

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1999 OF 2007

1. Smt.Sushma Dilip Kothmire	}	
2. Kum. Tejal Dilip Kothmire	}	
3. Shivani Dilip Kothmire	}	
4. Kum Omprasad Dilip Kothmire	}	
All R/at Tamjao (Shivtej), Bunglow,	}	
Plot No.11, S.No.892, Near Janak	}	
Apartment, Chetna Nagar, Nashik	}	...Appellants

Versus

1. The State of Maharashtra	}	
Upavan Sarankshak Vanjivan, Thane	}	
Divisional Office, L.B.S. Road,	}	
Naupada, Thane.	}	
2. Raghunath Laxman Wakle	}	
R/at Hari Om Apartment, Near T.V.	}	
Tower, Kirti Society Road, Katrap,	}	
Badlapur, Thane.	}	...Respondents

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Ms.Sneha G. Sanap, for the Appellants.
Ms.Tanaya Goswami, AGP, for the Respondent-State.

CORAM : S.G. DIGE, J.

DATE : 21 FEBRUARY 2023

JUDGMENT :-

. By way of this Appeal the Appellants-Original
Claimants are seeking enhancement.

2. It is contention of the learned counsel for the Appellant that the Tribunal has considered the income of deceased on lower side. The deceased was earning more than Rs.17,000/- per month, deceased was getting monthly salary of Rs.9,875/- and he was also running a mutton shop, from it he was earning the amount of Rs.7,500/- per month. The Tribunal has considered monthly income at Rs.10,000/- which is on lower side.

3. The learned counsel further submits that the Tribunal has deducted 1/3rd amount for personal expenses when there are four Claimants it should be 1/4th. The Tribunal has not awarded future prospectus. The Tribunal has awarded meager amount as consortium and funeral expenses. The learned counsel further submits that the Tribunal has deducted Rs.4,000/- as the Applicant No.1 was getting pension of Rs.4,000/- which is improper. Hence, requested to allow the Appeal.

4. The learned AGP for Respondent No.1 submits that the deceased was in Government service when he was in Government service he cannot do any other job or not other business. Hence, income of Rs.10,000/- considered by the Tribunal is proper.

5. The learned counsel further submits that the Applicant No.1 in cross-examination admitted that she was getting Rs.4,000/- per month as a pension, on that basis the Tribunal has deducted Rs.4,000/- from the income of deceased which is proper. The learned counsel further submits that while passing the order the Tribunal has considered all the aspects on that basis compensation is awarded which is proper.

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

7. The issue involved in this Appeal is the income of deceased considering on lower side, future prospects are not awarded, deduction of amount for personal expenses and reduction of Rs.4,000/- amount. In respect of issue of income the Tribunal has observed that deceased was getting Rs.9,875/- monthly salary and he was doing business of mutton shop. The license of mutton shop is in the name of deceased and he was getting Rs.7,500/- per month from mutton shop. Considering evidence on record, the Tribunal has considered monthly income of deceased at Rs.10,000/- per month, I do not find any infirmity in it. In my view there is no evidence on record that deceased was getting Rs.7,500/- from mutton shop. Moreover income from shop is not consistent hence monthly income of deceased at Rs.10,000/- is proper.

8. The Tribunal has observed that the Claimant No.1-Wife of deceased in her cross-examination admitted that she is getting pension of Rs.4,000/-, on that basis the Tribunal has calculated yearly income of Rs.48,000/- and applied multiplier of 13, total amount comes to Rs.6,24,000/-. The Tribunal has deducted this amount from total compensation amount of Rs.10,40,000/-. I am unable to understand the observations of the Tribunal, and deduction of amount of pension. It is settled principle of law that pension amount cannot be considered as the income of deceased. While considering the income of deceased is to be considered which he was taking at the time of accident. Hence, I am setting aside observations of the Tribunal in respect of pension amount and deduction of amount of Rs.6,24,000/-. The Tribunal has deducted 1/3rd amount for personal expenses. There are four Claimants. It should be 1/4th, hence, I am considering 1/4th amount for personal expenses. The Tribunal has not awarded future prospectus. As per view of Hon'ble Court in case of *National Insurance Co. Ltd V/s. Pranay Sethi*¹, the Claimants are entitle for future prospects. The deceased was 48 years old at the time of the accident and he was in permanent service. The Claimants are entitle for 30% future prospects.

9. The Tribunal has awarded Rs.2,00/- for funeral expenses Rs.5,000/- for loss of consortium, Rs.2,500/- for loss of

1 2017, ACJ 2700 (SC)

estate, total comes to Rs.9,500/-. As per view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd V/s. Nanu Ram*², each Claimant is entitled for Rs.44,000/- at 10% increase as a consortium amount. There are four Claimants. The Claimants are entitled for Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

10. Considering the above calculation the Claimants are entitled for following compensation.

Particulars	Amount
Income	Rs.10,000/-
Deduction towards personal expenses $\frac{1}{4}$ (Rs.2,500/-)	Rs.7,500/-
Total Income Rs.7500 X 12	Rs.90,000/-
Multiplier 13 i.e. Rs.90,000 x 13	Rs.11,70,000/-
Future Prospects 30%	Rs.3,51,000/-
Funeral Expenses Rs.16,500/-	Rs.16,500/-
Loss of consortium (Spousal)	Rs.44,000/-
Loss of Parental Consortium Rs.44,000 x 3	Rs.1,32,000/-
Loss of Estate	Rs.16,500/-
Total Compensation	Rs.17,30,000/-
Deduction of Rs.5,00,000/- awarded by the Tribunal from total compensation i.e. Rs.17,30,000-Rs.5,00,000/-	Rs.12,30,000/-
Total Compensation Payable	Rs.12,30,000/-

² 2018 ACJ 2782 (SC)

11. The Applicants are entitled for enhanced compensation of Rs.12,30,000/-.

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

ORDER

(i) The Appeal is allowed.

(ii) The Appellants-Claimants are entitled for amount of Rs.12,30,000/- @ of 7.5% for filing of Claim Petition till realization of amount out of this amount, Rs.2,00,000/- is consortium amount. The Claimants are entitled @7.5% on this amount from 1 October 2017 till realization of amount.

(iii) The Respondent shall deposit enhanced amount along with accrued interest thereon within six weeks after receipt of order. The Claimants are permitted to withdraw deposited amount along with interest thereon.

(S.G. DIGE, J.)