

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 2228 OF 2007**

- 1 Smt. Chhaya Baburao Phadatare,
Age about 38 years,
Occupation : Household.
- 2 Rajashri Baburao Phadatare,
Age about 29 years,
Occupation : Household,
Both R/o. Jalgaon Naka (Vadar Galli)
Koregaon, Tal.Koregaon, ..Appellants
District: Satara (Orig. Applicants)
Versus
1. Shankar Krishna Kadam
Age Adult, Occ,: Business,
R/o. A/p. Rahimatpur,
Tal. Koregaon, District: Satara.
2. The New India Assurance Co. Ltd.,
Office at Rajtara Building,
Opp. Collector Office, Sadar Bazar, ..Respondents
Satara. (Orig Opponents)

Mr. Dilip Bodake along with Mr. Sharad Bhosale, Advocate for the Appellant.

Mr. P. M. Jadhav, Advocate for Respondent No.1.

Ms. Poonam Mital, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th MARCH 2023.

Oral Judgment :

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

2. It is contention of learned counsel for the appellants/claimants that Tribunal has awarded compensation on lower side. While awarding compensation, the Tribunal has held that the claimant Nos. 1 and 2 are the married daughters of deceased, hence, they cannot be considered as dependents of deceased. On that basis, the Tribunal has not awarded compensation. Learned counsel further submits that Tribunal has not awarded consortium amount and future prospects. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2 - Insurance Company that married daughter cannot be considered as legal heirs of the deceased and Tribunal has rightly held that they are not entitled for compensation. While awarding compensation, the Tribunal has considered all aspects, hence, no interference is required in it.

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

5. In respect of issue of entitlement of compensation, the Tribunal has observed that both applicants are married daughters of deceased- Walubai ,considering the above admitted facts on record as well as applicants have not produced any evidence to show that they were staying with deceased since last ten years, they cannot be considered as dependent upon deceased, therefore, they are not entitled to receive the compensation. I am unable to understand the observation of the Tribunal on the ground that the claimant No.1– Chaya Fadtare has deposed at Exhibit “26”, she has stated that she and claimant No.2 were married but their husband refused to maintain them, therefore, they are staying at their parents house. This witness was cross-examined on the issue of marriage but the evidence of this witness remained intact. In my view, the claimants have stated on oath that there were marital disputes with their husbands due to which they were residing at their parents house and the Tribunal has observed that there is no evidence on record

that they were residing with their deceased mother. For getting compensation, no one would say that they have been expelled by their husbands. The Tribunal has not considered the evidence led by the claimants. Hence, I am considering the claimants are entitled for compensation as dependents of deceased.

6. The Tribunal has considered monthly income of deceased at Rs.3000/-, 25% future income comes to Rs.750/- per month. The total of it, comes to Rs.3750/-. If 1/3rd amount for personal deduction is deducted from it i.e. Rs.1250/-, it comes to Rs.2,500/- per month. The multiplier is 13 as deceased was 50 year old at the time of accident. Thus Rs.2500/- x 12 months x 13 multiplier, comes to Rs.3,90,000/-. Each claimant is entitled for Rs.40,000/- as consortium amount, there are two claimants, the consortium amount comes to Rs.80,000/- Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. The total comes to Rs.5,00,000/-. The Tribunal has awarded Rs.58,000/-, if this amount is deducted from Rs.5,00,000/-, it comes to Rs. 4,42,000/-. The claimants are entitled for this amount.

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

O R D E R

1. The claimants are entitled for compensation of Rs.4,42,000/- @ 7.5% interest per annum from the date of filing of claim petition till realization of the amount. Out of this amount, Rs.1,10,000/- is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st October 2017 till realization of the amount.
2. The respondents are directed to deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
3. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

The appeal stands disposed of.
8. Pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)