

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 169 OF 2023**

The General Manager,)
BEST Undertaking, Electric House,) ...Appellant
Colaba, Mumbai – 400 001.) (Org. Opp. Party)

versus

1 Mina Vasant Patil,)
Aged 56 years, Occ: household)
2 Vivek Vasant Patil)
Age 25 years,)
Both residing at Near Dattamandir 76)
Mu-Po-Adai, Tal. Panvel,)Respondents
Dist.: Raigad 410206.) (Org. Applicants)

Ms. Karishma Jhaveri i/b. Navdeep Vora and Associates, Advocates for the Appellant.

Mr. Tejpal S. Ingale, Advocate for respondent Nos.1 and 2/claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th DECEMBER, 2023.

Oral Judgment. :

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

2. It is the contention of learned counsel for the appellant that deceased was doing business of water supply. In spite of that, the Tribunal has considered the income of deceased at Rs.12,000/- per month, which is on higher side and, on that basis, compensation is awarded. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for respondent Nos.1 and 2/claimants that deceased was doing business of water supply and he was getting Rs.12,000/- per month. Moreover, the Tribunal has not awarded future prospects which the claimants are entitled for. The order passed by the Tribunal in respect of income of the deceased is legal and valid.

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

5. To prove the income of deceased, claimant – Mina Patil, who is the mother of deceased, examined herself. She has stated that deceased was doing business of water supply. To support her evidence, the claimants examined PW-2 Rahul Patil, proprietor of water supplier CIDCO Colony, New Panvel. He has stated that deceased – Niraj Patil was working with him from the Year 2016 and was getting salary of Rs.12,000/- per month. The salary certificate is at Exhibit-28. Considering the evidence on record, the Tribunal has considered

Rs.12,000/- as monthly salary of the deceased. It is the contention of learned counsel for the appellant that it is on higher side.

The Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)**, the claimants are entitled for future prospects. If 40% future prospects are deducted, the monthly income of deceased would come to Rs.8000/-. Hence, in my view, the income considered by the Tribunal is proper and no interference is required in it.

It appears that the Tribunal has not awarded consortium amount. As per the view of Hon'ble Apex Court in the case of **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, the claimant No.1 is entitled for consortium amount of Rs.44,000/-.

6. Considering the above reasons, I pass following order :

ORDER

1. The appeal is dismissed. No order as to cost.
2. Claimant No.1 is entitled for an additional amount of Rs.44,000/- towards consortium amount @ 7.5% per annum from the date of filing of original claim petition i.e. on 16th February 2018 till realisation of the amount.
3. The appellant is directed to deposit the additional amount along with accrued interest thereon within four weeks from the receipt of this order.

4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
5. The statutory amount be transferred to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)