

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.231 OF 2018

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|---|---------------|
| 1. Jyotsna Vinod Raut |) |
| Age : 33 years. Occu : Household |) |
| 2. Janhavi Vinod Raut |) |
| Age : 11 years; Occu : Student |) |
| 3. Raju Ayodhya Raut |) |
| Age : 74 years; Occu : Nil |) |
| 4. Janaki Raju Raut |) |
| Age : 60 years, Occu : Household |) |
| 5. Sundaram Raju Raut |) |
| Age : 33 years, Occu : Nil |) |
| (The appellant No.2 is minor represented |) |
| through her mother i.e. Appellant No.1) |) |
| All are R/at : Room No.5, Irala Society, |) |
| Shanti Nagar, Vile Parle (W), Mumbai |) Appellants |
| Versus | |
| 1. Shiny Roadlines Pvt. Ltd. |) |
| At 11-26/27, Gayatri Industries, |) |
| At : Post, Valpada, Tal. Bhiwandi, Dist. Thane |) |
| 2. The New India Assurance Co. Ltd. |) |
| Sushila Bhavan, 1 st Floor, Dhuriwadi, |) |
| Tal. Vasai, Dist : Thane |) Respondents |

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Mr. S. R. Chavanke, Advocate for the Appellants.

Ms. Jyoti Bajpayee, Advocate for Respondent No.2-Insurance Company.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 18th DECEMBER, 2023

JUDGMENT :

1. The issues involved in this appeal are while awarding compensation future prospects have not been awarded, consortium

amount is awarded on lower side and the amount deducted for personal expenses.

2. It is the contention of learned counsel for the appellant Nos.1 to 5/ claimants that while awarding compensation the Tribunal has not awarded future prospects. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side. There are five claimants but the Tribunal has deducted 50% amount for personal expenses it should be 1/4th. He has relied upon the decisions of Hon'ble Apex Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi*¹, and *Magma General Insurance Co. Ltd. vs. Nanu Ram*². Hence, requested to allow the appeal.

3. It is the contention of learned counsel for respondent No.2/ Insurance Company that the Tribunal has considered last year's income as income of deceased, it should have been average of three years' income tax returns.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Palghar (for short "**the Tribunal**"). The Tribunal has considered yearly income of deceased at Rs.1,07,266/- but the Tribunal has not awarded future prospects as per the view of *Pranay Sethi (Supra)*. The claimants are

¹2017 ACJ 2700 (SC)

²2018 ACJ 2782 (SC)

entitled for future prospects. Hence, I am considering 40% future prospectus on this amount.

5. It is the contention of learned counsel for the respondent No.2 - Insurance Company that no tax deductions are done while calculating compensation by the Tribunal and it should have been on the basis of average income. The Insurance Company has not challenged the order passed by the Tribunal. Moreover, the Tribunal has considered income of deceased on the basis of income tax returns, hence I do not find any infirmity in it. The Tribunal has deducted 50% amount for personal expenses. There are five claimants. As per the view of the Hon'ble Apex Court in the case of *Sarla Verma and Ors versus Delhi Transport Corp. & Anr. AIR 2009 SC 3104*, it should be 1/4th for personal expenses, hence I am considering 1/4th amount for personal expenses instead of 50% amount. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of *Magma(Supra)* each claimant is entitled to Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate, Rs.18,000/- for funeral expenses.

6. Considering above calculations appellant Nos.1 to 5/ claimants are entitled for following compensation :

Particulars	Rs.	Entitlement
Net Income	Rs.	1,07,266.00
40 % future prospects	Rs.	42,906.00

Total monthly income	Rs.	1,50,172.00
Less 1/4 th personal expenses	Rs.	37,543.00
Total	Rs.	1,12,629.00
Multiplier Rs. 1,12,629 X 16	Rs.	18,02,064.00
Consortium (Rs.48,000/- X 5)	Rs.	2,40,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	20,78,064.00
Less compensation awarded by the Tribunal	Rs.	8,68,128.00
Enhanced amount	Rs.	12,09,936.00

Total compensation comes to Rs.20,76,064/-. If compensation awarded by the Tribunal Rs.8,68,128/- is deducted from this amount it comes to Rs.12,09,936/-. Appellants/Claimants are entitled for this enhanced amount of Rs.12,09,936/-.

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

ORDER

- i. The appeal is allowed.
- ii. The appellant Nos. 1 to 5/claimants are entitled for enhanced amount of Rs.12,09,936/- along with@ 7.5% per annum from the date of filing claim petition till realisation of amount. Out of this amount Rs.2,36,000/- is consortium amount, claimants are entitled at 7.5% interest p.a. on this amount from 1st November, 2017 till realisation

of the amount.

- iii. The respondent No.2-Insurance company shall deposit the enhanced amount along with accrued interest within six weeks after the receipt of this order.
- iv. Appellant Nos. 1 to 5 /claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

8. The appeal is disposed off.

(SHIVKUMAR DIGE, J.)

SONALI
SATISH
KILAJE

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by SONALI
SATISH KILAJE
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