

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.826 OF 2005

1. Jaitunbi Sherukhan,
2. Salma Sherukhan,
3. Sharufkhan Sherukhan,
4. Sameerkhan Sherukhan,
5. Sadeekhan Sherukhan,
6. Sakkerkhan Sherukhan
(Through their mother and
natural guardian
Smt. Jaitunbi Sherukhan)
7. Ahehsanbi alias Ameen
All residing at Merchant Nagar,
Malegaon, Dist. Nashik.

Appellants
...(Original Petitioners)

Versus

Branch Manager
New India Assurance Company Ltd.
Vasant Automobiles Building
Old Agra Road, Nashik.

Respondent
...(original opponent no.2)

Mr. Mohsin Naik i/by. Mrs. Sultana Sonawane for the Appellants.
Ms. Jyoti Bajpayee for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th MARCH, 2023

Oral Judgment:

1. Heard learned counsel for the Appellants and learned counsel for the Respondents.
2. By way of this Appeal, the Appellants-original claimants are seeking enhancement of compensation.
3. It is contention of learned counsel for the Appellants that the Tribunal has not granted future prospects and consortium amount while awarding the compensation as well as wrong multiplier is applied. Hence, requested to allow the Appeal.
4. It is contention of learned counsel for the Respondent-Insurance Company that while awarding compensation, the Tribunal has considered all the aspects, and on that basis, compensation is awarded.
5. I have heard both the learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Malegaon (for short 'The Tribunal').
6. It is contention of learned counsel for the Appellant, that deceased was driver and he was getting Rs.3,000/- per month salary. To prove the income of deceased, witness-Ejaz Beg, owner of the vehicle has stated that, he would use to pay Rs.3,000/- per month to deceased, but there was no documentary evidence on record in respect of income of the deceased. Hence, Tribunal has considered Rs.50 per day income of deceased, on that basis income of deceased considered at Rs.1,500/- per month. In my view, the Tribunal

has erred while considering monthly income of deceased, as the witness has specifically stated that he used to pay Rs.3,000/- per month to the deceased as salary and the Tribunal has considered his income, on the basis of daily wages. In my view, it should be Rs.2,000/- per month. Hence, I am considering monthly income of deceased at Rs.2,000/- per month.

7. The Tribunal has not awarded future prospects. I am considering future prospects. The Tribunal has applied multiplier of 10. At the time of accident, deceased's wife/claimant was 24 years old, so proper multiplier is 18.

8. The Tribunal has not awarded consortium amount. As per view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram**¹, each claimant is entitled to Rs.40,000/- as consortium with 10% increase and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate. Considering the above calculations, the claimants are entitled for following compensation:-

Particulars	Amount
Monthly Income	Rs. 2000.00
Less 1/5 deduction for personal expenses (rounded off)	Rs. 400.00
Total Monthly Income	Rs. 1600.00
Annual Income Rs.1600X12(months)	Rs. 19,200.00
Rs.19,200X17(multiplier)	Rs. 3,26,400.00

¹ 2018 ACJ 2782 (SC)

Add Consortium amount (7 claimants) (Rs.44,000X7)	Rs.	3,08,000.00
Add Funeral expenses and loss of estate (Rs.16,500+ 16,500)	Rs.	33,000.00
Total entitled compensation	Rs.	6,67,400.00
(Less) Compensation awarded by Tribunal	Rs.	1,78,000.00
Total Compensation Payable		
Difference (Amount to be deposited by Appellant-Insurance Company)	Rs.	4,89,400.00

9. The Tribunal has awarded amount of Rs.1,78,000/-, if this amount is deducted from the amount considered by this Court, it comes to Rs.4,89,400/-, the claimants are entitled for this amount.

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

ORDER

- (i) The Appeal is allowed.
- (ii) The claimants are entitled for enhanced amount of Rs.4,89,400/- @ 7.5% per annum from the date of filing of Claim Petition till realization of the amount, out of this amount of Rs.3,08,000/- is consortium amount, the claimants are entitled @ 7.5% interest on this amount from 1st October 2017, till realization of the amount.

- (iii) The Appellant-Insurance Company is directed to deposit enhanced amount along with accrued interest thereon within six weeks after receipt of the order.
- (iv) The claimants are permitted to withdraw the deposited amount along with interest as per their share.

(SHIVKUMAR DIGE, J.)