IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.599 OF 2021

Tata AIG General Insurance Co. Ltd. Penunshula Corporate Park, Nicholas Piramal Tower, 9th Floor, Ganpatrao Kadam marg, Lower Parel.	} } } }	**...Appellant**

Versus

1. Naresh Chandrakant Mhatre **2. Nayana Naresh Mhatre** (Deceased) Through Legal Heirs Respondent Nos.1 and 3.	} } } } }	
3. Pratik Naresh Mhatre Respondent No.3 being minor through father guardian Respondent No.1 All are R/at Hashiware, Tal. Alibag, District-Raigad & Ganesh Nagar, Wadala (E), Mumbai-400 030.	} } } } } }	
4. S.G. Transport Gala No.56, Om Sainath Complex, Dapoda Road, Bhiwandi, District- Thane.	} } } }	**...Respondents**

Mr.D.S. Joshi, for the Appellant.
Mr.Sanjay A. Ghaisas, for the Respondents.

CORAM : S.G. DIGE, J.

DATE : 14 FEBRUARY 2023

JUDGMENT :-

. The issue involved in this Appeal is monthly income of deceased considered on higher side.

2. It is contention of learned counsel for the Appellant that deceased was 14 years old at the time of the accident. He was studying in 9th Standard. The Tribunal has considered his monthly income Rs.6,000/- per month which is on higher side and on that basis calculations are done which are exorbitant and excessive. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for Respondent that deceased was intelligent student. He had bright future. He was meritorious student. He had passed his exams in distinction rank. The evidence was led before the Tribunal that his monthly income should be considered at the rate of Rs.10,000/- per month but Tribunal has considered monthly income Rs.6,000/- per month which is proper. Hence, no interference is required in it.

3. I have heard both learned counsel. Perused judgment and order passed by the Tribunal.

4. It is contention of the learned counsel for the Appellant that income of deceased is considered on higher side.

To prove his case Claimant No.1 Naresh Mhatre examined himself at Exhibit-28. He has produced mark list of deceased at Exhibit-31, leaving certificate at Exhibit-30, scholarship mark list at Exhibit-33 on record. While considering the income of deceased the Tribunal has observed that deceased was intelligent student of 9th Standard. He would have bright future. He was not employed therefore, he had no source of income. Considering his consistency in studies the Tribunal has considered his notional income to the tune of Rs.6,000/- per month.

5. In my view, the Tribunal has considered income of deceased on slightly higher side as he was studying in 9th Standard. Mere studying in 9th Standard cannot be a ground to consider notional income Rs.6,000/- per month. It should be Rs.5,000/- per month and I am considering Rs.5,000/- per month as monthly income of the deceased. The learned counsel for the Appellant submits that the Tribunal should not have considered future prospects to the notional income as the deceased was not earning member. In my view, the Tribunal has considered the notional income of deceased. Hence there should be future prospects and I am considering 40% future prospects.

5. The deceased was bachelor, so ½ amount is deducted for his personal expenses it would come to Rs.2,500/-. The

deceased was 14 years old hence proper multiplier is 15. As per view of Apex Court in case of ***Magma General Insurance Co. Ltd V/s. Nanu Ram***[1] each Claimant is entitled for Rs.44,000/- with 10% increase as Consortium amount. There are two Claimants, it comes to Rs.88,000/- and loss of estate Rs.16,500/- and funeral expenses Rs.16,500/-.

6. Considering the above calculations the Claimants are entitled for following compensation.

Monthly notional income	Rs.5,000/-	
Dependency	50%	**Rs.2,500/-**
Years Income Rs.2500/- X 12 months		**Rs.30,000/-**
Multiplier	15	
Loss of Income Rs.30,000 x 15=		**Rs.4,50,000/-**
Future Prospects	40%	**Rs.1,80,000/-**
Total Loss of Dependency		**Rs.6,30,000/-**
Conventional Heads :		
Consortium	Rs.88,000/-	
Loss of Estate	Rs.16,500/-	
Funeral Exp.	Rs.16,500/-	**Rs.1,21,000/-**
Compensation payable		**Rs.7,51,000/-**

By the above calculations total comes to Rs.7,51,000/-. The Tribunal has awarded Rs.10,52,000/-. If this amount deducts from amount considered by this Court, the excessive compensation is Rs.3,01,000/-.

1 **2018 ACJ 2782 (SC)**

8. It is contention of the learned counsel for the Appellant, the Tribunal has granted interest @ 9%, it is on higher side, hence, it be reduced.

9. In my view, it is discretion of the Tribunal to grant interest it may be 12% or may be on lower side, so no interference is required in it and I pass following order.

ORDER

(i) The Appeal is allowed.

(ii) The Claimants are entitled for amount of Rs.7,51,000/- @ interest 9% per annum from the date of filing Application till realization of amount.

(iii) The appellants are permitted to withdraw the balance amount along with accrued interest thereon, if entire amount is deposited before the Tribunal.

(iv) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it.

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

(S.G. DIGE, J.)