

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

FIRST APPEAL NO. 541 OF 2011

Shri Asad Musabhai Mithani)
Agedd about 66 years,)

Smt. Zaintaj Asad Mithani)
Aged about 63 years,)
Residing at D-43/44,)
yuwari Apartment, Mount Merry Road)
Bandra (W), Mumbai – 400050.)Appellants

Versus

The Bombay Municipal Corporation)
of Gr. Bombay)
Through the General Manager, BEST)
Undertaking, Electric House, Colaba)
Mumbai – 400005.)Respondent

Mr. T. J. Mendon Advocate for the Appellant
Ms. Shraddha Chheda i/b Navdeep Vora & Associates Advocate for
the Respondent - BEST undertaking.

CORAM : S. G. DIGE, J.

RESERVED ON : 14th DECEMBER, 2022.

PRONOUNCED ON : 25th JANUARY, 2023

JUDGMENT. :

1. The issue involved in this appeal is monthly income of
deceased is considered by the tribunal on lower side.

2. It is the contention of learned counsel for appellants that the tribunal has committed grave error in not accepting the income of deceased at Rs. 15,000/- per month. The deceased was educated and was working as an Interior Designer and Decorater. The deceased had great future prospects and bound to earn substantial amount as his income. But, the Tribunal has considered Rs. 3,000/- per month as monthly income of deceased which is on lower side. The evidence is produced on record to show monthly income of deceased was Rs. 15,000/- but, it was not considered by the tribunal. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the respondent that no evidence produced on record to prove the income of deceased was at Rs. 15,000/- per month, on the basis of evidence produced on record. The tribunal has considered notional income of Rs. 3,000/- per month which is proper. The deceased was bachelor but the tribunal has deducted 1/3rd income for personal expenses, it should be 1/2.

4. I have heard both learned counsel, perused judgment and

order passed by the Motor Accident Claims Tribunal (for short 'the Tribunal'). The issue involved in this appeal is income of the deceased.

5. To prove the income of deceased PW-1- Asad Musabhai Mithani, father of deceased has stated that deceased was his only son. Deceased had completed the diploma course in interior designing and decorations, he had also passed intermediate drawing examination. After completing his diploma course in interior designing and decoration in the month of December, 1995, the deceased started his own business. He was taking contract of interior decoration etc. Deceased had executed various works of house interiors and decorations and successfully completed the same, out of the said business, the monthly income of deceased was about Rs. 15,000/-. Nothing elicited in cross-examination of this witness.

6. To support evidence of PW-1, appellants have examined PW-2-Akbar Hamid at Exhibit '21' and PW-3-Kamruddin Sattani at Exhibit '14. PW-2-Akbar Hamid has stated that, he was close friend of deceased, and the deceased had many projects in his hand prior to the accident. PW-3-Kamruddin Sattani has stated that, he had

engaged services of the deceased for interior decoration of some flats in his society. He paid Rs. 3,50,000/- to the deceased.

7. The appellants have produced documents on record to prove that deceased had completed the diploma course in interior designing. The certificate is at Exhibit-'21'.

8. From the evidence of these witnesses and the certificate of passing diploma course in interior designing (Exhibit-'21'), it appears that, deceased was an interior designer and decorator. The tribunal has considered notional income of Rs. 3,000/- per month. In my view, approach of the tribunal considering monthly income of deceased is wrong when it has come on record that the deceased had completed diploma course in interior designing and decoration, the deceased was resident of Bandra (West) which is considered as high class society area, he was doing business there as also in view of the statements of the examined witnesses. The notional income of Rs. 3,000/- is on lower side. It should be Rs. 5,000/- per month. Hence, I am considering, the income of Rs. 5,000/- per month.

9. Deceased was 23 years old at the time of accident, hence, multiplier of 18 is proper. The tribunal has not awarded

consortium amount and amount of loss of the estate and funeral expenses as per view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram. 2018 ACJ 2782 (SC).***

The appellants are entitled for consortium amount and amount for funeral expenses and loss of the estate. The deceased was bachelor, hence, there should be 1/2 deduction for personal expenses.

10. Considering the above calculations, the appellants are entitled for following compensation:

Notional income	5000/- x 12 =60000/-
Personal expenses	60000 – 50% = 30000/-
Multiplier	30000/- x 18 = 540000/-
Future prospects	540000/- x 40% = 216000/-
	540000 + 216000 = 756000/-
Loss of Estate	16500
Funeral expenses	16500
Loss of consortium	88000
Principal	756000 + 16500 +16500 + 88000 = 877000

11. The tribunal has awarded the amount of Rs. 2,85,000, if it is deducted from Rs. 8,77,000, it comes to Rs. 5,92,000. The claimants are entitled for this amount.

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

ORDER

- i. Appeal is allowed.
 - ii. The Appellant/Claimants are entitled for enhanced compensation of Rs. 5,92,000 @ 6% interest from the date of filing of petition till its realization. The respondents are directed to deposit the enhanced amount along with accrued interest thereon.
 - iii. The respondent shall deposit the enhanced amount along with accrued interest thereon within six weeks.
 - iv. The claimants/appellants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The statutory amount along with accrued interest be transferred to the tribunal. The parties are at liberty to withdraw it, as per rule.
13. All pending applications stand disposed off.

(S. G. DIGE, J.)