IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 565 OF 2005

1 Sunanda w/o. Kumar @)
Madhavrao Khot,)
Since deceased by Legal Heirs)
2 Sachin Kumar @ Madhavrao Khot)
Age – Major, Occu.-)
3 Rohini Kumar @ Madhavrao Khot,)
Age – Major, Occu.-)
All R/o. Rukadi, Tal. Hatkanangale,)
Dist. Kolhapur.)
4 Jyoti Kiran Patil,)
Age – Major, Occu.-)
R/o. Adhirath Apartment, Shop No.1,)
Near Vanaj Co-op. Kinara Hotel,)
Kothrud, Pune.) ...Appellants

Versus

1 Vijay Annasaheb Patil (Dead))
Legal Heirs:-)

SHUBHADA SHANKAR KADAM
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1a	Sou Sunanda Annasaheb Patil,	)	
	Age 55 yrs, Occu.Household,	)	
2	United India Insurance Co.Ltd.	)	
	Br.Stn. Road, Kolhapur.	)	...Respondents.

Mr. Tejpal S. Ingale, Advocate for the Appellants.
Ms. Poonam Mital, Advocate for Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th APRIL, 2023.

Oral Judgment :

1. Heard learned counsel for the appellants and learned counsel for the respondents.

2. The issues involved in this appeal are income of deceased considered on lower side and compensation of future prospects and consortium have not been awarded.

3. It is contention of learned counsel for the appellants that deceased was permanent employee of the sugar factory. While computing the compensation, the Tribunal has considered him as seasonal employee, which is not proper. Learned counsel further

submits that there are four claimants, so the amount for personal deductions should be 1/4th but the Tribunal has considered 1/3rd. The compensation for future prospects and consortium is not awarded by the Tribunal. Hence, requested to allow the appeal.

4. Learned counsel for the respondents submits that it has come in the evidence of PW2 that the clerk would get 50% amount in seasonal period and, on that basis, the Tribunal has considered the monthly income of deceased, which is proper. While awarding compensation, the Tribunal has considered all aspects and, on that basis, compensation is awarded, which is proper. No interference is required in it.

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

6. To prove the income of deceased, claimants have examined PW2-Ramchandra Bawache. He has stated that deceased was serving with Panchganga Sugar Factory as permanent employee and his last pay salary was Rs.4565/- per

month. In cross-examination, this witness admitted that sugar factory runs about 4-5 months in a year and salary of the employee i.e. clerk is 50% in non-seasonal period. On that basis, the Tribunal has considered monthly income of deceased at Rs.2,282/- i.e.half of Rs.4565/-.

7. I am unable to understand the finding given by the Tribunal. As PW2 who was working in Panchganga Sugar Factory, where deceased was working has stated that deceased was permanent employee of their factory and in cross-examination, he has admitted that if a servant is seasonal worker, then, he would get half salary and in cross-examination, this witness denied the suggestion the deceased was not permanent employee of the factory. The last drawn salary slip is at Exhibit 71, it shows the last drawn salary of deceased was Rs.5018.25 and professional tax was Rs.120.00. As deceased was permanent employee, it is settled principle of law that while considering salary, profession tax should be deducted, after deduction of it, the salary come to Rs.4898.75. I am considering this salary as monthly salary of deceased.

8. It is contention of learned counsel for the appellant that

deceased was earning Rs.1,00,000/- per annum from agricultural income. PW1-Sachin Khot, son of deceased has stated that, his father was earning Rs.1,00,000/- net income per year from agricultural produce. They own 8 Acre agricultural land, his father was supplying milk to dairy and he was earning Rs.6000/- to Rs.7,000/- per month. In cross-examination, this witness admitted that he has not produced any documentary evidence on record to show agricultural income of deceased. To support evidence of this witness, the claimants have examined PW3-Raghunath Patil at Exhibit “74”, Accountant in Panchaganga Sugar Factory. This witness has stated that, he knows deceased. The bills of sugar cane of the year 1988-198 to 1998-1999 are at Exhibit “76”, which are in the name of deceased. Nothing elicited in cross-examination of this witness. Considering the evidence on record that the deceased was serving as a clerk in sugar factory and also had agricultural land, he was cultivating agricultural land and doing milk business, I am considering income from agriculture and milk business at Rs.5000/- per year.

9. The Tribunal has deducted 1/3rd amount for personal expenses, it should be 1/4th as there are four claimants. Deceased

was 54 year old at the time of accident, hence, proper multiplier is 11. As deceased was 54 year old, as per view of the Hon'ble Apex Court in ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC),*** the claimants are entitled for 50% future prospects. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC),*** each claimant is entitled for Rs.40,000/- with 10% increase as consortium, Rs.16500/- for funeral expenses and Rs.16,500/- for loss of estate. There are four claimants, so total of it comes to Rs.2,09,000/-.

10. Considering the above calculations, the claimants are entitled for following compensation :

Monthly Income	Rs. 4898.75
1/4th deduction for personal expenses	Rs. 1225.00
Total (rounded up)	Rs. 3674.00
Annual Income Rs.3674 x 12(months)	Rs. 44088.00
Add income from Agriculture and Milk Supply per annum	Rs. 5000.00
Annual Income (from all sources)	Rs. 49088.00
Add 15% Future Prospects	Rs. 7363.00
Total Income	Rs. 56,451.00

Rs. 56,451/- x 11 (multiplier) As the age of deceased was 54 year at the time of accident	**Rs. 620961.00**
Add Consortium (Rs.44000.00 x 4 (claimants))	Rs. 176000.00
Add Loss of Estate	Rs. 16500.00
Add Funeral Expenses	Rs. 16500.00
Total Compensation	**Rs. 8,29,961.00**
Compensation awarded by Tribunal	Rs. 318000.00
Enhanced Amount	**Rs. 5,11,961.00**

11. In view of above, I pass following order :

O R D E R

1. The first appeal is allowed.

2. The claimants are entitled for enhanced amount of Rs. 5,11,961/- @ 7.5% interest per annum from the date of filing of petition till realisation of the amount. Out of this amount, Rs.2,09,000/- is consortium, the claimants are entitled 7.5% interest on this amount from 1st November, 2017 till realisation of the amount.

3. Respondents are directed to deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.

4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

The appeal stands disposed of.

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

(SHIVKUMAR DIGE, J.)