

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

FIRST APPEAL NO.20 OF 2008

1. Vanmala Shivajirao Bhosale }
2. Shri.Shivajirao Dnyaneshwar Bhosale }
 (Since Decd.) Thr. Lrs. }

2(A) Sou.Manisha Santosh Babar }
 Daughter of deceased }
 Both R/at C/o. Sanotsh Rajaram babar, }
 Babar Building, Near Jogad Building, }
 Yashwant Nagar, Vita. Dist-Sangli. }

2(B) Sou.Madhura Bharat Khamkar }
 Daughter of deceased }
 Sangali Kolapur Road, Near Amba }
 Bhadang Hotel, Khamkar Mala, }
 Jaysingpur, Taluka-Shirol, District- }
 Kolphapur. }

...Appellant

Versus

1. Syed Hashim Hussain }
 S/o. Syed Kaleemshasan, }
 R/o. 12-2-717/1/59, Mendipattanam, }
 Saptagiri Colony, Hyderabad, }
 Andrapradesh. }

2. Syed Ahmed Syed Nabimia }
 R/o House No.133,2511, Hyderabad. }
 Andrapradesh. }

3. The Manager }
 The New India Assurance Co. Ltd. }
 Branch S.P. Road, Secunderabad. }

...Respondents

**NILAM
SANTOSH
KAMBLE**

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Mr.P.D. Pise, for the Appellants.
Mr.Sandeep S. Jinsiwale, for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 27 APRIL 2023

JUDGMENT :-

. By this appeal, the Appellant-Claimants are seeking enhancement of compensation.

2. It is contention of the learned counsel for the Appellant that the deceased was Medical Representative and was earning Rs.6,000/- per month. The Tribunal has considered his notional income at Rs.1,850/- per month which is on lower side.

3. The learned counsel further submits that the Tribunal has applied multiplier of 11 on the basis of the age of the mother, at the time of the accident deceased was 27 years old, so proper multiplier is 17. The Tribunal has not awarded consortium amount and future prospects, it should be awarded. Hence, requested to allow the Appeal.

4. The learned counsel for the Respondent-Insurance Company vehemently submits that at the time of the awarding compensation the Tribunal has considered all the aspects and on that basis compensation is awarded. No income proof was

produced before the Tribunal to prove the income of the deceased. Hence, requested to dismiss the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Sangli (for short 'the Tribunal').

6. To prove the income of the deceased, the Claimants have examined father of the deceased. He has stated that deceased was his son, he was working as a Medical Representative in Well Known Company Viz., M/s.Niramay Remedies Pvt. Ltd., Pune and he was earning Rs.7,000/- per month. Nothing elicited in the cross-examination of this witness. To support his evidence the Claimants have examined PW-2 Avinash Madhav Inamdar, Divisional Sales Manager in Niramay Remedies Pvt. Ltd. This witness has stated that deceased was working in their company as Medical Representative at Sangli, Head Quarter and he was earning more than Rs.6,000/- per month. Salary Certificate is at Exhibit-49. In cross-examination this witness admitted that he did not bring original record of the company to show deceased was getting gross salary of Rs.6,000/- per month. This witness further admitted that the company was having the record of the bifurcation of the salary of the deceased and deceased Vinod was getting basic salary of Rs.1,850/- per month.

7. Considering the evidence of this witness the Tribunal has considered basic salary as income of deceased at Rs.1,850/- per month. I am unable to understand the observations of the Tribunal in respect of the income of deceased when PW-2 has specifically stated that deceased was getting more than Rs.6,000/- per month as salary and salary certificate is at Exhibit-49. The monthly income of the deceased considered by the Tribunal is on lower side. Hence, I am considering it Rs.3,500/- per month.

8. The Tribunal has not awarded future prospects. As this Court has considered notional income of deceased as per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi¹***, the Claimants are entitled for 40% future prospects. The Tribunal has not awarded consortium amount as per view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram²***, each Claimants are entitled for Rs.40,000/- with 10% increase as consortium and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate. The Tribunal has applied multiplier of the age of the parents of the deceased it should be as per the age of the deceased. Hence, I am considering multiplier of 17.

9. In view of above calculations, the Claimants are entitled for following compensation.

¹ 2017 ACJ 2700 (SC)

² 2018 ACJ 2782 (SC)

Particulars	Amount
Income	Rs.3,500/-
40% future prospects	Rs.1,400/-
Deduction towards personal expenses 1/2nd of Rs.4,900 comes to Rs.2,450/- Therefore, Rs.4,900-Rs.2450 comes to Total Income Rs.2450 X 12	Rs.29,400/-
Rs.29,400 X 17 (multiplier)	Rs.4,99,800/-
Loss of consortium Rs.44,000/- x 2 (Filail)	Rs.88,000/-
Loss of Estate	Rs.16,500/-
Funeral Expenses	Rs.16,500/-
Total Compensation	Rs.6,20,800/-
Less compensation amount already granted by the MACT, Sangli	Rs.1,75,000/-
Total Compensation Payable	Rs.4,45,800/-

10. The Tribunal has awarded compensation of Rs.1,75,000/- as per calculations of this Court, amount comes to Rs.6,20,800/-, if this amount deducts from amount considered by the Tribunal at comes to Rs.4,45,800/-. The Claimants are entitled for this amount.

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

ORDER

(i) The Appeal is allowed.

(ii) The Claimants are entitled for enhanced amount of Rs.4,45,800/- @ 7.5% per annum from the date of the filing of the Claim Petition till realization of the amount. Out of this amount Rs.1,21,000/- is consortium amount. The Claimants are entitled for 7.5% per annum interest on this amount from 1 October 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 this order.

(iv) The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.

(v) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)