

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

FIRST APPEAL NO.514 OF 2004

1. Budha Mahadu Gaikwad,
2. Sonabai Budha Gaikwad. ... Appellants

V/s.

1. Bhaskar Motiram Thakare,
2. The New India Assurance Co. Ltd.,
3. Abbas Abdul Karim Bagwan,
4. The United India Insurance Co. Ltd. ... Respondents

WITH

FIRST APPEAL NO.535 OF 2004

1. Daulat Balu Bhoje,
2. Shankar Pandu Gaikwad,
3. Sitabai Shankar Gaikwad. ... Appellants

V/s.

1. Bhaskar Motiram Thakare,
2. The New India Assurance Co. Ltd.,
3. Abbas Abdul Karim Bagwan,
4. The United India Insurance Co. Ltd. ... Respondents

Mr. Vishwanath Talkute a/w Mr. Graham Francis for Appellants in both the Appeals.

Mrs. S. S. Dwivedi for Respondent No.2 in both the Appeals.

Mrs. Jyoti Bajpayee for Respondent No.4 in both the Appeals.

CORAM : SHIVKUMAR DIGE, J.

DATED : 8 MARCH, 2023

JUDGMENT:

1. Heard learned counsel for the Appellants, learned counsel for Respondent No.2 and learned counsel for Respondent No.4.

2. Both these Appeals are preferred by the original claimants for enhancement of compensation. As both these are out of same accident and preferred against the judgment and order passed by the Motor Accident Claims Tribunal, Nashik, out of the said accident, I am deciding these Appeals by this common judgment.

3. Learned counsel for the Appellants submits that in both these Appeals, the Tribunal has considered income of deceased on lower side, Tribunal has not awarded amount for future prospects, multiplier is not properly applied, amount for consortium, loss of estate and loss of funeral expenses are not awarded. Hence, requested to allow the Appeals.

4. It is contention of learned counsel for Respondent's insurance company that the Tribunal has considered all the aspects while awarding the compensation and on that basis, compensation is awarded which is proper. Hence, no interference is required in it.

5. I have heard learned counsel of all the parties. The Tribunal has considered monthly income of deceased in both the Appeals at Rs.900/- per month, but Tribunal has not awarded future prospects in both the Appeals. Hence, I am considering 40% future prospects in both the Appeals. The Tribunal has applied wrong multiplier in both the matters. In First Appeal No.535 of 2004, the proper multiplier is 18; whereas in First Appeal No.514 of 2004, the proper multiplier is 17. Hence, I am considering these multipliers. The Tribunal has not awarded consortium amount. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors.** in (2018 ACJ 2782 (SC)) each claimant is entitled to Rs.44,000/- as consortium with 10% increase,

Rs.16,500/- for funeral expenses @ Rs.16,500/- for loss of estate.
Hence, I am considering these amounts.

6. In view of above calculations, the Claimants are entitled for following compensation:

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Table of compensation to be awarded under the relevant heads

Head	What the Ld. Tribunal ought to have granted
Income	Rs.900/- p.m.
Future Prospects	40%, i.e. Rs.360/-
Deduction towards personal expenses	$\frac{1}{2}$ of Rs.1,260/- = Rs.630/- Therefore, Rs.1,260/- - Rs.630/- = Rs.630/-.
Total Income	Rs.630/- X 12 = Rs.7,560/-
Multiplier	Rs.7,560/- X 17 = Rs.1,28,520/-
Loss of Consortium, Love and Affection	Rs.44,000/- X 2 (Family Members: Filial/parental) = Rs.88,000/-
Loss of Estate	Rs.16,500/-
Funeral Expenses	Rs.16,500/-
Total	Rs.2,49,520/-

The Tribunal has awarded Rs.67,600/-. If this amount deducts from the amount considered by this Court, it comes to Rs.1,81,920/-. The claimants are entitled for this amount.

FIRST APPEAL NO.535 OF 2004

Head	What the Ld. Tribunal ought to have granted
Income	Rs.900/- p.m.
Future Prospects	40%, i.e. Rs.360/-
Deduction towards personal expenses	$\frac{1}{3}$ of Rs.1,260/- = Rs.420/- Therefore, Rs.1,260/- - Rs.420/- = Rs.840/-.
Total Income	Rs.840/- X 12 = Rs.10,080/-
Multiplier	Rs.10,080/- X 18 = Rs.1,81,440/-
Loss of Consortium, Love and Affection	Rs.44,000/- X 3 (Family Members: Filial/parental/spousal) = Rs.1,32,000/-

Loss of Estate	Rs.16,500/-
Funeral Expenses	Rs.16,500/-
Total	Rs.3,46,440/-

The Tribunal has awarded Rs.67,600/-. If this amount deducts from the amount considered by this Court, it comes to Rs.2,78,840/-. The claimants are entitled for this amount.

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

- (i) Appeals are allowed.
- (ii). The Claimants in First Appeal No.514 of 2004 are entitled for enhanced amount of Rs.1,81,920/- and the Claimants in First Appeal No.535 of 2004 are entitled for enhanced amount of Rs.2,78,840/- @ of interest 7.5% from the date of filing of Claim Petition till realisation of the amount.
- (iii). The Respondents are directed to deposit enhanced amount within six weeks after receipt of the order.
- (iv). The claimants in both Appeals are permitted to withdraw the amount alongwith accrued interest thereon.

(SHIVKUMAR DIGE, J.)