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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 889 OF 2013

- | | | |
|----------------------------------|---|----------------|
| 1. Mrs. Rita Pascol Rodrigues. |) | |
| Age: 40 years: Occu: Household |) | |
| 2. Miss. Dolly Pascol Rodrigues, |) | |
| Age: 19 years; Occu: Student |) | |
| 3. Miss. Sneha pascol Rodrigues, |) | |
| Age: 17 years: Occu: Student |) | |
| All are R/at House No. 1795, |) | |
| Madi Naka, Vasai, Dist. Thane. |) |Appellants |

Versus

- | | | |
|------------------------------------|---|----------------|
| Maharashtra State Road Transport |) | |
| Corporation, Divisional office, |) | |
| Palghar, Near Palghar Railway |) | |
| Station, Tal. Palghar, Dist. Thane |) |Respondent |

Mr. Shirshak Charanke for the Appellants.
Ms P. M. Bhansali i/b G. S. Hegde & Associate for the Respondent.

CORAM : S. G. DIGE, J.

DATE : 2nd MARCH 2023.

JUDGMENT :

1. By way of this appeal, appellants / original claimants are

seeking enhancement of compensation.

2. Learned counsel for the Appellants submits that the deceased was getting salary at Rs. 12,858/- per month but tribunal has considered the salary on lower side without giving any reason i.e. Rs. 8,659/-which is improper.

3. Learned counsel further submits that tribunal has not awarded future prospects and consortium amount. The compensation awarded for loss of estate amount and funeral expenses are on lower side. Hence, requested to allow the appeal.

4. Learned counsel for respondent submits that tribunal has considered all the aspects while awarding the compensation. The tribunal has considered monthly salary of deceased after considering deduction in it which is proper. Hence no interference is required in it.

5. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'the tribunal'). To prove the income of deceased the claimants have examined the claimant no. 1. This witness has stated that deceased was earning Rs. 16,500/- per month, to support evidence of this witness the claimants have examined PW-2/Miss. Dolly Pascol

Rodrigues, she has stated that deceased was getting salary at Rs. 8,659/- per month. The salary certificate is at Exhibit-24. Considering the evidence of these witnesses, tribunal has observed that Exhibit-'24' salary certificate shows of deceased was getting salary at Rs. 8659/- on that basis the tribunal has calculated the compensation.

6. It is contention of learned counsel for the appellant that Exhibit-'24' shows the salary of deceased was Rs. 12,858/-, perused the Exhibit-'24' it shows salary of deceased was Rs. 12,858/-. The tribunal has deducted loan amount and others allowances and on that basis tribunal has considered net pay of Rs. 8,658 which is improper. It is settled law that while considering the salary the tribunal has to consider the salary after deduction of income tax and professional tax Exhibit-'24' shows professional tax of Rs. 200/- , I am deducting this amount from salary of deceased it comes to Rs. 12,658/-, I am considering this salary as monthly income of deceased. The tribunal has not awarded future prospects and consortium amount as per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)**, the claimants are entitled for future prospects. 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 Rs. 40,000/- with 10% increase each as consortium. In view of above calculations the claimants are entitled for the following compensation.

Gross Earnings	Rs. 12,858/-
Less Tax on Employment	Rs. 200/-
Net Income	Rs. 12,658/-
Add. 30% F. P. Income = Rs. 3,797/- p.m.	Rs. 16,455/- p.m.
Less 1/3rd Personal Exp. = Rs. 5,485/- p.m.	Rs. 10,970/- p.m.
Rs. 10,970/- X 12 X 14	Rs. 18,42,960/-
Add. Spousal and Parental Consortium	
Rs. 44,000/- X 3	Rs. 1,32,000/-
Add. Loss of Estate	Rs. 16,500/-
Add. Funeral	Rs. 16,500/-

Total Entitled Compensation	Rs. 20,07,960/-
Compensation awarded by Tribunal	Rs. 7,00,000/-
Difference to be paid by respondent.	Rs. 13,07,960/-

The claimants are entitled for Rs. 20,07,960/-.

The tribunal has awarded the compensation of Rs. 7,00,000/-, if this amount deducts from the amount awarded by this Court it comes to Rs. 13,07,960/-.

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

ORDER

- i. Appeal is allowed.
 - ii. The claimants are entitled for enhanced amount of Rs. 13,07,960/- @ 7.5% per annum, from filing claim petition till realization of the amount. Out of this amount, on amount of Rs. 1,65,000/- awarded as consortium, the claimants are entitled for 7.5% interest per annum on this amount from 1st October, 2017 till realization of the amount.
 - iii. The respondents are directed to deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
 - iv. The claimants are permitted to withdraw deposited amount along with accrued interest thereon.
8. Appeal stands disposed of.

(S. G. DIGE, J.)