

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.773 OF 2017**

Future Generali India Insurance Co. Ltd.)
D.G.P. House, 1st floor, 88C,)
Old Prabhadevi Road, Mumbai.)Appellant

Versus

1. Sarika Ramdas Dhebe)
Age : 31 years, Occupation : Household;)
2. Rohit Ramdas Dhebe)
Age : 12 years, Occupation : Nil)
G.A.L. through Mother- Respondent No.1.)
3. Dnyandev Maruti Dhebe)
Age : 65 years, Occupation : Nil;)
4. Shevanta Dnyandev Dhebe)
Age 60 years; Occupation : Household;)
All Resident of Umbraj (Malinagar))
Tal. Karad, Dist. Satara.) ...Respondents

Mr. D. R. Mahadik, Advocate for the Appellant.
Ms. Sonali Bhosale i/b. Expert Jurist LLP for Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th DECEMBER, 2023.

Judgment :

1. The issues involved in this appeal are future prospects are awarded on higher side and there was contributory negligence of the deceased in the said accident.

2. It is the contention of learned counsel for the appellant that when the accident took place, deceased was driving Innova car. There was head-on collision between the two vehicles but Tribunal has considered sole negligence of the driver of the luxury bus, which is not proper. The Tribunal should have considered contributory negligence of driver of both vehicles. Learned counsel further submitted that the Tribunal has awarded 50% future prospects, it should be 40%. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for respondents /claimants that deceased was going on in his direction. At that time, luxury bus came from opposite direction and gave dash to the Innova Car of deceased. Due to the said dash, deceased died on spot. An offence was registered against the driver of the luxury bus. No question of contributory negligence of the deceased arises. Learned counsel further submitted that the consortium amount awarded by the Tribunal is proper and no interference is required in it. Hence, requested to award consortium amount and dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short "the Tribunal").

5. To prove the negligence of the deceased, the appellant has not examined any witness. Moreover, an offence was registered against

the driver of the luxury bus, so it cannot be said that there was contributory negligence of the deceased in the said accident. The Tribunal has awarded 50% future prospects, it should be 40%. Hence, I am considering 40% future prospects. The Tribunal has awarded Rs.1,00,000/- towards consortium amount, Rs.3,00,000/- for loss of love and affection and Rs.25,000/- towards funeral expenses. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. (supra)**, each claimant is entitled for Rs.44,000/- as consortium amount, Rs.16,500/- for loss of estate and Rs.16,500/- towards funeral expenses.

6. Considering the above calculations, the claimants are entitled for following compensation :

Particulars	Amount
Monthly Income	Rs. 5000.00
¼ deduction towards personal expenses	Rs. 1250.00
Total	Rs. 3750.00
40% future prospects	Rs. 1500.00
Monthly Income	Rs. 5250.00
Annual Income 5250 X 12	Rs. 63000.00
Rs.63000/- X 17(multiplier)	Rs. 1071000.00
Consortium (Rs.44,000/- x 4 (claimants))	Rs. 176000.00
Funeral Expenses	Rs. 16500.00
Loss of Estate	Rs. 16500.00
Total Compensation	Rs. 1280000.00

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The claimants are entitled for compensation of Rs.12,80,000/-. The Tribunal has awarded Rs.15,82,700/-. Thus, Rs.3,02,700/- is an excess amount. The appellant-Insurance Company is entitled for this amount.

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

1. The appeal is allowed.
2. The appellant/Insurance Company is permitted to withdraw Rs.3,02,700/- along with accrued interest thereon.
3. The respondents/claimants are permitted to withdraw the remaining deposited award amount along with accrued interest thereon.
4. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

The first appeal stands disposed of.

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

(SHIVKUMAR DIGE, J.)