

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2098 OF 2011

1. Smt.Indravati Shukla }
2. Ms.Anju Shukla }
3. Mr.Narendra Shukla }
4. Mr.Arun Shukla }

All R/at Vishwakarma Chawl, }
Jijamata Nagar, Wagle State, Thane }

...Appellants

Versus

1. Shri.Surinder Singh Anand }
R/at M/s.Cenetral Automobiles, }
Khandwa, M.P. }

2. M/s.Oriental Insurance Co. Ltd. }
21, Pandbana Road, Khandw-453 001, }
Through their Regional Office at 7, }
J.T. Road, Churchagte, }
Mumbai-400 020. }

...Respondents

Mr.T.J. Mendon, for the Appellants.
Mr.D.S. Joshi, for the Respondents.

CORAM : S.G. DIGE, J.

DATE : 27 FEBRUARY 2023

JUDGMENT :-

. By way of this Appeal, the Appellants-Claimants are seeking enhancement of compensation.

NILAM
SANTOSH
KAMBLE

Digitally signed by
NILAM SANTOSH
KAMBLE
Date: 2023.03.02
11:29:15 +0530

2. It is contention of the learned counsel for the Appellant that the deceased was working in Multi National Company Cadbury India Limited and he was getting salary of Rs.5,009/- per month. The evidence was led before the Tribunal i.e. at Exhibit-26 salary slip of deceased which shows that salary of deceased was Rs.5,009/- per month. But the Tribunal has considered the net salary of deceased at Rs.2,285/- which is on lower side. The learned counsel further submit that Tribunal has applied wrong multiplier. The deceased was at the time of accident 42 years old. The Tribunal has applied multiplier of 12 which is not proper it should be 14.

3. The learned counsel further submit that future prospects and consortium amount are not awarded. The Tribunal has deducted 1/3rd personal expenses. There are four Claimants it should be 1/4th. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondent-Insurance Company that the Tribunal has considered proper monthly salary of deceased after making proper deduction the net salary of deceased was Rs.2,285/-. The Tribunal has considered all the aspects while awarding compensation which is proper and no interference is required in it, and requested to dismiss the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short 'the Tribunal').

6. While dealing with the issue of salary of deceased the Tribunal has observed that in the evidence of Indravati wife of deceased it has come on record that the monthly income of deceased is Rs.5,000/- per month. On the basis of admissions given by this witness in the cross-examination, that her daughter is married and her son working in share market and earns Rs.2,500/- as well as this witness receives amount of Provident Fund from the company of the deceased and she is receiving family pension under the ESI Scheme, on basis of these admissions the Tribunal has considered monthly salary of Rs.2,285/-.

7. I am unable to understand the observations given by the Tribunal. It is settled principle of law that at the time of considering the salary of deceased the Tribunal has to consider the salary after deduction of Professional Tax and Income Tax. Exhibit-26 shows that the deceased was getting gross salary Rs.5,009/-. After deduction of Income Tax and Professional Tax of Rs.690/- the salary comes to Rs.4,390/-. I am considering this salary as monthly income of deceased. At the time of accident deceased was 42 years old. The Tribunal has applied multiplier

of 12. As per view of the Hon'ble Apex Court in case of ***Sarla Verma & Ors vs Delhi Transport Corp.& Anr.***¹. The proper multiplier for the age of 42 is 14. Hence, I am considering this multiplier. The Tribunal has deducted 1/3rd amount for personal expenses. Admittedly, there are four Claimants. So deduction should be 1/4th. Hence, I am considering 1/4th amount for personal expenses. The Tribunal has not awarded future prospects. As per view of the ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017***², the Claimants are entitled for 30% future prospects. The Tribunal has not awarded consortium amount. As per view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***³, each Claimants are entitled of Rs.44,000/- with 10% increase as consortium amount, Rs.16,500/- for loss of estate Rs.16,500/- for funeral expenses. In view of the above the Claimants are entitled for following compensation.

Particulars	Amount
Income	Rs.4,319.00
Future Prospects 30%	Rs.1,296.00

Total	Rs.5,615.00
Deduction of amount for Personal Expenses 1/4th	- Rs.1,403.00

	Rs.4,212.00

1 AIR 2009 SC 3104

2 ACJ 2700 (SC).

3 2018 ACJ 2782 (SC)

Rs.4,212 x 12 x 14 (Multiplier)	Total	Rs.7,07,616.00
Consortium Rs.44,000 X 4		Rs.1,76,000.00
Funeral		Rs.16,500.00
Loss of Estate		Rs.16,500.00

	Total	Rs.9,16,616.00
Awarded by the Tribunal	-	Rs.2,31,000.00

		Rs.6,85,616.00
		=====

8. The Tribunal has awarded Rs.2,31,000/-, if this amount deducts from the amount calculated by this Court at Rs.9,16,616/-, it comes to Rs.6,85,616/-. The Claimants are entitled for this amount and I pass following order.

ORDER

(i) Appeal is allowed.

(ii) The Claimants are entitled for enhanced amount of Rs.6,85,616/- @ 7.5% interest from the date of filing of the Application till realization of the amount, out of this amount Rs.2,09,000/- is of consortium amount the Claimants are entitled for 7.5% interest 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 within six weeks after receipt of this order.

(iv) The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.

(v) Record and Proceedings be sent to the Tribunal.

(vi) All pending Civil Applications, if any, disposed of.

(S.G. DIGE, J.)