

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

FIRST APPEAL NO.3028 OF 2006

Oriental Insurance Co. Ltd.	}	Appellant
Shivram Sadan, 2 nd Floor, Near S.T. Sand,	}	(Orig. Opposite
Panvel, District-Raigad.	}	Party No.2 &
	}	Original Insurer)

V/s.

1. Smt.Usha Purushottam Sharma	}
(Being widow of deceased), aged about 40	}
years, Respondent Nos.2 and 3 are minors	}
and they are suing through Respondent	}
No.1 as their natural Guardian	}

2. Kumar Anurag Purushottam Sharma	}
(Being son of deceased) aged about 19	}
years)	}

3. Kumari Ashwini Purushottam Sharma	}
(Being daughter of deceased) aged about	}
15 years)	}

All R/at EBPL Colony, MIDC, Mahad,	}	Respondents
Taluka-Mahad, District-Raigad.	}	(Original
	}	Applicants)

4. Ramesh S. Yevle	}	
Aged about 45 years, R/at Sector	}	F.A. Stand
No.48/B, Building No.18, No.1, Vashi,	}	dismissed against
Navi Mumbai, District-Thane.	}	R.No.4 vide Reg.
	}	(J-II) Courts
	}	Order dated
	}	8/3/16 (Org.
	}	Opponent No.1)

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Mr.Bhavesh Wadhwani i/b M.V. Kini & Co., for the Appellant.
Mr.R.R. Salvi, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st DECEMBER 2023

ORAL JUDGMENT :-

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

2. It is contention of the learned counsel for the Appellant that, the Tribunal has considered yearly income of deceased at Rs.5,50,000/- which is erroneous. Without any evidence on record the Tribunal has considered this income. The documents produced on record shows that income of deceased was less, but the Tribunal has not considered this fact and has calculated the compensation on the basis of yearly income of Rs.5,50,000/-. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for Respondent-Claimants that, at the time of the accident deceased was 43 years old and he was drawing salary of Rs.6,26,000/- per year. But after deducting Income Tax and other taxes the

Tribunal has considered Rs.5,50,000/- per year income of deceased, which is on lower side. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Raigad at Alibag.

5. To prove the income of deceased the Claimant's have examined Claimant No.1 P.W.-1-Anurag Sharma, son of deceased. He has stated that, his father was working as Joint General Manager in Emellen Biotech Pharmaceuticals Company Limited, MIDC, Mahad and he was drawing salary of Rs.6,25,800/- per year. The Salary Certificate is at Exhibit-35. To support the evidence of PW-1 the Claimant's have examined PW-2 Ramkrishna Mohan Rao, Director (Technical) in Emellen Biotech Pharmaceuticals Company Limited. He has stated that, deceased was working in their company as a Joint General Manager and he was drawing salary of Rs.6,25,000/- per annum. At the time of the death, he was 43 years of age. Nothing elicited in cross-examination of this witness. Considering the evidence on

record the Tribunal has considered yearly income of deceased at Rs.5,50,000/- after deducting Income Tax and TDS. It is contention of learned counsel for the Appellant that, pay slip of deceased, which is at Exhibit-49 shows yearly income of deceased at Rs.5,31,000/- it should have been considered by the Tribunal. In my view, the Tribunal has considered proper income. It has come on record that, the deceased was earning Rs.6,25,000/- per annum. The documents produced on record supports contention of the PW-1 and PW-2. The income considered by the Tribunal is proper, I do not find any infirmity in it.

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

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Respondents-Claimants are permitted to withdraw the amount deposited by the Appellant along with accrued interest thereon.
- (iii) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it, as per Rule.

(iv) Pending Civil/Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)