

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.741 of 2004

- | | | | |
|----------|---|---|----------------|
| 1 | Rekha Ashok Lokhande |] | |
| | Aged About 34 years, Occupation : |] | |
| | Household. |] | |
| 2 | Shailesh Ashok Lokhande |] | |
| | Aged About 19 years, Occupation : Education |] | |
| 3 | Nilesh Ashok Lokhande |] | |
| | Aged About 17 years, Occupation: Education |] | |
| | No.3 is a minor through Appellant No.1 his |] |Appellants |
| | mother as guardian, All residing at Bhuinj, |] | (Original |
| | Taluka-Wai, District-Satara. |] | Petitioners) |

Versus

- | | | | |
|----------|--|---|----------------|
| 1 | Mohan Krishna Gaikwad |] | |
| | Adult, R/at Raigaon, Taluka-Jaoli, District- |] | |
| | Satara. |] | |
| 2 | The Oriental Insurance Co. Ltd. |] | (Original |
| | Keshav-Sona Complex, Powai Naka, |] | Opponent and |
| | Raviwar Peth, Satara |] | No.3 is |
| | | | Oriental |
| | | | Applicant-4 |
| 3 | Smt.Bhagirthi Kondiba Lokhande, |] | |
| | Adult, Occupation-Household, |] | |
| | R/at Bhuinj, Taluka Wai, District-Satara. |] | |
| | |] | ...Respondents |

Shri.Pradeep Gole, Advocate for the Appellants.

Ms.Poonam Mital, Advocate for Respondent No.2/Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th DECEMBER, 2023.

ORAL JUDGMENT :

1. By this appeal, appellants/claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the appellants that deceased was working in Bajaj Auto Pvt. Ltd. and was getting salary of Rs.7500/- per month but this fact is not considered by the Tribunal. Learned counsel further submitted that at the time of the accident, deceased was doing distributorship of Herbel Life International Private Limited and was getting Rs.6,500/- per month as commission. Learned counsel further submitted that deceased owned 1 ½ acre irrigated land but Tribunal has not considered all these aspects and has considered Rs.1500/- as monthly income of the deceased, which is on lower side, it should be Rs.6500/- per month. Learned counsel further submitted that Tribunal has awarded consortium amount on lower side, it should be awarded as per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2- Insurance Company that at the time of the accident, deceased was not working in Bajaj Auto Pvt.Ltd.. Though, the claimants has stated that deceased was doing the business of distributorship of Herbel Life International Private Limited, but no witness was examined to prove that deceased was carrying the said business. The income considered by the Tribunal is proper, no interference is required in it. Hence, requested to dismiss the appeal.

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

5. To prove the income of the deceased, claimant No.1-Rekha Lokhande examined herself. She has stated that her husband was working in Bajaj Auto Pvt. Ltd. and was getting salary of Rs.7,500/- per month. At the time of accident, he was in service but he was doing the business of distributorship of Herbel Life International Private Limited and he was getting Rs.6,500/- as monthly commission. She further stated that deceased owned 1 ½ acre irrigated land and from that, he was getting agricultural income. In cross-examination, this witness admitted that she has not produced documents on record to show that deceased was earning Rs.6,500/- from distributorship of Herbal Life International Private Limited. While considering the income of deceased, the Tribunal has observed that no documents are produced on record to show that deceased was getting commission from the business of Herbal Life International Private Limited as well as deceased owned 1 ½ acre of irrigated land. On that basis, the Tribunal has considered the monthly income of deceased at Rs.1,500/- per month. In my view, it has come on record that deceased was maintaining family of four persons. It appears from the record that deceased was doing business of Herbel Life International Private Limited as well as he owned irrigated land.

Considering the evidence on record, the income of deceased considered by the Tribunal at Rs.1,500/- per month in on lower side, it should be Rs.3,000/- per month. Hence, I am considering Rs.3000/- as monthly income of the deceased. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd.(supra)** each claimant is entitled for Rs.48,000/- each as consortium, Rs.18000/- for funeral expenses and Rs.18,000/- for loss of estate.

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

Particulars	Amount
Monthly Income	Rs. 3000.00
40% future prospects	Rs. 1200.00
Total	Rs. 4200.00
1/3rd deduction towards personal expenses	Rs. 1400.00
Monthly Income	Rs. 2800.00
Annual Income 2800 X 12	Rs. 33600.00
Rs.33600/- X 16(multiplier)	Rs. 537600.00
Consortium (Rs.48,000/- x 3 (claimants))	Rs. 144000.00
Funeral Expenses and Loss of Estate	Rs. 36,000.00
Total Compensation	Rs. 717600.00

The Tribunal has awarded Rs.2,00,000/-, if this amount is deducted from the amount of Rs.7,17,600/- considered by this Court, it comes to Rs.5,17,600/-. The claimants are entitled for this amount.

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

ORDER

1. The appeal is allowed.
2. The claimants are entitled for enhanced compensation of Rs. 5,17,600/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- is consortium amount, the claimants are entitled @ 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
3. Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

4. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.
8. Pending applications, if any, stand disposed of.
9. Ms. Mital, learned counsel, undertakes to file vakalatnama on behalf of respondent No.2-Insurance Company.

(SHIVKUMAR DIGE, J.)