

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 879 OF 2013

United India Insurance Company Ltd.)
Having its registered office at Satara.) ... Appellant

Versus

1. Aruna Rajaram alias Rajendra)
Jadhav, age about 28 years,)
Occupation: Household work,)
Resident of Khabalwadi, Taluka:)
Khatav, District: Satara.)
2. Rajashri Rajaram alias Rajendra)
Jadhav, age about 7 years,)
Occupation: Education, resident of)
Khabalwadi, Taluka: Khatav)
District: Satara)
3. Rohit Rajaram alias Rajendra Jadhav)
Age about 5 years,)
Occupation: Education, resident of)
Khabalwadi, Taluka: Khatav)
District: Satara)
4. Tatyaba Namdev Jadhav,)
Age about 55 years,)
Occupation: Agriculturist, resident)
of Khabalwadi, Taluka: Khatav)
District: Satara)
5. Babutai Tatyaba Jadhav,)
Age about 51 years,)
Occupation : Household work,)
resident of Khabalwadi, Taluka:)
Khatav, District: Satara)

6. M/s. B.G. Shirke Construction)
Tech. Private Limited,)
Occ: Business, Plot No.31, MIDC,)
Plot No.3, Rajiv Gandhi Infotech)
Park, Hinjawadi, Taluka: Mulshi,)
District: Pune, Owner of Dumper)
No. MH-14/AS/8207) ...Respondents

Mr. Ketan Joshi, Advocate for the Appellant.

Mr. Sangramsing Yadav a/w harvinder Kaur Rogi for the Respondent
Nos. 1 to 5.

CORAM : S. G. DIGE, J.

RESERVED ON : 13th DECEMBER, 2022.

PRONOUNCED ON : 25th JANUARY, 2023.

JUDGMENT. :

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

2. It is contention of learned counsel for appellant that the tribunal has considered monthly income of deceased at Rs. 10,000/- and Rs. 5,000/- as future prospects which is exorbitant. Learned counsel further submits that the deceased was painter. No evidence was produced on record to show that income of deceased was Rs. 10,000/- per month but, the tribunal has not considered this fact and

has considered Rs. 10,000/- monthly income of deceased which is excessive. Learned counsel further submits that it is settled principle of law that compensation is not a windfall but, it has to be awarded on the basis of evidence produced on record . The compensation awarded by the tribunal is excessive and exorbitant. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondents/original claimants that deceased was a skilled painter. He had completed diploma in painting. He was highly skilled painter. Deceased was earning Rs. 20,000/- per month. The evidence was produced on record to prove that the deceased was earning Rs. 20,000/- per month but, it was not considered by the tribunal. The tribunal has considered the monthly income of deceased on lower side. The order passed by the tribunal could not be challenged as the claimants are poor persons. There is no male member in the family of the claimants. Hence, they have not preferred appeal for enhancement of compensation. The tribunal has not awarded the consortium amount and compensation for funeral expenses and loss of the estate. Hence, requested to award the enhanced compensation under above referred heads.

4. I have heard both learned counsel, perused judgment and order passed by the tribunal. The issue involved in this appeal is monthly income of deceased is considered on higher side. To prove the income of the deceased, wife of the deceased- Aruna Jadhav examined herself. She has stated that deceased was doing painting work on the scheme of Mrs. B. U. Bhandari and he used to earn Rs. 20,000/- per month. She has produced ledger extracts issued by Mrs. B. U. Bhandari. It is marked as Article 1. The tribunal has observed that deceased was doing painting work on contract basis and he had to pay some allowances to the labourer and on the basis of the view taken by Hon'ble Apex Court in the case of **Santosh Devi vs. National Insurance Company Limited & Ors. Reported in 2012 A.C. J. 1428**, the tribunal has considered the monthly income of deceased Rs. 10,000/-. I do not find any infirmity in it. It appears from record that deceased was high skilled painter, the skilled painter can earn more amount, the tribunal has not awarded the consortium amount and compensation for funeral expenses and loss of the estate as held, by Hon'ble Apex Court case in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 ACJ 2782 (SC)**. In my view, as per the view of Hon'ble Supreme Court the claimants are entitled for spousal, filial, and parental consortium, as well as

amount for funeral and loss of estate.

5. It is contention of learned counsel for the appellant that the tribunal has deducted 1/5th amount for personal expenses, it should be 1/4th. Learned counsel for respondent has not disputed it. In view of above the claimants are entitled for following compensation.

Per month	Rs.10,000	
Future Prospectus	+Rs.5000	
	----- Rs.15,000	
	X 12 months	
	----- Rs.1,80,000	
	-1/4 th Deduction -----	
	Rs.1,35,000	
	X 16 Multiplier -----	Rs.21,60,000
Spousal		+ Rs.44,000
Parental	Rs.44,000X2	Rs.88,000
Filial	Rs.44,000X2	Rs.88,000
Funeral		Rs.16,500
Estate		Rs.16,500
		----- Rs. 24,13,000 =====

6. The tribunal has awarded Rs. 22,61,500/- if it is deducted from Rs. 24,13,000/-, it comes to Rs.1,51,500/-, it is just compensation. The claimants are entitled for this amount.

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

ORDER

- i. Appeal is dismissed. No order as to cost.
 - ii. The claimants are entitled for compensation amount of Rs. 24,13,000/- at the rate of 6% from the date of filing of claim petition till realization of the amount.
 - iii. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - iv. The statutory amount along with accrued interest be transferred to the tribunal. The parties are at liberty to withdraw it, as per rule.
6. All pending applications stand disposed off.

(S. G. DIGE, J.)