

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

FIRST APPEAL NO.676 OF 2010

1. Mrs.Prema Ramesh Gund }
 2. Miss Punam Ramesh Gund }
 3. Master.Roham Ramesh Gund }
 4. Miss Priti Ramesh Gund }
 5. Mrs.Shakuntala Sukur Gund }
 (The Applicant Nos.2, 3 and 4 are }
 minors, represented through their mother }
 i.e. Applicant No.1) }
 All are R/at Bujapada, Panjare, Post- }
 Mahagaon, Taluka-Palghar, District- }
 Thane. }

....Appellants

V/s.

1. Mr.Jayantilal Laxmilal Jain }
 R/at Vanjarwada, Boisar, Tal.Palghar, }
 District-Thane. }
 }
 2. The New India Assurance Co. Ltd. }
 Nikunj Signature, 3rd Floor, Above }
 Corporation Bank, Manav Mandir Road, }
 Vasai-401 202. }

....Respondents

Mr.S.R. Chavanke, for the Appellants.
 Mr.V.N. Sagare, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st DECEMBER 2023

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ORAL JUDGMENT :-

. By this Appeal the Claimant's are seeking enhancement of compensation.

2. It is contention of the learned counsel for the Appellant's that while awarding compensation, the Tribunal has not awarded future prospects and consortium amount is awarded on lower side. The learned counsel further submitted that, accident occurred due to sole negligence of the driver of the offending vehicle but, Tribunal has considered 20% contributory negligence of the deceased, which is not proper. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for Respondent-Insurance Company that, the accident occurred due to sole negligence of the deceased, but the Tribunal has considered only 20% contributory negligence of the deceased, which is not proper. The learned counsel further submitted that, while awarding compensation the Tribunal has considered all the aspects and on that basis judgment and award is passed and no interference is required in it.

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

5. It is Claimant's case that, on 5th August 2008 at about 3.15 p.m. deceased Ramesh was proceeding from Boisar to Chillar on motorcycle bearing No.MH-04/AV-6494. When he reached near Harivansh Dhaba, at the relevant time one tempo bearing No.MH-04/AG-7423 coming from opposite direction dashed his motorcycle. Due to said dash deceased died on the spot. The offence was registered against the driver of the tempo.

6. While dealing with the issue of negligence the Tribunal has observed that, there was involvement of both vehicles in the accident and the driver of the tempo and deceased did not tried to avoid collusion, therefore, there was negligence of both the drivers. Hence, Tribunal has considered 80% negligence of the tempo driver and 20% of the deceased. I am unable to understand the observations of the Tribunal regarding 20% contributory negligence of the deceased, as offence was registered against the driver of the tempo. In FIR it is mentioned

that driver of tempo dashed the motorcycle of deceased and the police papers supports the contentions of the Claimants. Moreover, the Insurance Company did not examine the driver of the tempo to prove the negligence of the deceased. Hence, I hold that, accident occurred due to sole negligence of the driver of the tempo.

7. While awarding the compensation the Tribunal has considered monthly notional income of deceased at Rs.3,000/-, but the Tribunal has not awarded future prospects. As per view of Hon'ble Apex Court in case of *National Insurance Co. Ltd. vs. Pranay Sethi*¹, the Claimant's are entitled for 40% future prospects. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*², 2018 ACJ 2782 (SC) each claimant is entitled for Rs.48,000/- as consortium amount. There are five Claimants it comes to Rs.2,40,000/-, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

8. In view of above, the Claimant's are entitled for following compensation.

Particulars	Amount
Notional Income	Rs.3,000.00
Add: 40% F.P. Income = Rs.1,200/- p.m.	Rs.4,200.00
Less 1/4th Personal Expenses = Rs.1,050/- p.m. Rs.3,150/- x 12 x 17	Rs.3,150.00
	Rs.6,42,600.00
Add: Consortium Rs.48,000/- X 5	Rs.2,40,000.00
Add: Loss of Estate	Rs.18,000.00
Add: Funeral	Rs.18,000.00
Total Just Compensation	Rs.9,18,600.00
Less: Compensation By Tribunal	R.3,76,800.00
Enhancement	Rs.5,41,800.00

9. The Claimants are entitled for enhanced amount of Rs.5,41,800/-.

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

ORDER

(i) The Appeal is allowed.

(ii) The Claimants are entitled for enhanced compensation of Rs.5,41,800/- @ 7.5% per annum from the date of the filing of Claim Petition till

realization of the amount. Out of this amount Rs.2,76,000/- is consortium the Claimants are entitled interest @ 7.5% from 1st November 2017 till realization on this amount.

(iii) The Respondent-Insurance Company shall deposit the enhanced amount along with interest thereon, within six weeks, after receipt of this order.

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

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)