

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 241 OF 2023**

The Divisional Manager,
The New India Assurance Co. Ltd.,
Add. Rushiraj Regency, Near Vidya
Vikas Circle, Gangapur Road, Nashik
Through Legal Hub, TP Hub, 41B, 4th
Floor, Maker Tower, E Cuffe Parade,
MUMBAI – 400 005.

....Appellant
(Org. Opp.No.2)

VERUS

1. Yeshoda Sajan Gaikwad,
Age about -28 years, Occ.Household.
2. Adesh Sajan Gaikwad,
Age about – 5 years, Occ. Education.
3. Aditya Sajan Gaikwad,
Age about – 3 years, Occ. Nil,
Respondent Nos. 2 and 3 represented
through their Guardian-Respondent
No.1.
4. Nailini Nana Gaikwad,
Age about – 53 years, Occ.
Household,
All R/O-Boredaivat, Tal. Kalwan,
Dist-Nashik.

....Respondent Nos.
1 to 4.
(Org. Applicants)

5. Minaben Bhagwandas Shaha,
Age: Major, Occ. Vehicle Owner,
R/o. Near Mandirwali Khadki,Respondent No.5
Patel Phaliya, Adhdol, (Org. Opp. No.1)
Tal. Nadiyad, Dist. Kheda, (Gujrat).

Ms. Poonam Mital, Advocate for the Appellant.

Mr. Pritesh Bohade, Advocate for Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th MARCH 2023.

Oral Judgment :

1. The issues involved in this appeal are driving license of the driver of the offending vehicle and income of deceased considered on the higher side.

2. It is contention of learned counsel for the appellant that the driver of the offending vehicle was holding license of light motor vehicle, whereas the offending vehicle was heavy transport vehicle but this fact is not considered by the Tribunal. Learned counsel further submits the Tribunal has considered notional monthly income of deceased at Rs.6000/- per month which is on the higher side. There was no evidence produced before the Tribunal about the income of deceased but Tribunal has considered this monthly

income, on that basis, exorbitant and excessive compensation is awarded. Hence, requested to allow the appeal.

3. Learned counsel for respondents/claimants submits that driver of the offending vehicle was holding driving license of light motor vehicle. He relied on the judgment of the Hon'ble Apex Court in **Mukund Dewangan versus Oriental Insurance Company Limited 2017 AIR SC 3668** wherein the Hon'ble Apex Court has held that the license to drive light motor vehicle, includes license to drive transport vehicle. Learned counsel further submits that deceased was having agricultural business and milk business. It was claimants' case that deceased was earning Rs.3,00,000/- per annum but Tribunal has considered only Rs. 6000/- per month as notional income. Learned counsel further submits that the Tribunal has awarded consortium amount to only one claimant, it should be given to all the claimants and loss of estate is not awarded.

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

5. In respect of issue of driving license, it is settled principle of law that if driver holds the driving license of light motor vehicle

and he drives heavy transport vehicle, it cannot be considered as he was not holding effective and valid driving license as held by the Hon'ble Apex Court in the case of ***Mukund Dewangan (Supra)***.

6. To prove the income of deceased, wife of deceased examined herself. She has stated that her husband was earning more than Rs.3,00,000/- per annum from agricultural and milk business, but considering the evidence on the record, the Tribunal has considered notional monthly income at Rs.6000/-. I do not find any infirmity in it.

7. The Tribunal has awarded Rs.40,000/- to wife of deceased as consortium amount. It is contention of learned counsel for appellant and that claimants have not preferred appeal for enhancement of amount, hence, they are not entitled for consortium amount. In my view, claimants are entitled for just compensation. Hence they are entitled for consortium amount. This Court is not enhancing income of deceased. As per view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)*** each claimant is entitled for Rs.40,000/- as consortium. There are four claimants. Tribunal has awarded consortium amount to one claimant only, remaining three claimants are entitled for

consortium amount, which comes to Rs.1,20,000/-.The Tribunal has not awarded amount for loss of estate. I am considering it at Rs.15,000/-. The total of this amount comes to Rs.1,35,000. The claimants entitled for this amount.

8. In view of above, I pass following order :

ORDER

1. Appeal is dismissed. No order as to cost.
 2. The claimants are entitled for additional amount of Rs.1,35,000/- at the rate of 7.5% interest from 1st October 2017 till realization of the amount.
 3. Appellant is directed to deposit additional amount along with accrued interest thereon within six weeks from receipt of this order.
 4. The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.
9. Pending applications, if any, stand dispose of.

(SHIVKUMAR DIGE, J.)