



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

FIRST APPEAL NO.3280 OF 2006

1. Abdulrahiman Amin Varunkar
since deceased through legal heirs,
Appellant Nos. 2 to 7 are already on
record.
2. Mumtaj Abdulrahiman Varunkar,
Age: 64 years,
3. Banu Hasham Varunkar,
Age: 36 years,
4. Avej Hasham Varunkar,
Age: 16 years,
5. Afroz Hasham Varunkar,
Age: 14 years,
6. Afsar Hasham Varunkar,
Age: 13 years,
7. Afsana Hasham Varunkar,
Age: 11 years, Minors through their
Guardian mother Petitioner No.3
All Residents of School Mohalla,
House No.196-B, Mahableshwar,
Taluka Mahableshwar, District Satara. Appellants
...(Orig. Petitioners)

Versus

1. Vinayak Eknath Dushane, Adult,
Occupation : Trax Owner,
Resident of Priyadarshani Society,
Siddhanthwadi, Taluka Wai,
District Satara.

2. Oriental Insurance Company Ltd.
Through Satara Branch, Satara.

Respondents
(Orig. Opponents)

Mr. B. A. Lawate for the Appellants.

Mrs. Kalpana Trivedi for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th MARCH, 2023

Oral Judgment:

1. By way of this Appeal, the Appellants-original claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for Appellants that while awarding compensation, the Tribunal has not awarded future prospects, wrong multiplier applied and consortium amount is not awarded. Hence, requested to allow the Appeal.

3. The learned counsel for Respondent-Insurance Company vehemently submits that no evidence was produced before the Tribunal regarding the income of deceased in spite of that the Tribunal has considered Rs.3,000/- monthly income of deceased which is on higher side, the Tribunal has considered all the aspects while calculating compensation. Hence, no interference is required in it.

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

5. The Tribunal has considered notional monthly income of deceased at Rs.3,000/-. As Respondent-Insurance Company has not challenged the said income, hence I am considering this income as monthly income of deceased. The Tribunal has not awarded future prospects, applied wrong multiplier and consortium amount is not awarded. As per the view of the Hon'ble Apex Court in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.**¹. The claimants are entitled to 40% as future prospects. 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**², each claimant is entitled Rs.40,000/- with 10% increase as consortium amount. There are seven claimants.

The Tribunal has not deducted amount of personal expenses there are seven claimants so amount for personal expenses should be 1/5th.

6. Considering the above calculations, the claimants are entitled for following compensation :-

<u>COMPUTATION OF COMPENSATION</u>			
1.	Income	Rs.	3,000.00
2.	Dependency 1/5th (7 dependents)	Rs.	2,400.00
3.	Future prospects 40/-	Rs.	3,360.00
4.	Yearly income after applying multiplier of 16	Rs.	6,45,120.00
5.	Consortium	Rs.	3,08,000.00
6.	Loss of Estate	Rs.	16,500.00
7.	Loss of Funeral	Rs.	16,500.00
8.	Total compensation	Rs.	9,86,120.00

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

As per the calculations, the total amount of compensation comes to Rs.9,86,120/-. If the amount of Rs.3,25,000/- awarded by the Tribunal is deducted from Rs.9,86,120/-, it comes to Rs.6,61,120/-. The claimants are entitled for this amount. In view of the above, I pass following order:-

O R D E R

- (i) The Appeal is allowed.
 - (ii) The claimants are entitled for enhanced compensation of Rs.6,61,120/- @ 7.5% per annum from the date of filing of application till realization of the amount. Out of this amount Rs.3,41,000/- is consortium amount the claimants are entitled @ 7.5% on this amount from 1st November, 2017 till realization of the amount.
 - (iii) The respondent is directed to deposit enhanced amount along with accrued interest thereon within six weeks after the receipt of this order.
 - (iii) Learned counsel for Respondent no.2 undertakes to file Vakalatnama on behalf of Respondent No.2.
 - (iv) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
7. Pending applications, if any, are also disposed of.

(SHIVKUMAR DIGE, J.)

This order is corrected as per speaking to the minutes of order dated 8th February 2024.