

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SHANTANU
SHANKARSA
DHUDUM

Digitally signed by
SHANTANU
SHANKARSA DHUDUM
Date: 2023.03.24
11:57:57 +0530

FIRST APPEAL NO. 349 OF 2008

- | | | |
|--|---|----------------|
| 1. Smt. Sarla Anil Kundalkar, |) | |
| Age 29 years, Occ. Household |) | |
| 2. Ashish Anil Kundalkar, |) | |
| Age 10 years |) | |
| 3. Amey Anil Kundalkar, |) | |
| Age 7 years, |) | |
| Appellant Nos. 2 & 3 minors |) | |
| Through their mother Appellant |) | |
| No. 1 |) | |
| 4. Mahadev Dinkar Kundalkar, |) | |
| Age 63 years, Occupation Labourer, |) | |
| All R/o. Maraicchiwadi, Tal. Khandala, |) | |
| Dist. Satara |) |Appellants |

Versus

- | | | |
|------------------------------------|---|--|
| 1. Suraj Sarjerao Shelke, |) | |
| Age Adult, |) | |
| r/o. Pratibhanagar, |) | |
| Tal. Baramati, Dist. Pune |) | |
| 2. The Nedw India Assurance Co. |) | |
| Divisional Office, Shivaji Circle, |) | |
| Satara. |) | |
| 3. The Divisional Manager, |) | |
| Maharashtra State Road |) | |
| Transport Corpn. Vahatuk |) | |
| Bhavan, Mumbai, |) | |

Through Divisional Controller,)
M. S. R. T. C. Satara Division,)
Satara)....Respondents

Mr. Harvinder Kaur Rogi i/b Mr. Sangramsinh Yadav for the
Appellants.

Ms. Darshana P. Deshmukh for the Respondent No.1.

Mr. D. S. Joshi a/w Pradyumna Thakardesai for the Respondent No.2.

CORAM : S. G. DIGE, J.

DATE : 9th MARCH 2023.

JUDGMENT :

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

2. The learned counsel for the appellants submits that tribunal has considered the income of deceased on lower side and on that basis compensation is awarded.

3. The learned counsel further submits that deceased was working in Krushi Seva Kendra at Lonand and was earning salary of Rs. 4,000/- per month. The owner of said Krishi Seva Kendra deposed before the tribunal that the deceased was getting salary of Rs. 4000/- per month. In spite of that the tribunal has considered monthly

income of deceased at Rs. 2,100/- which is on lower side. Learned counsel further submits that the tribunal has deducted $\frac{1}{3}^{\text{rd}}$ amount for personal expenses it should be $\frac{1}{4}$ as there are four claimants. The tribunal has not awarded future prospect and consortium amount. Hence, requested to allow the appeal.

4. It is contention of learned counsel for the respondent no.2/Insurance Company that no evidence was led before the tribunal to prove the income of deceased. Though, it was case of the appellants that deceased was getting Rs.4,000/ per month, but no documentary evidence was produced before the tribunal to prove this fact hence, income considered by the tribunal is proper. Learned counsel further submits that the employer of deceased has admitted in his evidence that he has not produced the salary register and attendance register of the deceased. Hence, requested to dismiss the appeal.

5. The learned counsel for the respondent no.1 submits that at the time of accident offending vehicle was insured with insurance company/respondent no.2.

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

‘the tribunal’). To prove the income of deceased PW-1 Sarla wife of deceased has stated that at the time of accident deceased was 26 years old. He was serving in Krishi Seva Kendra at Lonand and was earning salary of Rs. 4000/- per month to corroborated evidence of this witnesses. The claimants examined PW-2 Rajendra owner and proprietor of the Krishi Seva Kendra at Lonand, he has stated that at the relevant time deceased was serving with him and was earning Rs. 4,000/- per month. The salary certificate of deceased is at Exhibit-‘41’. In cross examination, this witness admitted that the salary register or attendance register of the deceased was not produced by him. On the basis of evidence of this witnesses and there is no evidence except the bare words of this witnesses, the tribunal has considered monthly income of deceased Rs.2,100/- per month, I am unable to understand the finding given by the tribunal. When it has come on record that there are four claimants, deceased was maintaining the family of four claimants including himself. The wife of deceased has stated that her husband was working in Krishi Seva Kendra and it is corroborated by PW-2/Rajendra the salary certificate is produced by witness Rajendra is at Exhibit-‘41’. The tribunal has observed that no salary register or attendance register is produced. In

my view, when salary certificate is produced on record and witness stated that deceased was working with him, it is sufficient to hold that he was he was working there. Moreover, no question was put to this witness in cross-examination that deceased was not working in his shop.

7. Considering the evidence on record, I am considering the salary of deceased at Rs. 3,100/-. The tribunal has deducted $\frac{1}{3}$ amount for personal expenses, there are four claimants it should be $\frac{1}{4}$. Hence, I am deducting $\frac{1}{4}$ amount for personal expenses. The tribunal has not awarded future prospects at the time of accident deceased was 26 years old. As per the view of Hon'ble Apex Court in case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)***. The claimants are entitled for 40% future prospect. The tribunal has Rs. 5,000/- as consortium, Rs. 5,000/- for love and affection and of Rs.2,000/- for funeral expenses. 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 claimants are entitled for Rs.44,000/- with 10% increase as consortium amount and Rs. 16,500/- for funeral expenses and Rs. 16500/- of loss of estate.

Income	Rs. 3,100
1/4 Personal expenses	-Rs. 775/-
	----- Rs. 2,325/-
40% Future Prospects	+Rs. 930/-
	----- Rs. 3,255/- X 12
	----- Rs. 39,060 X 17
	----- Rs. 6,64,020
Consortium	+ Rs. 1,76,000/-
Loss of Estate	+ Rs. 33,000/-
Total	Rs. 8,73,020/-

Considering the above calculation the claimants are entitled for compensation of Rs.8,73,020/-. The tribunal has awarded the amount of Rs. 3,15,000/- if this amounts deducts from calculated amount of this court it comes to Rs. 5,58,020/- to round up Rs. 5,58,100/-. The claimants are entitled for this amount.

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

ORDER

- i. Appeal is allowed.

- ii. The claimants are entitled for enhanced amount of Rs. 5,58,100/-at the rate of 7.5% from date of filing claim till realization of this amount, out of this amount Rs. 2,09,000 is consortium amount. On this amount claimants are entitled @ 7.5% from 1 October 2017 till realization of amount..
- iii. The respondents are directed to deposit the enhanced amount along with accrued interest thereon, within four weeks after receipt of the order.
- iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(S. G. DIGE, J.)