

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

FIRST APPEAL NO. 2130 OF 2005

- | | |
|---|---|
| 1. Vaishali Shantaram Wagh, |) |
| age – 20 years, Occupation – Household. |) |
| 2. Kumar Saurabh Shantaram Wagh |) |
| age- 1, (minor) through |) |
| guardian natural mother/No.1, |) |
| 3. Parbai Janu Wagh, |) |
| age 65, Occupation-Household, |) |
| All r/o At & Post Kohare, |) |
| Tal. Peth, Dist-Nashik. |) |

....Appellants
(Orig. Claimants).

Versus

The Maharashtra State Road,	)
Transport Corporation	)
(Notice to be served on its	)
Divisional Office at Nashik	)

....Respondent
(Orig. Opponent)

Ms. Namrata Agashe for the Appellants.
Ms. P. M. Bhansali a/w Ms. Dharini Jain for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th NOVEMBER, 2023.

JUDGMENT. :

1. This appeal is filed for enhancement of compensation by the Appellants/Claimants.
2. The issue involved in this appeal is income of deceased considered on lower side.
2. It is contention of learned counsel for the Appellant that deceased was Medical Practitioner having B.A.M.S. Degree and he was getting daily income between Rs.500/- to Rs.1,000/-. He was practicing at Kohar Tal. Peth. He used to purchase the medicine. The witness is examined to show that while practicing he used to sell the medicine but the Tribunal has considered daily income of deceased at Rs.100/- which is on lower side. Hence, requested to allow the appeal.
3. It is contention of learned counsel for the Respondent that deceased was Naturopathy Yoga and Electropathy Doctor. No evidence produced on record to show that deceased was earning between Rs.500/- to Rs.1000/- per day. The income considered by the Tribunal is proper and no interference is required in it.
4. I have heard both learned counsel. Perused judgment and

order passed by Motor Accident Claims Tribunal, Nashik (for short “the Tribunal”). To prove the income of deceased, the claimants have examined PW-1 Vaishali Wagh wife of deceased. She has stated that deceased was B.A.M.S. Doctor and was practicing at Kohar Talukha Peth and he was getting the income of Rs.500/- to Rs.1000/- per day. He owned agriculture land. The 7/12 extract is at exhibit 28/1. Nothing elicited in her cross-examination to disbelieve her evidence. To support the evidence of PW-1, the claimants have examined PW-2 Satish Nawal, who owns medical shop. He has stated that deceased would purchase medicine from his shop for his medical profession and during period of 3rd June, 1994 to 15th December, 1997 deceased had purchased medicine worth Rs.3,40,645.57/-. In cross-examination he admitted that he did not bring duplicate of the medical bills and sale tax documents. It has come on record that deceased was medical practitioner. The tribunal has considered daily income of deceased at Rs.100/- per day, it has come on record that deceased was having agriculture income but tribunal has not considered the agricultural income. The evidence of PW-2 shows deceased would purchase the medicine from his shop considering these facts the daily income of Rs.100/- considered by the tribunal is

on lower side and I am considering it Rs.250/- per day. The tribunal has not awarded future prospects as per the view of Hon'ble Apex Court in the Case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)***. Appellants are entitled for 40% future prospects. The Tribunal has awarded consortium amount on lower side as per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, the claimants are entitled for consortium amount of Rs.44,000/- each, Rs.16,500/- for loss of estate and Rs.16,500/- for loss of funeral expenses.

5. Considering above calculations appellants are entitled for following compensation.

<u>Sr. No.</u>	<u>Particulars</u>	<u>Amount</u>
1.	Monthly Income	Rs.6500/-
2.	Future Prospects (40% of Rs. 6500/-)	Rs.6,500/- + Rs.2600/- +Rs.9,100/-
3.	Deduction of personal expenses (1/3rd as 3 Dependent Family members)	Rs.9,100/- – Rs.3033/- =Rs.6067/-
4.	Compensation on Dependency (Multiplier of 17)	Rs.6067/- X 12 X 17 = Rs. 12,37,688/-
5.	Loss of Estate	Rs.16,500/-
6.	Funeral Expenses	Rs.16,500/-
7.	Loss of Consortium (3 Applicants) (Spouse consortium) (Parental consortium)	Rs.44,000/- X 3 = Rs.1,32,000/-
	Total Compensation	Rs.14,02,668/-

	Compensation Awarded by Ld. MACT Nashik	Rs.3,92,000/-
	Enhanced Amount	Rs.10,10,668/-

The Appellants/Claimants are entitled for enhanced amount of Rs.10,10,668/- for round up Rs.10,11,000/-.

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

ORDER

- i. Appeal is allowed.
 - ii. The Appellants/Claimants are entitled for enhanced amount of Rs.10,11,000/- @ 7.5% from the date of filing claim petition till realization of amount.
 - iii. The Respondent shall deposit enhanced amount along with accrued interest thereon within six weeks after receipt of the order.
 - iv. The Appellants/Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
7. All pending civil/interim applications are disposed off.

(SHIVKUMAR DIGE, J.)