IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.472 OF 2016

1.	**Ashwin Arun Patrale** Age-40, Occupation-Service	]]
2.	**Arya Ashwin Patrale** Age-9 years, Occupation-Nil	]]
3.	**Arshiya Ashwin Patrale** Ag-7 years, Occupation-Nil All residing at B-704, Prafulla Paradise, Khadakpada, Kalyan (West), District-Thane. No.2 and 3 being minors represented by Their Natural father No.1, Ashwin Arun Patrale	]]]]]] ….Appellants

Versus

1	**Wasim Mohammad Shah** Age-40 years, Occ : Driver R/at Mangaon (Dobewadi) Taluka-Kudal, District-Sindhudurg	]]]]
2	**Hariprasad Shridhar Chavan** Age : 50 years, Occ : Business, Residing at Kudal (Audumbarnagar), Taluka-Kudal, District-Sindhudurg.	]]]]
3	**National Insurance Co. Ltd.** Through Branch Manager, Ratnagiri, Branch 2811, Subhas Road, Opp. Patit Pavan Mandir, Ratnagiri.	]]]]
4	**Sujay Nitin Walawalkar** Age : 36 years, Occ : Service, R/at Walawal, Taluka-Kudal, District-Sindhudurg.	]]]]
5	**New India Insurance Company Ltd** Thr. Branch Manager, Kudal Branch, Taluka-Kudal, District- Sindhudurg.	]]]]
6	**Prashant Shivaji Naik** Age-36 Years Occ : Business R/at Aronda, Taluka-Sawantwadi, District- Sindhudurg.	]]]]
7	**New Oriental Insurance Company Ltd.,** Thr. Branch Manager, Kudal, Taluka-Kudal, District-Sindhudurg.	]]] ...Respondents

Mr. Sudhir Prabhu, Advocate for the Appellants.
Mr. Sujay H. Gangal, Advocate for Respondent Nos.1 and 2.
Mr. Amol Gatne, Advocate for Respondent No.3.
Smt.S.S. Dwivedi, Advocate for the Respondent No.5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th DECEMBER, 2023.

ORAL JUDGMENT :

1. The issue involved in this appeal is the income of deceased is considered on lower side.

2. It is contention of learned counsel for the appellants/claimants that deceased was serving as a clerk in Saraswat Co-operative Bank Ltd., Mulund West Branch and she was drawing a salary of Rs.19262/- per month but the Tribunal has considered Rs.10,000/- as her monthly salary, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects as per the view of the Hon'ble Apex Court in ***National Insurance Co. ltd. vs. Pranay Sethi , 2017 ACJ 2700(SC).*** Learned counsel further submitted that the Tribunal has awarded consortium on lower side, it should be awarded as per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC) .***

3. It is contention of learned counsel for respondent No.3 that the salary slips produced on record shows different income of the deceased. The gross salary is shown in the said salary slip at around Rs.5000/- per month. There was variation in the salary. The Tribunal has considered

these aspects and, on that basis, the Tribunal has considered monthly income of deceased at Rs.10,000/- which is proper. No interference is required in it.

4. Learned counsel for respondent No.5-Insurance Company adopted the argument of learned counsel for respondent No.3.

5. I have heard all learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Sindhudurg at Oras (for short "the Tribunal").

6. To prove the income of the deceased, the claimants have examined Ashwin Patrale at 'Exhibit-58'. He stated that deceased was his wife and she was working in Saraswat Co-operative Bank, Mulund West, as a clerk and she was getting salary of Rs.19262/- per month. To support his evidence, the claimants examined PW-3- Sandeep Sadanand Punekar , Assistant Manager, Saraswat Co-operative Bank, at Exhibit-97. He has stated that deceased was working in his bank as a Junior Clerk and she was getting salary of Rs.19,262/-. He has produced salary slips on record at "Exhibits 80-99". In cross-examination, he has admitted that out of Rs.19,282/-, some amount was deducted. He further admitted that he has not brought the original record of Exhibit-99. Considering the evidence on record, the Tribunal has considered the monthly salary of deceased at Rs.10,000/-.

The Tribunal has observed that deceased was working as a clerk and the appellants have not provided any documents to prove the income of the deceased. Considering the nature of job of deceased, the Tribunal has considered the monthly income of deceased at Rs.10,000/- per month. I am unable to understand the observations of the Tribunal. When it has come on record that deceased was working as a clerk in Saraswat Cooperative Bank and Assistant Manager of the said bank has been examined as witness before the Tribunal, the salary slips of the deceased are filed on record at “Exhibit-99” shows the salary of deceased, the Tribunal without applying its mind has considered the income of deceased at Rs.10,000/- per month, which is not proper. The salary slips which are at Exhibit-99 shows that deceased received salary of Rs.18712/- in the month of March 2010, Rs.19262/- in the month of April 2010 and Rs. 14,968/- in the month of May 2010. It is contention of learned counsel for the appellants that accident occurred on 21st May 2010, hence, salary shown for the month of May 2010 is on the lower side. Considering the evidence on record and the salary slips, I am considering monthly salary of deceased at Rs.19,000/- per month..

The Tribunal has not awarded future prospects as per the view of the Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)***. The claimants are entitled for 50% amount as future prospects as deceased was 34 year old at the time of accident and she was in permanent service.

The Tribunal has awarded consortium amount on lower side. As per the view of Hon’ble Apex Court in ***Magma General Insurance Co.***

Ltd.(supra) each claimant is entitled for Rs.48,000/- as consortium, Rs.18000/- for funeral expenses and Rs.18,000/- for loss of estate.

Considering the above calculations, the appellants/ claimants are entitled for following compensation:

No	Head	Amount (In Rs)	
1	Annual Income (19,000/- x 12)	Rs.	2,28,000.00
2	50% Future Prospects	Rs.	1,14,000.00
3	Total	Rs.	3,42,000.00
4	1/3rd deduction for personal expenses	Rs.	1,14,000.00
5	Total	Rs.	2,28,000.00
6	**Rs. 2,28,000/- x 16 (Multiplier)**	**Rs.**	**36,48,000.00**
7	Consortium (48,000 x 3)	Rs.	1,44,000.00
8	Loss of Estate	Rs.	18,000.00
9	Funeral Expenses	Rs.	18,000.00
	Total Compensation	**Rs.**	**38,28,00.00**
	Less : Compensation awarded by Tribunal	**Rs.**	**12,89,500.00**
	Enhanced Compensation Amount	**Rs.**	**25,38,500.00**

The appellants/claimants are entitled for enhanced amount of Rs.25,38,500/-.

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

O R D E R

1. The appeal is allowed.

2. The appellants/claimants are entitled for enhanced compensation of Rs. 25,38,500/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.

3. The respondents/Insurance Companies shall pay the enhanced compensation along with accrued interest thereon as apportioned by the Tribunal within six weeks from the receipt of this order.

4. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)