

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.2676 OF 2007**

1. Smt Rajashree Chandrakant Vengulkar }
2. Kumari Puja Chandrakant Vengulkar }
3. Kumar Vishal Chandrakant Vengulkar }
4. Kumari Aarati Chandrakant Vengulkar }

Applicant Nos.2 to 4 are minor. }

Through their natural guardian as }

mother i.e. Applicant No.1 }

All residents of Salgaon, Tal:-Ajara }

Dist:-Kolhapur } ...APPELLANTS

(Applicants)

Versus

1. Mr. Rafik Ahmad Kasim Naikwadi }
- R/o Sayed Wada, Near Zonal }
- Agriculture, Valpoi, Goa. }
2. National Insurance Co. Ltd }
- Through its Divisional Office, Cosmos }
- Commercial complexes, 205, E Ward new }
- Shahpuri, Kolhapur }
3. Shri Abhaji Vithal Dongre }
- R/o Podarewadi Tal: Ajra, }
- Dist: Kolhapur. }
4. Shri Anil Shankar Kamble }
- R/o At Post, Sule, Tal: Ajra, }
- Dist: Kolhapur. }

5. The Oriental Insurance Co. Ltd. }
 - Divisional Office, Kanchanganaga }
 - 201/E Station Road, Kolhapur } ...RESPONDENTS
- (orig. opponents)

Mr. Sarthak Diwan a/w Mr. Paras D. Yadav and Mr. Ratnadeep Khavare for the Appellants.

Ms. Poonam Mital for Respondent No.2.

Mr. Sandeep Jinsiwale for Respondent No.5.

CORAM : SHIVKUMAR DIGE, J.

DATED : 21st APRIL, 2023

JUDGMENT:

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

2. It is contention of learned counsel for the Appellants that monthly income of deceased was Rs.6,000/- per month, but Tribunal has considered at Rs.1,500/- per month, which is on lower side. Learned counsel further submits that Tribunal has awarded consortium amount on lower side. There are four claimants hence, consortium amount be awarded.

3. Learned counsel further submits that the Tribunal has fixed equal liability on both Insurance Company i.e. 50% 50%. Both the Insurance Company shall pay enhanced compensation amount equally.

4. Learned counsel of Respondent No.2-Insurance Company submitted that it has come in the evidence of wife of deceased that deceased was getting Rs.3,000/- per month. He was doing the work of painter hence, the monthly income of deceased at Rs.1,500/- considered by the Tribunal is proper and no

interference is required in it.

5. Learned counsel for Respondent No.5-Insurance Company adopted the arguments of learned counsel for Respondent No.2-Insurance Company.

6. I have heard both learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Gadhinglaj (for short 'the Tribunal'). To prove the income of deceased, the claimants have examined Smt. Rajashree Vengulkar at Exhibit-45, she has stated that her husband was doing the work of painting on contract basis and 3 to 4 workers were working under him. His monthly earning was Rs.3,000/- to Rs.4,000/-. To support her evidence PW-2 Narayan Aasabe at Exhibit-54, has stated that he had given a work of painting to deceased and he had paid Rs.3,000/- for allotted work to him. The claimants examined Shri. Jayasing Dorugade at Exhibit-55, this witness has stated that, he worked under the deceased on daily wages and deceased gave him Rs.100/- per day as a wages. He further stated that deceased was getting Rs.4,000/- to Rs.6,000/- per month. Nothing elicited in the cross-examination of this witness. The claimant examined PW-4 Shri. Dayanand Devalkar at Exhibit-63. This witness stated that, he had given work of painting to the deceased, he was working in their Sanstha during period 1993 to 1999. He personally knows about his work that the deceased was doing the work of painting and his monthly income was Rs.4,000/- to Rs.6,000/-.

7. Considering the evidence of these witnesses and documents produced on record, the Tribunal has considered notional monthly income of deceased at Rs.1,500/- per month. In my view, it has come on record that deceased was doing the work of painting. Three to four persons were working under him and he was giving daily wages of Rs.100/- per day to these workers. The income considered by the Tribunal is on lower side. Hence, I am considering notional monthly income of deceased at Rs.5,000/- per month.

8. The Tribunal has awarded consortium amount of Rs.5,000/-. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram**,¹ 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. The Tribunal has not awarded future prospects as per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.**,² the claimants are entitled for 40% future prospects. Considering above calculations, the claimants are entitled for following compensation.

Particulars	Amount
Per month income	Rs. 5000.00
40% future prospects Rs. (12,000X5)=60,000+24,000/-	Rs. 84,000.00
Deduction towards personal expenses 1/4th of Rs. 63,000.00	
Rs.84,000-Rs.21,000/- comes to	
Rs.63,000X16 (multiplier)	Rs. 10,08,000.00

1 2018 ACJ 2782 (SC)

2 2017 ACJ 2700 (SC)

Loss of consortium Rs.44,000X4 (claimant4)	Rs. 1,76,000.00
Loss of Estate	Rs. 16,500.00
Funeral Expenses	Rs. 16,500.00
Total Compensation	Rs. 12,17,000.00
Award	Rs. 1,69,000.00
Total Compensation Payable	Rs. 10,48,000.00

9. The Tribunal has awarded Rs.1,69,000/-. As per the calculation of this Court, total comes to Rs.12,17,000/-. If the amount awarded by the Tribunal is deducted from the amount considered by this Court, it comes to Rs.10,48,000/- the claimants are entitled for this amount. In view of the above, I pass following order.

O R D E R

- (i) Appeal is allowed.
- (ii) The claimants are entitled for enhanced amount of Rs.10,48,000/- @ 7.5% per annum from the date of filing of claim petition till realization of the amount, out of this amount Rs.2,09,000/- is consortium, funeral expenses and loss of estate amount. The claimants are entitled @ 7.5% per annum on this amount from 1st November, 2017 till realization of the amount.
- (iv) The Respondents are directed to deposit enhanced amount along with accrued interest thereon, within eight weeks after the receipt of the order.

- (v) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - (vi) The Respondents shall deposit the amount as per their share fixed by the Tribunal.
10. Pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)