

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1066 OF 2016

1. Shivram Pandurang Wahgmare }
2. Pradip Shivram Waghmare }
3. Satish Shivram Waghmare }
4. Sachin Shivram Waghmare }
5. Chandan Shivram Waghmare }
All are R/at Kanharwadi, Taluka }
Khatav, District-Satara }

...Appellants

Versus

1. Ramjan Rajjak Nadaf }
R/at Mayani, Taluka-Khatav, District- }
Satara. }
2. Dilip Wamanrao Yalmar }
R/at Kanharwadi, Taluka-Khatav, }
District-Satara }
3. The New India Insurance Co. Ltd., }
Satara, Taluka & District-Satara. }

...Respondents

Mr.V.B. Rajure, for the Appellant.
Mr.D.D. Rananware, for Respondent No.2.
Mr.Shubham Misar i/b Mr.H.G. Misar, for Respondent No.3.

CORAM : S.G. DIGE, J.

DATE : 7 FEBRUARY 2023

P.C:-

. This Appeal is filed for enhancement of compensation.

2. It is contention of the learned counsel for the Appellant that the Motor Accident Claims Tribunal, Vaduj, at Vaduj (for short 'the Tribunal') has awarded compensation on lower side. The monthly income of deceased is considered at Rs.3,000/- when in evidence it has come on record that deceased was earning more than Rs.3,000/-. The learned counsel further submit that the Tribunal has not awarded consortium amount and amount for funeral expenses and loss of estate. The learned counsel further submit that the future prospectus are not also awarded, hence, requested to allow the Appeal.

2. The learned counsel for Respondent No.3-Insurance Company submits that while awarding compensation the Tribunal has considered all the aspects and on the basis of the evidence the Tribunal has awarded compensation which is proper. No interference is required in it. The judgment and order passed by the Tribunal is legal and valid.

3. I have heard both the counsel. Perused judgment and order passed by the Tribunal.

4. The issues involved in this Appeal are income of deceased considered on lower side and future prospectus and consortium amount are not awarded. The Tribunal has considered monthly income of deceased of Rs.3,000/- per month, to prove the income of deceased the Claimants have examined. Claimant No.1 Shivraj, he has stated that his wife was earning Rs.125/- per day she was doing labour work. Considering evidence on record the Tribunal

has considered notional monthly income of deceased at Rs.3,000/- per month, I do not find any infirmity in it. The Tribunal has not awarded future prospectus. The deceased was 55 years old at the time of the accident. As per view of the Apex Court in case of ***National Insurance Co. Ltd. V/s. Pranay Sethi¹***, the Claimants are entitled for 10% future prospectus. The Tribunal has not awarded consortium amount as per view of the Hon'ble Apex Court in the case of *Magma (Supra)* each claimants are entitle for Rs.44,000/- as consortium amount with 10% increase. There are five Claimants. The Tribunal has awarded Rs.5,000/- for funeral expenses it should be Rs.16,500/-, with 10% increase, I am considering this amount. The Tribunal has not awarded amount for loss of estate, I am considering Rs.16,500/- with 10% increase for loss of estate.

5. In view of the above, the Appellants are entitle for following compensation.

Particulars	Amount
Monthly Income	Rs.3,000.00
10% future prospects	Rs.3,300.00
Yearly Income Rs.3300/- x 12	Rs.39,600.00
1/4th Deduction for personal expenses	-Rs.9,900.00

	Rs.29,700.00
Multiplier	X 11

Total Income	Rs.3,26,700.00
Loss of Consortium Rs.44,000/- x 5	Rs.2,20,000.00

¹ 2017 ACJ 2700 (SC)

Funeral Expenses	Rs.16,500/-
Loss of Estate	R.16,500/-

Total	Rs.5,79,700/-

6. The Tribunal has awarded compensation of Rs.2,86,280/-, if this amount deducted from Rs.5,79,700/- it comes to Rs.2,93,420/-. The Claimants are entitled for this amount.

7. In view of the above, I pass following order :-

ORDER

(i) The Appeal is allowed.

(ii) The Claimants are entitled for enhanced of amount of Rs.2,93,420/- @ 7.5% per annum from the date of filing Claim Petition till realization of amount out of this amount Rs.2,53,000/- is amount of consortium the Claimants are entitled @ 7.5% interest on this amount from 1 October 2017 till realization of the amount.

(ii) The Respondent shall deposit the enhanced amount within four weeks along with interest thereon.

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

(S.G. DIGE, J.)