

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1077 OF 2017**

Reliance General Insurance Company Ltd., 4th
Floor, Chintamani Avenue, Off Western
Express Highway, next to Virwani Industrial
Estate, Goregaon(E) Mumbai 400 063.

... Appellant

V/s.

1. Shivaji Choudappa Wankhede, Age-55
Years, Occupations:- Nil,
Residing at plot no. 72, Swagat Nagar, Near
Mallikarjun Nagar, Solapur.

2. Sau. Jagdevi Shivaji Wankhede, Age-50
years, Occupation:- Household,
Residing at plot no. 72, Swagat Nagar, Near
Mallikarjun Nagar, Solapur.

3. Smt. Rashmita Arun Wankhede, Age-24,
Occupation:- Household
Residing at plot no. 72, Swagat Nagar, Near
Mallikarjun Nagar, Solapur.

4. Mrs. Radhaben Damaji Meta, Age-Adult,
Occupation:- Business
Residing at Ratanlal, Tal: Anjas, Dist. Kaccha,
Gujrat.

... Respondents

**WITH
CROSS OBJECTION STAMP NO. 17752 OF 2019
IN
FIRST APPEAL NO. 1077 OF 2017**

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Years, Occupations:- Nil,
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Mallikarjun Nagar, Solapur.

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years, Occupation:- Household,
Residing at plot no. 72, Swagat Nagar, Near
Mallikarjun Nagar, Solapur.

3. Smt. Rashmita Arun Wankhede, Age-24,

Occupation:- Household

Residing at plot no. 72, Swagat Nagar, Near
Mallikarjun Nagar, Solapur.

Cross Objectors
(Original Claimants)

V/s.

1. Reliance General Insurance Company Ltd.,
4th Floor, Chintamani Avenue, Off Western
Express Highway, next to Virwani Industrial
Estate, Goregaon(E) Mumbai 400 063.

2. Mrs. Radhaben Damaji Mata Age: Adult,
Occ: Business R/o. Ratnal, Tal-Anjas, Kutch
Gujarat.

... Respondents

Mrs. Poonam Mital for Appellant.

Mr. R.S. Alange for Respondent

CORAM : SHIVKUMAR.G. DIGE, J.

DATED : 13th MARCH, 2023

JUDGMENT:

1. Being aggrieved and dissatisfied with the judgment and order passed by Motor Accident Claims Tribunal, Solapur, the Appellant-Insurance Company preferred this Appeal. The Claimants also filed cross objection for enhancement of compensation. I am deciding Appeal and cross objection by this common judgment.

2. It is contention of learned Counsel for the Appellant that at the time of accident the driver of offending vehicle was not holding effective and valid driving license and this fact was proved before the Tribunal but it is not considered by the Tribunal. The learned Counsel further submitted that the

Tribunal has considered monthly income of the deceased on higher side without any evidence on record. Learned Counsel further submits that the Tribunal has awarded the amount of Rs. 15,000/- for each Claimant towards love and affection and Rs. 1,00,000/- as consortium amount which is exorbitant and excessive. Hence, requested to allow the Appeal.

3. It is contention of learned Counsel for the Claimant-Cross Objector that Tribunal has not awarded future prospects. Learned Counsel further submits that driver of offending vehicle had valid and effective driving license for driving a transport vehicle. The Tribunal has passed reasoned order in that regard. Learned Counsel further submits that deceased was working as Assistant Manager in ABG Cement Company, at Abdasa Dist. Kutch, Gujrat State and he was getting monthly salary of Rs.24,932/-. and, requested to allow the cross objection and dismiss the Appeal.

4. I have heard both learned Counsel, perused judgment and order passed by the Tribunal. While dealing with the issue of driving license, the Tribunal has observed that the copy of license at Exhibit 40 shows that the period of license was ending on 12th July, 2000 and it was renewed for the period from 12th July, 2000 to 11th July, 2012. The license was valid on the date of accident i.e. 22nd May, 2012. It shows that at the time of accident, driver was possessing valid and effective driving license. I do not find any infirmity in it. Moreover the Appellant/Insurance Company has not examined any witness to prove that driver of offending vehicle was not holding effective and valid driving license. In respect of issue of income of deceased it appears from

record that deceased was working as Assistant Manager in ABG Cement Company, and he was getting salary of Rs. 24,932/- per month. The Claimants have examined the PW-2 Kishor Kunkawadekar at Exhibit-13, he is Assistant Manager of ABG Cement Company, wherein the deceased was serving at relevant time. This witness has stated that the deceased was working in their company as Assistant Engineer. The salary slip at Exhibit 31 shows that total monthly income of deceased was Rs. 24,932/- and considering this document and deductions, the Tribunal has considered the monthly salary at Rs. 24,732/-. I do not find any infirmity in it.

5. Considering above calculations, and Claimants are entitled for following compensation:-

Calculation & Compensation

Particulars	Amounts
Monthly income	Rs. 24,732/-
Add: 50% future prospects	Rs. 12,366/-
Total Income per month	Rs. 37,098/-
Annual Income Rs. 37,098/- x 12	Rs. 4,45,176/-
Less 1/3rd towards personal expenses	Rs. 1,48,392/-
Total Income	Rs. 2,96,784/-
Deduction : Income Tax	Rs. 10,000/-
	Rs. 2,86,784/-
Rs. 2,86,784/- x 17 (Multiplier as deceased of age)	Rs. 48,75,328/-

Add: Funeral Expenses	Rs. 16,500/-
Add: Loss of Estate	Rs. 16,500/-
Add: Loss of Consortium	Rs. 1,32,000/-
Total	Rs. 50,40,328/-
75% Liability of insurance company	Rs. 37,80,246/-
Less Compensation Awarded by Tribunal	Rs. 26,30,000/-
Enhanced Compensation	Rs. 11,50,246/-

6. The Claimants are entitled for enhanced amount of Rs.11,50,246/-

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

ORDER

(i) Appeal is dismissed.

(ii) No order as to costs.

(iii) The Cross Objection is allowed. The Claimants are entitled for enhanced amount of Rs.11,50,246/- at the rate of 7% of interest per annum from the date of filing of Application till realization of amount. Out of this amount Rs.1,32,000/- is consortium amount the claimants are entitled @ 7% per annum from 1st November, 2017 till realization of amount.

(iv) The appellant is directed to deposit enhanced amount along

with accrued interest thereon within six weeks after receipt of the order.

(v) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

(vi) The statutory amount be transmitted to the Tribunal, the parties are at liberty to withdraw it as per rule.

(SHIVKUMAR DIGE,J.)