

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 661 OF 2017

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|------------------------------------|---|----------------------|
| 1. Shri. Nitin Baban Dethe |) | |
| Age. 24 years, Occ. Nil |) | |
| 2. Shindhubai Baban Dethe, |) | |
| Age. 43 years, Occ. Housewife |) | |
| 3. Manisha Baban Dethe |) | |
| Age. 22 years, Occu.: Nil, |) | |
| All Resident of Dhondewadi, |) | |
| Tal. Pandharpur, District: Solapur |) |Appellants |
| | | (Original Claimants) |

Versus

- | | | |
|--|---|-------------------|
| 1. Devendra Deoram Shirsath, |) | |
| Age. Adult, Occu. Tractor Owner, |) | |
| R/o. Shri Gajanan Kripa, Savroli Road, |) | |
| Shahapur, Thane. |) | |
| 2. Vilas Ganpat Nishite, |) | |
| Age. Adult, Occu. Tractor Driver, |) | |
| R/o. Shendrun, Tal - Shahapur, |) | |
| Dist. Thane. |) | |
| 3. The Manager, |) | |
| ICICI Lombard Motar Insurance, |) | |
| Having office at Jinat House, |) | |
| Keshavrao Khade Marg, |) | |
| Mahalaxmi, Mumbai |) |Respondents |
| | | (Orig. Opponents) |

Mr. Shankar Katkar i/b Manisha Devkar for the Appellants.
Mr. Rajesh Kanojia a/w Ms. Nikita Singh i/b Res Juris for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd APRIL 2023.

JUDGMENT :

1. The issues involved in this appeal are age of deceased, future prospects and consortium amount are not awarded.
2. It is contention of learned counsel for the appellant that the age of deceased was 48 years old at the time of accident, but the Tribunal has considered 65 years old. The claimant no. 2, who is wife of deceased was 40 years old, the claimant no. 1, son of deceased was 21 years old and the claimant no. 3 daughter of deceased was 19 years old at the time of filing claim petition. The FIR in respect of the said accident was filed by the police constable and he on guess work mentioned, the age of deceased as 65 years, and on that basis, in the postmortem report the age of deceased was mentioned as 65 years old. In claim petition, claimants had mentioned the age of deceased as 48 years old but, tribunal has considered the age of deceased as 65

years old which is not proper. Learned counsel further submits that the tribunal has not awarded future prospects as well as consortium amount.

3. Learned counsel for the respondent/insurance company vehemently submitted that no documentary evidence regarding proper age of deceased was produced before the tribunal. The FIR and postmortem report shows, the age of deceased as 65 years old and, on that basis, the tribunal has considered the age of deceased as 65 year old, which is proper. Learned counsel further submits that moreover, no ground is taken in appeal about age of deceased. So, it cannot be considered. Learned counsel further submits that while awarding compensation, the tribunal has considered all the aspects and on that basis compensation is awarded, which is proper and no interference is required in it.

4. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Malshiras (for short 'the Tribunal'). While dealing with the issue of age of deceased, the tribunal has observed that applicant has contended in the application that deceased was about 48 years old at the time of accident. The applicant has also examined independent witness

Bhramhadeo Katkar, who has stated that at the time of accident deceased Baban was 48 years old. First Information Report shows that deceased Baban was 65 years old, in postmortem report age of deceased Baban is mentioned as 65 years old. The applicant did not file any documentary proof to show that deceased Baban was 48 years old. Considering the age mentioned in FIR and postmortem report, the Tribunal has held that deceased was 65 years old at the time of accident. I am unable to understand, the findings given by the tribunal, as the claimants in their claim petition have specifically mentioned the age of deceased as 48 years old. The claimant no. 1 is son of deceased, his age is shown as 21 years old. The claimant no. 2 is wife of deceased, her age in claim petition shown as 40 years old and the claimant no. 3 is daughter of deceased her age is shown as 19 years old. Age mentioned in the claim petition matches with the age of deceased shown in claim petition as 48 years old. The FIR was lodged by the police constable, after the accident. On guess work basis, he has mentioned the age of deceased at about 65 years old and the same is mentioned in postmortem report. The age mentioned by the police constable was only on the basis of guess work. Police constable was not aware about the exact age of the deceased. The

claimants were aware about the exact age of deceased and on that basis his age was mentioned in the claim petition. Moreover, the claimants have examined witness to prove the age of deceased, who has stated that, at the time of accident deceased was 48 years old.

5. Now question remains without absence of any documentary proof of age of deceased can it be considered. In my view, the claimants have mentioned the age of deceased in the claim petition, considering the age gap between wife of deceased and children, the age mentioned by the claimants appears proper. Moreover, deceased was labourer, his wife is labourer and his son is also labourer. Considering their family background, one cannot expect that they can prove the age of deceased on the basis of documents. The claimants have examined witness and that witness has stated about the age of deceased, but the tribunal has not considered it and mere on the basis of age mentioned in the FIR and postmortem report came to wrong conclusion that age of deceased was 65 years old, which is not proper. Hence, I am considering the age of deceased as 48 years old, at the time of accident.

6. It is the contention of learned counsel for the respondent that no ground was taken in the appeal regarding age of deceased. In

my view, though ground is not taken in appeal memo but the said issue was discussed by the tribunal in the impugned judgment and specific plea was there in the claim petition about age of deceased and it was not considered by the tribunal. Any mistake of advocate in not taking any specific ground in appeal memo, cannot be a reason to deny the benefits to the claimants for which, the claimants are entitled, as Motor Vehicle Act, 1988 is beneficial legislation. 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, 2017 ACJ 2700 (SC)**, the claimants are entitled for 25% future prospects. The multiplier for age of 48 is of 13. The tribunal has awarded consortium amount of Rs. 5,000/- and funeral expenses of Rs. 2,000/- and Rs. 2,500/- for loss of estate which is on lower side. As per the view of Hon'ble Apex Court in the Case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)** each claimant is entitled for Rs. 40,000/- with 10% increase and Rs. 16,500/- for funeral expenses and Rs. 16,500/- for loss of estate. Considering the above calculations, the claimants are entitled for following compensation.

Notional Income per month	Rs.	Rs.5000/-
Add 25% future prospects	Rs.	Rs.1250/-
Total Income per month	Rs.	Rs.6250/-
Annual Income Rs. 6250 x 12	Rs.	Rs.75000/-
Less 1/3 towards personal expenses	Rs.	Rs.25,000/-
Total Income	Rs.	Rs. 50,000/-
Rs. 50,000/- x 13 (multiplier as deceased of 48 years old)	Rs.	Rs. 6,50,000/-
Add: Funeral Expenses	Rs.	Rs. 16,500/-
Add: Loss of Estate	Rs.	Rs. 16,500/-
Add: Consortium (44,000/- x 3)	Rs.	1,32,000/-
Total Compensation	Rs.	Rs. 8,15,000/-
Less Compensation awarded by the Tribunal	Rs.	Rs. 2,09,500
Enhanced Compensation	Rs.	Rs. 6,05,500/-

The tribunal has awarded amount of Rs. 2,09,500/-, if this amount is deducted from the amount considered by this Court, it comes to Rs.6,05,500/-. The claimants are entitled for this amount.

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

ORDER

- i. Appeal is allowed.
 - ii. The claimants are entitled for enhanced amount of Rs. Rs. 6.05,500/- at the rate of 7.5% per annum from date of filing claim petition till realization of the amount, out of this amount, consortium amount is of Rs. 1,55,000/-, the claimants are entitled @ 7.5% per annum on this amount from 1 October, 2017, till realization of the amount.
 - iii. The respondents are directed to deposit enhanced amount along with accrued interest thereon within six weeks after the receipt of the order.
 - iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
8. All pending applications are disposed of.

(SHIVKUMAR DIGE, J.)