

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1297 OF 2022**

United India Insurance Co. Ltd.)
 Shribag, Near S. T. Stand, Alibag,)
 Tal:-Alibag, Dist" Raigad,)
 Through its Regional Manager,)
 United India Insurance Co. Ltd.,)
 Mumbai Regional Office-II, T. P. Hub,)
 4th Floor, Union Co-op. Insurance)
 Bldg, Sir P.M. Road, Fort,)
 Mumbai – 400 001.)Appellant

Versus

1 Mrs. Suvarna Jeevan Thakur)
 Age:- 48 years, Occ : Household.)
 2 Mr. Aakash Jeevan Thakur)
 Age : 23 years, Occ: Education)
 3 Mrs. Krishnaba Laxman Thakur)
 Age : 77 years, Occ : Housewife,)
 Resp Nos. 1 to 3 all R/o. Mulpada,)
 Chirner, Tal: - Uran, Dist:-Raigad.)
 4 Mr. Gorakshnath Baban Aandhale,)
 Age : Major,)Respondents
 R/o:- Kajurle, Harya, TalL Parner,) (Nos. 1 to 4 Original
 Dist:- Ahmednagar) Claimants)

Mr. Amol A. Gatne, Advocate for the Appellant.

Mr. Sanjay Ghaisas, Advocate for Respondents/Claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th MARCH 2023.

Oral Judgment :

1. The issue involved in this appeal is quantum.
2. It is contention of learned counsel for the appellant that Tribunal has considered monthly income of deceased at Rs.6000/- per month without any evidence on record, which is improper. Learned counsel further submits that the claimants have claimed that deceased was doing the work of welding and he was earning Rs.6000/- per month but no evidence is produced on record that deceased was doing the business of welding. In spite of that, the Tribunal has considered notional income of deceased at Rs.6,000/-,per month and on that basis, exorbitant and excessive compensation is awarded, which is improper. Learned counsel further submits that if notional income of deceased is considered, then, Tribunal ought not to have awarded additional future prospects but it is awarded. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondents/ claimants that deceased was doing business of welding, and from that, he was earning Rs.9500/- per month but Tribunal has considered income of deceased on lower side. Learned counsel further submits that Tribunal has awarded consortium to only one claimant. There are three claimants and they are also entitled for consortium amount.

4. It is contention of learned counsel for the appellant that claimants have not preferred appeal for enhancement of compensation. In the appeal filed by the appellant, claimants cannot be entitled for enhancement of compensation, hence, it may not be awarded.

5. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Alibaug (for short "the Tribunal").

6. In respect of income of deceased, claimants have examined claimant No.1- Suvarna, she has stated that deceased was earning Rs.9,500/- per month and he was doing work of welder.

Her evidence is supported by evidence, P-W-2-Shri Patil. He has stated that deceased was earning Rs.9500/- per month. This witness produced salary certificate which is at Exhibit "30". This witness in cross-examination admitted that he has not produced documentary evidence to show that this witness is doing fabrication business, nor he produced on record Attendance Register, voucher, salary slip, statement and Income Tax Returns. Considering the evidence of these two witnesses and as deceased was skilled worker, the Tribunal has considered his notional monthly income at Rs.6000/- per month. I do not find any infirmity in it as it has come in the evidence of PW2 that deceased was doing welding work in his fabrication shop and he was skilled worker.

7. As per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)** the claimants are entitled for 25% future prospects if the deceased was self employed. Hence, I do not find merit in contention of learned counsel for appellant that it is wrongly awarded.

8. The Tribunal has awarded Rs.44,000/- as consortium

amount to one claimant only but there are three claimants. As per the view of Hon'ble Apex Court in case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.40,000/- as consortium and Rs.15,000/- for funeral expenses and Rs.15,000/- for loss of estate. Hence, I am considering Rs.80,000/- as consortium amount for remaining two claimants.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
2. The claimants are entitled for additional amount of Rs.80,000/- @ 7.5% interest per annum from 1st October 2017 till realization of the amount.
3. The appellant is directed to deposit additional amount along with accrued interest thereon within four weeks from receipt of this order.

4. Statutory amount along with accrued interest thereon be transmitted to the Tribunal. Parties are at liberty to withdraw it as per Rule.
9. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)