

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 528 OF 2013**

Tanmay Dilip Barate	)	
Age 12 years Occ: Education,	)	
Through Guardian	)	
Suman Kashinath Khachane	)	
Age : 57 years, Occ ; Household,	)	
R/o : Shreyas, Ramdas Plot,	)	
Canada Corner, Nashik – 5.	)	Appellant

Versus

1. Riyaz Abdulmajid Shaikh	)	
Age : Adult, Occ.: Owner/Driver,	)	
R/o : House No.155,	)	
Nayaikwadi Pura,	)	
Near Ajmeri Masjid, Nashik-422 001.	)	
2. The New India Assurance Co. Ltd.	)	
Nashik Divisional Office No.3,	)	
Old Agra Road, Nashik	)	
Through Divisional Manager	)	Respondents

with

FIRST APPEAL NO. 549 OF 2013

Tanmay Dilip Barate	)	
Age 12 years Occ: Education,	)	
Through Guardian	)	
Suman Kashinath Khachane	)	
Age : 57 years, Occ ; Household,	)	
R/o : Shreyas, Ramdas Plot,	)	
Canada Corner, Nashik – 5.	)	Appellant

Versus

1. Riyaz Abdulmajid Shaikh)
Age : Adult, Occ.: Owner/Driver,)
R/o : House No.155,)
Nayaikwadi Pura,)
Near Ajmeri Masjid, Nashik-422 001.)
 2. The New India Assurance Co. Ltd.)
Nashik Divisional Office No.3,)
Old Agra Road, Nashik)
Through Divisional Manager)
 3. Shailaja Madhukar Barate)
Age 72 years, occ: household,)
R/at: 38, Sankalpa, Saptashruni)
Colony, Gangapur Road, Nashik-13.)
-Respondents

Mr. Satyajeeet P. Dighe, Advocate for the Appellant in both appeals.
Mr. Sandeep S. Jinsiwale, Advocate for the Respondent No.2 in both appeals.
Mr. Abhijeet Khade i/b. Mr. Harshad Inamdar, Advocate for Respondent No.3 in First Appeal No.549 of 2013.

CORAM : S. G. DIGE, J.

DATE : 8th FEBRUARY 2023.

Judgment :

1. Both these appeals are arising out of the same accident, hence, I deciding both the appeals by passing a common judgment.
2. These appeals are filed for enhancement of compensation.

3. Learned counsel for the appellant submits that while awarding compensation, the Tribunal has not awarded future prospects and consortium amount. He has relied upon the decisions of the Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC) and Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC).** Hence, requested to allow the appeals.

4. Learned counsel for respondent No. 2 - Insurance Company submitted that while awarding compensation, the Tribunal has considered all the aspects. Hence, no interference is required in it and requested to dismiss the appeals.

5. I have heard both learned counsel, perused the impugned judgment and order passed by the Tribunal. While calculating the compensation, the Tribunal has considered the monthly income of the deceased, but the Tribunal has not awarded future prospects. As per the view of the Hon'ble Apex Court in the case of **Pranay Sethi (Supra)**, the claimants are entitled for future prospects. Hence, I am considering 40% as future prospect as the deceased was self-employed. The Tribunal has not awarded consortium amount and

amount for loss of estate and funeral expenses. As per the view of the Hon'ble Apex Court in **Magma General Insurance Co. Ltd**, each claimant is entitled to Rs.44,000/- with 10% increase consortium amount, Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

6. There is one claimant in both the appeals. Hence, I am considering Rs.44,000/- as consortium amount.

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

1. Both the appeals are allowed.
2. In First Appeal No.549 of 2013, the appellant/ claimant is entitled for enhancement of Rs.8,31,280/- @ 7.5% interest per annum from the date of filing of claim petition till realisation of the amount.
3. In First Appeal No.528 of 2013, the appellant/ claimant is entitled for enhancement of Rs.13,53,538/- @ 7.5% interest per annum from the

date of filing of claim petition till realisation of the amount.

4. The respondents are directed to deposit enhanced amount along with accrued interest thereon within six weeks in both the matters.

5. The claimants are permitted to withdraw the amount along with accrued interest thereon in both the matters.

The appeals are disposed of.

8. Pending applications, if any, stand disposed of.

(S. G. DIGE, J.)