

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.1005 OF 2022

The National Insurance Company)
Through Divisional Manager)
Division Office Nashik)
In front of Dongare Maidan)
Kavita Complex, In front of V. N. Naik College)
Vasant Market, Canada Corner, Nashik)

....Appellant/Orig. Resp.

Versus

1. Smt. Kalpana Jagannath Gangurde)
Age - 40 years, Occu-Household)
2. Mangesh Jagannath Gangurde)
Age - 20 years, Occu- Education)
3. Dnyaneshewar Jagannath Gangurde)
Age - 18 years, Occu-Education)

...Orig. Applicant No.1.

...Orig. Applicant No.2.

...Orig. Applicant No. 3.

All Respondents R/o Virgaon)
Tal. Satana, Dist. Nashik)

4. Thangraj K. Kaveri)
Age - 28 years, Occu - Driver)
R/o Morur, Kanvaipudhur)
Tal. Oamlur, Dist. Salem, State Tamilnadu,)
PIN – 636 351)

...Orig. Respondent No.1

5. Jagdisan. V. Velappan)
Age - 50 years, Occu - Vehicle Owner)
R/o D. No. 18/16 .N. No. 18/7)
B. C. Street, Naganichettipatti)
Morur West, Tal. Sankari Dist.)
Salem, State- Tamilnadu)
PIN-636351)

...Orig. Respondent No.2

.... Respondents.

Mr. Rahul Mehta i/b. KMC Legal Venture, Advocates for the Appellant.

Ms. Sejal Todkar i/b. Mr. Ashwin Kapadnis, Advocate for the Respondent Nos. 1 to 3.

CORAM : S. G. DIGE, J.

DATE : 1st MARCH 2023.

Judgment :

1. The issue involved in this appeal is income of the deceased is considered on higher side.

2. It is contention of learned counsel for the appellant that the Tribunal has considered monthly income of the deceased @ Rs.7000/- which is on higher side. The deceased was working as a driver in Sai Transport and also doing agricultural work. The Tribunal has considered the salary of the deceased as well as supervisory income from agricultural work and travel allowances and, on that basis, compensation is awarded which is exorbitant and excessive. Learned counsel further submits that the Tribunal has deducted 1/4 amount for personal expenses, it should be 1/3rd. Hence. requested to allow the appeal.

3. It is the contention of learned counsel for claimants that deceased was driver in transport office. He was skilled driver, he was getting salary of Rs.7,700/- per month and he was getting Rs.255/- per day as daily wages. Deceased had agricultural land and he was getting Rs.3,000/- per month income from agricultural land but the Tribunal has considered monthly income of deceased as Rs.7000/- only, which is proper, hence, requested to dismiss the appeal.

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

5. To prove the income of the deceased, wife of deceased – Kalpana examined herself. While dealing with the issue of income, the Tribunal has observed that deceased was getting monthly salary of Rs.7700/- and he was getting Rs.255/- wages per day. In my view, deceased was skilled driver, he was getting salary and income of agricultural land. Considering the evidence produced on record, the Tribunal has considered income of Rs.7,000/- per month, which is proper. I do not find any infirmity in it.

6. The Tribunal has deducted 1/4th amount for personal expenses. There are three claimants, then, it should be 1/3rd and not 1/4th. Hence, I am considering deduction of 1/3rd amount for personal expenses.

7. The Tribunal has awarded consortium amount only to one claimant. As per the view of the Hon'ble Apex Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)** each claimant is entitled for consortium amount, hence, I am considering consortium amount for remaining two claimants. It comes to Rs.80,000/-, I am considering this as consortium amount. The calculations of deduction of amount considered for personal expenses as 1/3rd amount and consortium amount of Rs.80,000/- which the claimants are entitled for, would be same. Hence, it is not necessary to deduct the amount awarded by the Tribunal.

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

ORDER

1. The appeal is dismissed. No order as to cost.

2. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
3. Statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
9. Pending civil applications, if any, stands dismissed.

(S. G. DIGE, J.)