

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 963 OF 2016

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|--|---|-------------|
| 1. Madhu Ramsagar Pande |) | |
| Age : 31 years, Occ : Household |) | |
| 2. Dipak Ramsagar Pande |) | |
| Dipak @ Deepakkumar |) | |
| (Amendment carried out as per order 11/9/2023) |) | |
| Age : 17 years, Occ : Student |) | |
| 3. Devam Ramsagar Pande |) | |
| Age : 16 years, Occ: Student |) | |
| 4. Shubham Ramsagr Pande |) | |
| Age : 13 years, Occ : Student |) | |
| 5. Kalpana Ramsagar Pande |) | |
| Age : 11 years, Occ : Student |) | |
| (All from No.2 to No.5 minor and therefore |) | |
| through natural guardian mother, i.e. No.1) |) | |
| 6. Pralhad Prasad Pande |) | |
| (Applicant No.6 deleted and amendment carried |) | |
| out as per order dated 11/9/2023) |) | |
| 7. Nirmala Pralhad Pande |) | |
| 61 years, Occ : Household |) | |
| All Residing at : Choudhari Sadan Chawl, |) | |
| R/No.7, Liyanka Estate, Janaleshwar Mahadeo |) | |
| Marg, Aslpha Village, Ghatkopar (W), Mumbai |) | Appellants |
| Having permanent address at : Gram :-Tarijyot, |) | (Original |
| Post-Samsapur, District : Basti, Uttar Pradesh |) | Applicants) |
| Versus | | |
| 1. Ramesh Bhikaji Shinde |) | Respondent |
| Age : adult, Occ : Not known, |) | Original |
| Residing at : Flat No.15, Sundaram Bldg., |) | opposite |
| Malabar Hill Road, Mulund Colony, |) | Party) |
| Mumbai – 400 080 |) | |
| 2. New India Assurance Co. Ltd., |) | |
| Office at : Regional Office, New India Bhawan, |) | |
| 1 st Floor, Near Old Custom House, Bank Street, |) | |
| Fort, Mumbai – 400 001 |) | Respondents |

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Ms. Sushama Poyekar, Advocate for the Appellants.
Ms. Poonam Mital, Advocate for Respondent No.2-Insurance Company.
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CORAM : SHIVKUMAR DIGE, J.
DATE : 18th DECEMBER, 2023

JUDGMENT :

1. This appeal is filed by the appellants/claimants for enhancement of compensation.

2. It is the contention of learned counsel for the appellants that while awarding compensation the Tribunal has calculated the compensation at Rs.7,36,200/- while awarding compensation. It is observed by the Tribunal that the appellants have restricted their claim to Rs. 4,50,000/- and did not seek any amendment in the claim application for enhancement of compensation, hence, the Tribunal has awarded Rs.4,50,000/- with 7.5% per annum, which is not proper, hence requested to allow the appeal.

3. It is the contention of learned counsel for the respondent No.2/ Insurance Company that while awarding compensation the Tribunal has considered all the aspects. Moreover, no amendment was carried out by the appellants/claimants in the claim petition for enhancement of compensation. The order passed by the Tribunal is legal and valid and no interference is required in it. He further submitted that the Tribunal has

awarded 50% towards future prospects, it should be 40%.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short "**the Tribunal**"). The Tribunal has considered the evidence on record produced by the claimants and come to the conclusion that the appellants/claimants are entitled to Rs.7,36,200/- but the Tribunal has observed that the claimants have restricted their claim to Rs.4,50,000/- and did not seek any amendment in the claim petition for enhancement of amount. I am unable to understand the view taken by the Tribunal, when on the basis of evidence on record comes to conclusion that the claimants are entitled for compensation of Rs.7,36,200/- the Tribunal should have granted the said compensation. In my view, the Tribunal has passed the order mechanically and without application of mind. It is settled principle law that if the claimants are entitled for more compensation than claimed compensation, they are entitled for it. In respect of the issue of future prospects the Tribunal has considered the age of deceased 25 and on that basis amount of future prospects is awarded and no appeal is preferred by the respondent No.2 / Insurance Company challenging the future prospects, hence I do not see any merit in it. It is the contention of learned counsel for the appellants that the Tribunal has awarded consortium amount on lower side. As per the view of the Hon'ble Apex Court in the case of

Magma General Insurance Co. Ltd. vs. Nanu Ram¹, each claimant is entitled for Rs.48,000/- as consortium amount. There are seven claimants so claimants are entitled for Rs.3,36,000/- as consortium, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses, so total comes to Rs.3,72,000/-. If amount of Rs.45,000/- granted by the Tribunal as a consortium amount is deducted from this amount it comes to Rs.3,27,000/-.

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

Particulars	Rs.	Entitlement
Monthly Income	Rs.	3,000.00
50 % future prospects	Rs.	1,500.00
Total monthly income	Rs.	4,500.00
Annual Income	Rs.	54,000.00
Les 1/5 th deduction for personal expenses	Rs.	10,800.00
Total	Rs.	43,200.00
Multiplier Rs. 43200 X 16	Rs.	6,91,200.00
Consortium (Rs.48,000/- X 7 claimants)	Rs.	3,36,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	1,063,200.00
Less compensation awarded by the Tribunal	Rs.	4,50,000.00
Enhanced amount	Rs.	6,13,200.00

Thus claimants are entitled for enhanced compensation of Rs.6,13,200/-.

¹ 2018 ACJ 2782 (SC)

5. In view of above, I pass following Order:

ORDER

- i. The appeal is allowed.
- ii. The claimants are entitled for enhanced compensation of Rs. Rs.6,13,200/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.3,72,000/- is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
- iii. The respondent shall deposit the enhanced amount along with accrued interest thereon within eight weeks after the receipt of this order.

6. The appeal is disposed of.

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
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(SHIVKUMAR DIGE, J.)