

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

FIRST APPEAL NO. 310 OF 2023

- | | | |
|---------------------------------------|---|------------------|
| 1. Amit Vikaramsingh Thakur |) | |
| R/o 24/2 Behind Janata Bank, |) | |
| Vidya Nagar, Shelgi, Tq. Solapur |) | |
| Dist. Solapur. |) | |
| | | |
| 2. Abhijeet Vikaramsingh Thakur |) | |
| R/through his elder brother Applicant |) | |
| No.1 Amit V. Thakur. |) | |
| R/o 24/2 Behind Janata Bank, |) | |
| Vidya Nagar, Shelgi, Tq. Solapur |) | |
| Dist. Solapur. |) | |
| | | |
| 3. Ashish Vikaramsingh Thakur |) | |
| R/through his elder brother Applicant |) | |
| No.1 Amit V. Thakur. |) | |
| R/o 24/2 Behind Janata Bank, |) | |
| Vidya Nagar, Shelgi, Tq. Solapur |) | |
| Dist. Solapur. |) | ...Appellants |
| | | (Ori. Claimants) |

Versus

- | | | |
|--|---|-------------------|
| 1. Brijmohan Shrivallabh Sharma |) | |
| Age: Adult, Occ: Business |) | |
| R/o Vijay Nagar, Amakho, Lashkar |) | |
| Gwailihor, Madhya Pradesh |) | |
| And also Chatrasal Transport Co. |) | |
| Bypass Road Bhopal GPO, Bhopal |) | |
| Madhya Pradesh. |) | |
| | | |
| 2. ICICI Lombard General Insurance Co. |) | |
| Summons be served on its Divisional |) | |
| Office, Old Hotgi Naka, Opp. Bank of |) | |
| Ujani Colony, Solapur. |) | ...Respondents |
| | | (Ori. Respondent) |

Mr. R. S. Alange for the Appellants.

Mr. Rajesh Kanojia i/b Res Juris for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATED : 30th MARCH, 2023

JUDGMENT :

1. The issues involved in this Appeal are future prospects, consortium amount have not been awarded and application of wrong multiplier.

2. It is contention of learned counsel for the Appellant that the Tribunal has not awarded future prospects, consortium amount and wrong multiplier is applied and deduction is not properly made. Hence, requested to allow the Appeal.

3. The learned counsel for the Respondent submits that while awarding compensation the Tribunal has considered all the aspects, and on that basis compensation is allowed. Compensation awarded by the Tribunal is proper.

4. I have heard both the learned counsel. Perused the judgment and order passed by the learned Motor Accident Claims Tribunal (for short 'the Tribunal'), the Tribunal has considered a monthly income of deceased at Rs.35,583/-, but Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi¹*, the

¹ 2017 ACJ 2700 (SC)

claimants are entitled for 30% future prospects as he was 43 years old at the time of accident. The Tribunal has applied multiplier of 12 which is not proper, it should be 14. The Tribunal has not awarded consortium as per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. Vs. Nanu Ram²**, the claimants are entitled for Rs.40,000/- each with 10% increase as consortium amount. There are three claimants. The claimants are entitled for consortium amount of Rs.1,32,000/-, Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

5. It is contention of learned counsel of Respondent that at the time of accident, deceased was riding on motorcycle, they were triple seat. There was contributory negligence of deceased. The learned counsel for the Respondents-Insurance Company has relied on judgment in the case of **National Insurance Company Limited vs. S. Muthu and Ors.** dated 12.08.2022 of the Madras High Court. I have gone through the judgment, the facts of cited case and case in hand are different as Respondent-Insurance Company has not examined any witness to prove that the deceased and others were riding triple seat on motorcycle at the time of accident. Moreover, Respondent-Insurance Company has not challenged the order passed by the Tribunal.

6. Considering the above calculations, the claimants are entitled for following compensation.

2 2018 ACJ 2782 (SC)

Particulars		Amount
Annual Income (35,583X12)	Rs.	4, 26,996.00
Professional tax	Rs.	2,500.00
Income Tax	Rs.	24,154.00
Annual earning	Rs.	4,00,342.00
Future prospects 30%	Rs.	1,20,102.00
	TotalRs.	5,20,444.00
1/3rd deduction from earning	Rs.	1,73,481.00
	TotalRs.	3,46,963.00
Rs.3,46,963X14(multiplier)	Rs.	48,57,482.00
Add Consortium amount (3 claimants) (Rs.44,000X3)	Rs.	1,32,000.00
Add Funeral expenses and loss of estate (Rs.16,500+16,500)	Rs.	33,000.00
Total entitled compensation	Rs.	50,22,482.00
(Less) Compensation awarded by Tribunal	Rs.	30,12,672.00
The claimants are entitled for enhanced amount of	Rs.	20,09,810.00

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

ORDER

- (i) The Appeal is allowed.
- (ii) The claimants are entitled for enhanced amount of Rs.20,09,810/- @ 7.5% per annum from the date of filing of application till realization of the amount, out of this amount, consortium amount is Rs.1,65,000/-, the claimants are entitled for interest on this amount @ 7.5% from 1st November, 2017 till realization of the amount.

- (iii) The Respondents are directed to deposit enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
- (iv) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (v) There was delay in filing the present appeal of 1 year 338 days. Therefore, the claimants are not entitled for interest on enhanced amount for this delayed period.

(SHIVKUMAR DIGE, J.)