

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

FIRST APPEAL NO.1060 OF 2006

**NILAM
SANTOSH
KAMBLE**

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1. Smt.Nirmalal Hanmant Sanas }
2. Bhagyashri Hanmant Sanas }
3. Rushikesh Hanmant Sanas }
4. Rajashri Hanmant Sanas }
5. Ajit Hanmant Sanas }
6. Smt.Laxmibai Bahiru Sanas }
7. Shri. Bahiru Narayan Sanas }

All R/at Asare, Taluka-Wai, District-
Satara. }

Nos.2 and 3 are minors through,
Guardian Appellant No.6. }

Nos.4 and 5 are minors through
Guardian Appellant No.1. }

...Appellants

Versus

1. Mrs.Baby Satyanarayan Gupta }
- R/at. Room No.125, Type A-2, }
- Sector No.20, Turbhe. }

2. United India Assurance Co. Ltd. }
- Divisional Manager, Satara Division, }
- Satara, Near Science College, Satara. }

...Respondents

Mr.Sharad T. Bhosale i/b Mr.Dilip Bodake, for the Appellants.
Mr.Poonam Mital, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6 APRIL 2023

JUDGMENT :-

. This Appeal is filed for enhancement of compensation by the Claimants.

2. It is contention of the learned counsel for the Appellants that the deceased was teacher and he was getting salary of Rs.7,875/- per month. The Tribunal has considered at Rs.5,000/- without any reasonable ground, which is improper.

3. The learned counsel further submits that the Tribunal has not awarded future prospects and amount for consortium. Hence, requested to allow the Appeal.

4. The learned counsel for the Respondent-Insurance Company submits that while awarding the compensation the Tribunal has considered all the aspects and on that basis compensation is awarded which is proper. Hence, no interference is required in it and requested to dismiss the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'the Tribunal').

6. To prove the income of the deceased the Claimant examined Claimant No.1 Nirmala Hanmant Sanas at Exhibit-32,

she has stated that deceased was her husband, he was primary teacher and he was getting salary of Rs.10,000/-.

7. While dealing with this issue the Tribunal has observed that the salary Certificate of deceased is at Exhibit-45 it indicates the total salary was of Rs.7,875/- and take home salary was at Rs.3,890/-. Out of the deduction, there is deduction of loan of Rs.1,840/- and it cannot be considered as income. It means take home salary was Rs.7,730/-. The Tribunal has observed that take home salary shall be taken as Rs.5,000/-. I am unable to understand the observations of the Tribunal when it has come on record that deceased was getting salary of Rs.7,875/-. The salary certificate is at Exhibit-45, after deducting professional tax it comes to Rs.7,730/-. It is settled principle of law that while considering the salary of deceased it should be after deduction of professional tax and income tax. I am considering the salary at Rs.7,730/- per month. The Tribunal has not awarded future prospects. At the time of the accident deceased was 38 years old. As per view of the Hon'ble Apex Court in case of ***National Insurance Co. Ltd V/s. Pranay Sethi***¹, the Claimants are entitled for 50% future prospects. The Tribunal has awarded consortium of Rs.5,000/- and Rs.2,500/- for loss of estate and Rs.2,500/- for funeral expenses. In my view these amounts are on lower side.

1 2017 ACJ 2700 (SC)

8. As per view of the Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd V/s. Nanu Ram*² each Claimant is entitled for Rs.40,000/- with 10% increase as consortium amount and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

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

Particulars	Amount
Dependency 7730 x 12 x 15 (1/6 for personal expenses)	Rs.13,91,400/- Rs.2,31,900/-
Total	Rs.11,59,500/-
Loss of Estate	Rs.16,500/-
Consortium Rs.44,000/- X 7	Rs.3,08,000/-
Funeral Expenses	Rs.16,500/-
Future Prospect Rs.3,915/- + Rs.7,730/-	Rs.11,645/-
Total	Rs.15,12,145/-

10. The Tribunal has awarded compensation of Rs.4,90,000/-, if this amount dedcuted from the amount considered by this Court it comes to Rs.10,22,145/-. The Claimants are entitled for this amount.

² 2018 ACJ 2782 (SC)

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

ORDER

(i) Appeal is allowed.

(ii) The Claimants are entitled for Rs.10,22,145/- @ 7.5% per annum from the date of the filing of Application till realization of the amount. Out of this amount Rs.3,08,000/- is consortium amount the Claimants are entitled interest @ 7.5% per annum on this amount from 1st October 2017 till realization of the amount.

(iii) The Respondents are directed to deposit enhanced amount along with accrued interest within six weeks, after receipt of the order.

(iv) The Claimants are permitted to withdraw deposited amount.

(v) The learned counsel for the Respondent-Insurance Company undertake to file Vakalatnama.

(SHIVKUMAR DIGE, J.)