

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

FIRST APPEAL NO.1121 OF 2018

The Divisional Manager)
 Future Generali India Insurance Co.Ltd)
 R/o. Block A, 1st floor)
 heritage house 6)
 Ramabai Ambedkar Road)
 Near Sharab Hall, Pune)....Appellant
 (Orig. Opponent No.3)

Versus

1. Shri Bhagwat Tatyaba Dhaigude,)
 Age 38 years, Occu: Labour,)
2. Sou. Sunita Bhagwat Dhaigude)
 Age: 30 years, Occ: Household)
3. Kum. Namrata Bhagwat Dhaigude)
 Age: 14 years, Occ: Education)
4. Kum. Swapnali Bhagwat Dhaigude)
 Age: 12 years, Occ: Education)
 Applicant No.3 & 4 are minor, hence)
 represented by father-Applicant No.1.)
5. Shri Tatyaba Krishna Dhaigude)
 Age: 65 years, Occ: Nil)
6. Sou. Hirabai Tatyaba Dhaigude)
 Age: 60 years, Occ: Nil)
 All Resident of Khed (Bk))
 Tal. Khandala Dist.- Satara.)
(Org. Petitioners)

7. Shri Rajendra Narayan Ubale)
Age: adult, Occ: Business)
R/o. Khandala 78 Market Committee)
Tal. Khandala, Dist.- Satara)
8. Shri Rajendra Shamrao Gadhave)
Age-Adult, Occ.- Driver)
R/o Shivaji Chowk, Khandala)
Tal. Khandala, Dist.-Satara.)....Respondents
(Orig. Applicants & opp. No.1 & 2)

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Mr. D. R. Mahadik, for Appellant.

Mr. Vaibhav R. Gaikwad a/w. Atharva R. Bhingardev, Respondents.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 27th MARCH 2023.

JUDGMENT:

1. The issues involved in this Appeal are that the income of deceased considering on higher side and compensation awarded under conventional head is excessive.

2. It is the contention of the learned Counsel for Appellant that, the deceased was 16 years old girl, she was student. The Tribunal has considered her yearly income at Rs.30,000/- which is higher side. Learned Counsel further submits that the Tribunal has awarded Rs.6,00,000/- under conventional head which is exorbitant and excessive. The Tribunal has not deducted 1/2 amount for

personal expenses. Hence, requested to allow the Appeal.

3. It is contention of learned Counsel for the Respondents-claimants that while awarding compensation the Tribunal has considered all the aspects and, on that basis, the Tribunal has awarded compensation. No interference is required in it.

4. I have heard both learned Counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short 'the Tribunal'). While dealing with income of the deceased, the Tribunal has observed that deceased, Amruta Bhagwat Dhaigude was 16 years old and was taking education at the time of accident. In view of law laid down in the case *Klishan Gopal & Anr. vs. Lala & Ors.*¹ her notional income has been taken into consideration at Rs.30,000/- per year. I do not find any infirmity in it as deceased was 16 years old and she was taking education. The Tribunal has considered her monthly income below Rs.3,000/- per month, while awarding the compensation under the conventional heads, the Tribunal has awarded Rs.6,00,000/- for loss of love and affection and Rs.25,000/- for funeral expenses, as per the view of the Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs.*

1. AIR (SCW) 2013

Nanu Ram² each claimant is entitled for Rs.40,000/- as consortium amount and Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate.

5. Learned Counsel for the claimants submits that the Tribunal has not awarded the future prospects.

6. It is contention of learned Counsel for appellant that the Tribunal has not deducted amount for personal expenses. The deceased was bachelor. Hence, there should be deduction of 1/2 amount for personal expenses. Considering the above calculations, the claimants are entitled for following compensation:

Particulars	Amount
Income	Rs. 30,000.00 (per year)
50% personal expenses	Rs. 15,000.00
Dependency Rs.15,000.00x18	Rs. 2,70,000.00
Loss of consortium Rs.40,000/-x 6	Rs. 2,40,000.00
Loss of Estate	Rs. 15,000.00
Funeral Expenses	Rs. 15,000.00
Total Compensation	<u>Rs. 5,40,000.00</u>
Tribunal has awarded	Rs. 11,65,000.00

2. 2018 ACJ 278 (SC)

Less Actual compensation	Rs.	5,40,000.00
Refunded Amount.	Rs.	6,25,000.00

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

O R D E R

- i. Appeal is allowed.
- ii. The claimants are entitled for compensation of Rs.5,40,000/-as per the rate of interest awarded by the Tribunal.
- iii. The Appellants are permitted to withdraw amount of Rs.6,25,000/- along with accrued interest thereon.
- iv. The claimants are permitted to withdraw deposited amount, along with accrued interest thereon.
- v. The statutory amount along with interests be transmitted to the Tribunal. The parties are at liberty to withdraw the amount as per rule.
- viii. Appeal is disposed of. Pending Application, if any, is also disposed of.

(SHIVKUMAR DIGE, J.)