, future prospects are not awarded by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent-Insurance Company that deceased was B.A. pass. No evidence was produced on record that, he was earning Rs.13,000/- per month, salary certificate was produced on record shows that deceased was getting Rs.13,000/- per month, but no income tax returns were filed. To prove the salary, salary slip was not produced on record, the compensation awarded by the Tribunal is proper. No interference is required in it.

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

Sindhudurg (for short 'the Tribunal'). To prove the income of deceased, the claimant No.1 examined himself at Exhibit-31. He has stated that at the time of accident, deceased was 27 years old and he had completed various courses. He was working as Manager in Sindhudurg Transport, Kolhapur and was getting salary of Rs.13,000/- per month and he was only earning member of their family. Nothing elicited in the cross-examination of this witness, to support the evidence of this witness, the claimants have examined. Vilas Patil at Exhibit-51, proprietor of Sindhudurg Transport, Kolhapur. He has stated that deceased was working in his transport company as Manager and he was getting salary of Rs.13,000/- per month. The salary certificate is at Exhibit-52. In cross-examination, this witness has stated that, he does not know who is liable to pay the income tax on salary. On the basis of evidence on record, the Tribunal has considered monthly notional salary of deceased at Rs.4,500/- per month. I am unable to understand, the observations of the Tribunal on ground that, when it has come on record that deceased was getting Rs.13,000/- per month salary. His employer was examined before the Tribunal. He has produced salary certificate on record. The documents produced on record shows that, deceased was B.A. pass and he had completed various courses, it shows that he was skilled person. The salary considered by the Tribunal is on lower side.

5. In my view, as salary certificate was produced on record, which shows salary of Rs.13,000/- per month. No income tax was liable to pay on this income during that period. Considering evidence on record, I am considering Rs.11,000/- per

month as salary of deceased. The Tribunal has not awarded future prospects and consortium amount is awarded on lower side. As per the view of the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.**¹. The claimants are entitled to 40% as future prospects. As per view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram**², each claimant is entitled to Rs.40,000/- as consortium with 10% increase and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

6. The learned counsel for the Respondent-Insurance Company submits that Respondent Nos.3 and 4 are younger sister and brother of the deceased. They are not liable for consortium amount. In my view, as per view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram** family member of deceased is entitled for consortium amount. The claimant Nos.3 and 4 are younger sister and brother. Hence, they are also liable for consortium amount. In view of the above calculations, the claimants are entitled for following compensation.

Particulars	Amount
Monthly Salary	Rs.11,000/-
Annual Salary Rs.11,000X12 (months)	Rs.1,32,000/-
Future Prospects Rs.1,32,000/-X40%	Rs.52,800/-
Total Annual Income Rs.1,32,000+52,800	Rs.1,84,800/-
Deduction Rs.1,84,800/-(50%)	Rs.92,400/-
Rs.92,400X17 (Multiplier)	Rs.15,70,800/-

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

Add consortium amount (4claimants) Rs.44,000X4	Rs.1,76,000/-
Add Funeral expenses and loss of estate (Rs.16,500+ 16,500)	Rs.33,000/-
Total	Rs.2,09,000/-
Total entitled compensation	Rs.17,79,800/-

7. The Tribunal has awarded compensation of Rs.4,68,500/-, if this amount is deducted from amount and considered by this Court it comes to Rs.13,11,300/-. The claimants are entitled for this amount.

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

O R D E R

- (i) The Appeal is allowed.
- (ii) The Claimants are entitled for enhanced amount of Rs.13,11,300/- @ 7.5% per annum from the date of filing of application till realization of amount, out of this amount, the consortium amount is Rs.2,09,000/-. The claimants are entitled interest @7.5% per annum on this amount from 1st November 2017, till the realization amount.
- (iii) The Respondents are directed to deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
- (iv) The claimants are permitted to withdraw deposited amount alongwith accrued interest thereon. The rests of directions in respect of the aforesaid

awarding compensation and recovery rights given to Respondent No.1 is kept as it is. The remaining part of the award be kept as it is except enhancement of amount.

(SHIVKUMAR DIGE, J.)