

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

FIRST APPEAL NO. 990 OF 2018

- | | | |
|----------------------------------|---|----------------|
| 1. Ms. Roxan Cyrus Bharucha |) | |
| Age: 51 years, Occ: Household |) | |
| 2. Ms. Persis Cyrus Bharucha |) | |
| Age: 24 years, Occ: Education |) | |
| 3. Mr. Vsapan Cyrus Bharucha |) | |
| Age: 18 years, Occ: Education |) | |
| 4. Ms. Roda Dara Bharucha |) | |
| Age: 78 years, Occ: Nil |) | |
| All R/o Flat No. 604, Grevillea, |) | |
| Nyati Estate, Mohammdwadi |) | |
| Pune 411 060 |) |Appellants |

Versus

- | | | |
|--|---|-----------------|
| 1. The New India Assurance Co. Ltd, |) | |
| Sharda Centre, 2 nd Floor, Near Nal |) | |
| Stop, Off Karve Road, Pune 411 004 |) | |
| 2. M/s. Shreeganesh Tours & Travels |) | |
| Pro. Kiran Kamble, Gurunath, CHS Flat |) | |
| No. 204, Bldg No. 2, Anjur Phata, |) | |
| Bhiwandi, 421 302 |) |Respondents |

Mr. Yuvraj P. Narvankar for the Appellants
Mr. Ketan Joshi for the Respondent No.1.

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CORAM : S. G. DIGE, J.

DATE : 2nd MARCH 2023.

JUDGMENT :

1. By way of this appeal, appellants are seeking enhancement of compensation.

2. It is contention of learned counsel for appellant that deceased was retired Colonel. He was working in company and getting salary at Rs. 20,000/- per month. He was also doing the job of consultation and from that consultation, he used to get amount but the tribunal has considered notional monthly income of deceased on lower side. When deceased was getting salary his notional monthly income could not have been considered by the tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent that the deceased was doing contractual job, no evidence was produced on record to show that deceased was getting monthly salary of Rs. 20,000/-. Learned counsel further submits that the tribunal has considered 15% future prospects of the deceased while calculating compensation. Deceased was more than 50 years age so it should be

10%. Learned counsel further submits that deceased was doing consultation job so there was no fix source of income. The tribunal has considered all the aspects and on that basis tribunal has considered notional monthly income of deceased properly, no interference is required in it and requested to dismiss the appeal.

5. I have both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Pune (for short 'the Tribunal'). The issue involved in this appeal is income of deceased. To prove the income of deceased the claimants have examined Claimant No. 1 Roxan Bharucha. She has stated that deceased was highly educated person, he was serving in Military Department and he retired from Military as a Colonal. He was expert in Solar Energy System/resources and LED system etc. just prior to accident he was working with Aditya Green Energy Private Limited and he was getting Rs. 20,000/- monthly as remuneration, with yearly appraisal of 20% further, she further stated that deceased was doing consultation job for Army, Institute of Technology and one Relyon Solar Pvt. Ltd. He was getting Rs. 2 to 3 Lakhs per year as a consulting charges and also he was getting commission for the sale. She further stated that deceased was also holding the position as General Manager in

Reliance Communication at Haryana in 2009. Nothing elicited in the cross-examination of this witness about income of the deceased.

6. In support of this witness claimants have examined Adinath Sangve, he has stated that deceased was consulting to their company, he was appointed as technical consultant on contract basis for one year. His monthly salary was Rs. 20,000/- and they agreed to increase his salary to the extent of 20% yearly. The appointment letter is at Exhibit-‘36’. In cross examination this witness has admitted that salary was being paid in cash, there is no deduction from Rs. 20,000/-. The claimants have examined Rishikesh Patil (CW-3). He has stated that he was working as a Project Officer Army Institute of Technology. Deceased was the technical consultant for the installation of Solar Plant. Deceased was expert in providing consultation with solar rooftop power plant and electrical sub-station. In cross-examination this witness admitted that their company have paid Rs. 1,10,000/- as consultation to deceased for two projects. From evidence of these witnesses, it appears that deceased was expert in the solar projects he was getting salary at Rs. 20,000/- per month, for two projects he received the fees more than Rs. 1,00,000/-. I am unable to understand the observations of the tribunal to hold that as there was no fix

income of the deceased. Hence, the tribunal has considered notional monthly income of deceased at Rs. 10,000/-, when it has come on record, at the time of accident deceased was working in company and he was getting salary at Rs. 20,000/- per month. From the evidence on record it reveals that deceased was also doing consultation job considering these evidence. I am considering, Rs. 23,000/- per month as monthly income of the deceased. Deceased was 52 years old at the time of accident. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)***, he is entitled for 10% future prospects.

7. The claimants are entitled for 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)***.

8. In view of above, the claimants are entitled for following compensation.

Basic Income	Rs. 23,000/-
(+) 10% Future Prospects	Rs. 2300/-

	Rs. 25,300/-
1/4 dependency	-Rs. 6325/-

	Rs. 18,975/-

12 months	X 12
	Rs. 2,27,700/-
Multiplier	X 11
	Rs. 25,04,700/-
(+) Estate	Rs. 16,500/-
Funeral	Rs. 16,500/-
Consortium	
(i) Spousal	Rs. 44,000/-
(ii) Parental 44,000 X 2	Rs. 88,000/-
(iii) Filial	Rs. 44,000/-
Total	Rs. 27,13,700/-

The tribunal has awarded Rs.11,37,000/-, if this amount deducts from amount considered by this court it comes to Rs. 15,76,700/-. The claimants are entitled for this amount.

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

ORDER

- i. Appeal is allowed.
- ii. The claimants are entitled for enhanced compensation of Rs.15,76,700/- @ 7.5% p.a. from the date of filing claim petition till realization of amount, out of this amount Rs.2,09,000/- is consortium amount. The claimants are entitled @ 7.5% p.a. on this amount from 1st October, 2017 till realization of amount.

(S. G. DIGE, J.)