

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

FIRST APPEAL NO. 680 OF 2013

SHANTANU
SHANKARSA
DHUDUM

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|------------------------------------|--------------------|--|
| 1. Mrs. Usha Anil Chaudhari. |) | |
| Age: 25 years, Occu: Nil. |) | |
| 2. Master Yasha Anil Chaudhari |) | |
| Age : 7 years, Occu: Student |) | |
| 3. Master Suraj Anil Chaudhari. |) | |
| Age: 2 years, Occu: Student. |) | |
| 4. Smt. Lata Dharmendra Chaudhari |) | |
| Age: 47 years, Occu: Household |) | |
| (Appellant Nos. 2 and 3 are minors |) | |
| Represented through his natural |) | |
| Guardian i.e. Appellant No.1). |) | |
| All are residing at Kanal Pada, |) | |
| Post. Udhava, Tal. Dahanu, |) | |
| Dist. Thane. |)....Appellants | |
| | (Orig. Applicants) | |

Versus

- | | | |
|------------------------------------|-------------------|--|
| 1. Mr. Kanti B. Prajapati. |) | |
| Age – Adult, Occu. Business, |) | |
| R/at- Ganjad, Tal. Dahanu |) | |
| Dist. - Thane, |) | |
| 2. The National Insurance Co. Ltd. |) | |
| Jai Complex, Cadbury Naka, |) | |
| Khopat, Thane. (W) |)....Respondents | |
| | (Orig. Opponents) | |

Mr. S. R. Chavanke for the Appellant.

Ms. Poonam Mittal for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd DECEMBER, 2023.

Oral Judgment. :

1. By way of this appeal, Appellants/Claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellants that deceased was getting Rs.8,000/- per month as, he was skilled professional person i.e. artist photographer and was managing studio but, tribunal has considered monthly income of deceased at Rs.3,500/- per month, which is on lower side. Learned counsel further submitted that tribunal has not awarded consortium amount hence, it be awarded. Learned counsel further submitted that the tribunal has deducted 1/3 amount for personal expenses, it should be 1/4, as there are four Claimants. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2 / Insurance Company that while passing judgment and order, the Tribunal has considered all the aspects. Hence, no interference is

required in it.

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

5. To prove the income of deceased the Claimants have examined witness Shree Dhodi. He has stated that deceased was working with him in his studio and he was paying salary at Rs.8,000/- per month to the deceased. In cross-examination, he has admitted that he has not maintained the muster roll. He has not maintained any documents showing the salary paid to the deceased.

6. Considering the evidence on record, the Tribunal has considered notional monthly income of deceased at Rs.3,500/-. I am unable to understand the observations of the Tribunal as the Claimant No.1 wife of deceased in her affidavit of examination-in-chief has stated that deceased was working as a photographer and he was getting salary of Rs.8,000/- per month. The deceased was maintaining family of five persons. There is no reason to disbelieve the evidence of PW-2 employer of deceased. Deceased was skilled photographer. Considering the evidence on record, I am considering salary of deceased at Rs.6,000/- per month. The Tribunal has deducted 1/3

amount for personal expenses there are four Claimants, it should be $\frac{1}{4}$ hence, I am considering $\frac{1}{4}$ amount for personal expenses. The tribunal has not awarded consortium amount. 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)*** each claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

7. Considering the above, the Claimants are entitled for following compensation.

Notional Income per month	Rs.6,000/-
Add. 40% Future Prospects	Rs.2,400/-
Less $\frac{1}{4}$ Personal Expenses	Rs.2,100/-
Total Income per month	Rs.8,400/-
Rs.6,300/- X 12	Rs.75,600/-
Rs.75,600/- X 18 Multiplier	Rs.13,60,800/-
Add: Consortium Rs.48,000/- X 4 (Claimants)	Rs.1,92,000/-
Loss of Estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total Compensation	Rs.15,88,800/-
Less Compensation awarded by Tribunal	Rs.5,00,000/-
Enhanced Compensation Amount	Rs.10,88,800/-

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

ORDER

i. Appeal is allowed.

ii. The Appellants/Claimants are entitled for enhanced amount of Rs.10,88,800/- @ 7.5% interest per annum from the date of filing claim petition till realisation. Out of this amount, amount of Rs.2,28,000/- is consortium amount, the claimants are entitled for interest at 7.5% per annum on this amount from 1st November, 2017 till realisation of the amount.

iii. The Respondent / Insurance Company shall deposit enhanced amount Rs.10,88,800/- along with accrued interest thereon before the Tribunal within six weeks after receipt of the order.

iv. The Claimants are permitted to withdraw the amount deposited by Respondent No.2 / Insurance Company along with accrued interest thereon.

9. Pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)