

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

**FIRST APPEAL NO. 350 OF 2008
WITH
CIVIL APPLICATION NO. 3624 OF 2009
IN
FIRST APPEAL NO. 350 OF 2008**

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|----------------------------------|---|----------------------|
| 1. Smt. Ashwini Ashok Kadam |) | |
| Age: 49 years, Occu: Household |) | |
| 2. Kumari Amruta Ashok Kadam |) | |
| Age: 22 years, Occu: Education |) | |
| 3. Kumar Ajinkya Ashok Kadam |) | |
| Age: 18 years, Occu: Nil |) | |
| All residing at Anantnagar, B/14 |) | |
| Flat No. 96, Dhankawadi, |) | |
| Pune – 411 043. |) |Appellants |
| | | (Original Claimants) |

Versus

- | | | |
|---------------------------------|---|-----------------|
| 1. Shri Pradeep Dashrath Borade |) | |
| Age: 30 years, Occu: Business |) | |
| R/at. Somardi, Tal. Purandhar |) | |
| Dist. Pune. |) | |
| 2. New India Assurance Company |) | |
| Limited having its office at |) | |
| Commonwealth Building, Laxmi |) | |
| Road, Pune 411 030. |) |Respondents |

Mr. Yogesh Pande for the Appellant.

Smt. Urmila K. Sanil for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd DECEMBER, 2023.

Oral Judgment. :

1. By way of this appeal, Appellants/Claimants are seeking enhancement of compensation.
2. It is contention of learned counsel for the Appellants that deceased was doing Hotel Business and he was earning more than Rs.80,000/- per year from the said Business. While calculating the compensation, the Tribunal has deducted 40% amount for expenses of the Hotel Business, which is not proper. Hence, requested to allow the Appeal.
3. It is contention of learned counsel for the Respondent No.2 / Insurance Policy that while awarding compensation, the Tribunal has considered all the aspects and on that basis compensation is awarded. No interference is required in it.
4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short "the Tribunal").

5. While dealing with the issue of income of deceased the Tribunal has observed that the Income Tax Returns of deceased submitted by the Claimants are at Exhibit- 26, 30, 34 and 38 from these documents. It appears that, the income of deceased was within the range of Rs.54,030/- to Rs.79,680 per year. Considering the average of these income the tribunal has considered Rs.61,670 per year, as income of the deceased. While calculating the compensation, the tribunal has observed that, deceased was doing hotel businesses. He must have expenses for it on that basis, the tribunal has deducted 40% amount from the income of Rs.61,670/-. I am unable to understand, the observations of the tribunal about deduction of Rs.40% amount for expenses. When Income Tax Returns are filed on record which shows the income of deceased so it is not necessary to again deduct the amount for expenses of hotel business, which is not proper. Hence, I am considering this amount as income of the deceased.

6. Learned counsel for the Respondent/Insurance Company submitted the tribunal has applied multiplier of 15. At the time of accident deceased was 44 years six months, so multiplier should be 14. Considering evidence on record, I am considering the multiplier of 14. The tribunal has awarded consortium on lower side. 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 claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

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

Average income of deceased	Rs.61,617/-
Deducts 1/3 for personal expenses	Rs.20,539/-
Annual Income	Rs.41,078/-
Add 25% future prospects	Rs.10,269/-
Total Income	Rs.51,347/-
Rs.51,347 X 14 (Multiplier)	Rs.7,18,858/-
Add Consortium amount Rs.48,000/- X 3 (Claimants)	Rs.1,44,000/-
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs.18,000/-
Total Compensation	Rs.8,98,858/-
Less awarded by the Tribunal	Rs.4,34,705/-
Enhanced Compensation	Rs.4,64,153/-

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

ORDER

- i. Appeal is allowed.
- ii. The Appellants/Claimants are entitled for enhanced amount of Rs.4,64,153/- @ 7.5% interest per annum from the date of filing claim petition till realisation. Out of this amount

Rs.1,80,000/- is consortium amount, the claimants are entitled for interest at 7.5% per annum on this amount from 1st November, 2017 till realisation of the amount.

iii. The Respondent NO.2 / Insurance Company shall deposit enhanced amount of Rs.4,64,153/- along with accrued interest thereon before the Tribunal within six weeks after receipt of the order.

iv. The Claimants are permitted to withdraw the amount deposited by Respondent No.2 / Insurance Company along with accrued interest thereon.

9. Pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)