# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION
## FIRST APPEAL NO. 428 OF 2016

| | | | |
|---|---|---|---|
| | Tata AIG General Insurance | ) | ….Appellants |
| | Company Limited, | ) | |
| | Peninsula Corporate Park, | ) | |
| | Nicholas Piramal Tower, 9th Floor, | ) | |
| | Ganpatrao Kadam Marg, Lower Parel, | ) | |
| | Mumbai 400 013. | ) | |
| | Versus | | |
| 1 | Muneer Ahmed Shaikh s/o. Shaikh | ) | |
| | Karin, | ) | |
| | Aged about 78 years, Father of the | ) | |
| | deceased. | ) | |
| 2 | Suraiyya Muneer Ahmed Shaikh | ) | |
| | aged about 63 years, | ) | |
| | Mother of the deceased | ) | |
| | All residing at 3/21, Municipal Officer | ) | |
| | Co-op. Housing Society, Government | ) | |
| | Colony, Haji Ali Park, | ) | |
| | Mumbai – 400024. | ) | |
| 3 | Ramanand Baskar Shenoy, | ) | |
| | 201, Swastik Royale, Plot No. 40, | ) | |
| | Girija Society, MIT College | ) | ….Original Opposite |
| | Road(Paude Road), Kothrud, Pune. | ) | Party Respondents |

**WITH**

**FIRST APPEAL NO. 54 OF 2017**

| | | | |
|---|---|---|---|
| | Tata AIG General Insurance | ) | ….Appellants |
| | Company Limited, | ) | |
| | Peninsula Corporate Park, | ) | |
| | Nicholas Piramal Tower, 9th Floor, | ) | |
| | Ganpatrao Kadam Marg, Lower Parel, | ) | |
| | Mumbai 400 013. | ) | |
| | Versus | | |
| 1 | Vishwanath Subramaniya Shastri | ) | |
| | Aged about 48 years, Father of the | ) | |
| | deceased. | ) | |
| 2 | Smita Vishwanath Shastri, | ) | |
| | aged about 45 years, Mother of the | ) | |
| | deceased | ) | |
| | All residing at 3/21, Municipal Officer | ) | |
| | Co-op. Housing Society, Government | ) | |
| | Colony, Haji Ali Park, | ) | |
| | Mumbai – 400024. | ) | |
| 3 | Ramanand Baskar Shenoy, | ) | |
| | 201, Swastik Royale, Plot No. 40, | ) | |
| | Girija Society, MIT College | ) | ….Original Opposite |
| | Road(Paude Road), Kothrud, Pune. | ) | Party |
| | | | Respondents |

**With**

**FIRST APPEAL NO. 945 OF 2022**

| | | | |
|---|---|---|---|
| 1 | Vishwanath Subramaniya Shastri | ) | |
| | Aged – Adult, Father of the | ) | |
| | deceased. | ) | |
| 2 | Smita Vishwanath Shastri, | ) | |
| | Age- Adult, | ) | |
| | Mother of the deceased, | ) | |
| | Both residing at 113/3746, | ) | |
| | Neharunagar, Kurla (East), | ) | ….Appellants/ |
| | Mumbai.24. | ) | (Org. Claimants) |
| | Presently Residing at | ) | |
| | All residing At 3/21, Municipal Officer | ) | |
| | Co-op. Housing Society, Government | ) | |
| | Colony, Haji Ali Park, Mumbai – 24. | ) | |
| | Versus | | |
| 1 | Tata AIG General Insurance | ) | |
| | Company Limited, | ) | |
| | Peninsula Corporate Park, | ) | |
| | Nicholas Piramal Tower, 9th Floor, | ) | |
| | Ganpatrao Kadam Marg, Lower Parel, | ) | |
| | Mumbai 400 013. | ) | (Org. Insurer) |
| 2 | Ramanand Baskar Shenoy, | ) | |
| | 201, Swastik Royale, Plot No. 40, | ) | |
| | Girija Society, MIT College | ) | |
| | Road(Paude Road), Kothrud, Pune. | ) | (Org. Opp. Party)<br>….Respondents |

**WITH**
**FIRST APPEAL NO. 974 OF 2022**

| | | | |
|---|---|---|---|
| 1 | Muneer Ahmed Shaikh | ) | |
| | (deceased/deleted, Father of the | ) | |
| | Deceased | | |
| 2 | Suraiyya Muneer Ahmed Shaikh | ) | |
| | Age-73, Mother of the deceased | ) | |
| | All residing at 3/21, Municipal Officer | ) | |
| | Co-op. Housing Society, Government | ) | |
| | Colony, Haji Ali Park, | ) | |
| | Mumbai – 400024. | ) | ….Appellants |
| | | | (Org. Claimants) |
| | Versus | | |
| 1 | Tata AIG General Insurance | ) | |
| | Company Limited, | ) | |
| | Peninsula Corporate Park, | ) | |
| | Nicholas Piramal Tower, 9th Floor, | ) | |
| | Ganpatrao Kadam Marg, Lower Parel, | ) | |
| | Mumbai 400 013. | ) | (Org. Insurer) |
| 2 | Ramanand Baskar Shenoy, | ) | |
| | 201, Swastik Royale, Plot No. 40, | ) | |
| | Girija Society, MIT College | ) | |
| | Road(Paude Road), Kothrud, Pune. | ) | (Org. Opp. Party) ….Respondents |

Mr. Devendranath S. Joshi along with Mr. Pradyumna Thakurdesai, Advocate for the Appellants in First Appeal No. 428 of 2016 and First Appeal No. 54 of 2017 and for Respondents in First Appeal Nos. 945 & 974 of 2022.

Mr. Vishwanath Patil i/b. Mr. Sandeep Katke, Advocate for Respondents/ Claimants in First Appeal No. 428 of 2016 and First Appeal No. 54 of 2017 and for Appellants in First Appeal Nos. 945 & 974 of 2022.

**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 19TH APRIL, 2023.**

**<u>Oral Judgment :</u>**

1. First Appeal No. 428 of 2016 and First Appeal No.54 of 2017 are preferred by the appellant – Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai. The claimants also preferred First Appeal Nos. 945 and 974 of 2022 for enhancement of compensation. As these appeals are out of the same accident and against the same judgment, I am deciding it by common judgment.

2. It is contention of learned counsel for the appellant – Insurance Company that the deceased were students of First Year MBBS. While awarding compensation, the Tribunal has considered their monthly income at Rs. 9000/- per month, which is on higher side. On that basis, the Tribunal has awarded excessive and exorbitant compensation. Hence, requested to allow the appeals filed by the Insurance Company and dismiss the appeals filed by the claimants.

3. It is contention of learned counsel for the respondents/claimants that deceased were First Year MBBS students at the time of accident. The Tribunal has considered their monthly income at Rs.9,000/- per month which is on lower side, it should be Rs.30,000/- per month. Learned counsel further submits that the Tribunal has awarded consortium amount on lower side. To prove the negligence of the deceased, the appellants have not examined any witness. Hence, requested to dismiss the appeal filed by the Insurance Company and allow the appeal filed by the claimants.

Learned counsel for the respondents/claimants relied upon the decision of the Apex Court in the case of ***Arvind Kumar Mishra versus New India Assurance Co. Ltd. and anr. In Civil Appeal No. 5510 of 2005 and Ashvinbhai Jayantilal Modi versus Ramkaran Ramchandra Sharma & anr in Civil Appeal Nos. 8131-8132 of 2014*** . .

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal. The claimants' case is that on 2nd March 2006, deceased – Kaniz, Fatima Munir Shaikh and Deepti Vishwanath Shastri were travelling

with her friends in vehicle bearing No. MH-12 BP 3335, it was being driven by one – Shivanand Shenoy. The said vehicle dashed to the signal pole at Deccan Gymkhana at around 2.30 am. The deceased and her friend both sustained serious injuries and both died while taking treatment.

5. It is contention of learned counsel for the appellant-Insurance Company that the Tribunal has considered monthly income of deceased on higher side i.e. at Rs. 9000/-. Whereas, it is the contention of learned counsel for the respondents/claimants that the monthly income considered of both deceased at Rs.9000/- is on lower side. It appears from the record that both deceased were First Year MBBS students. While dealing with the issue of income, the Tribunal has observed that in the absence of any income proof of deceased as well as deceased were taking education, the Tribunal has considered monthly income of deceased at Rs.9,000/-. In my view, the Tribunal has considered income of both deceased on lower side, as admittedly, both deceased were First Year Medical students, both were brilliant students and had secured admission in MBBS College from Government Seats. The Hon'ble Apex Court in ***Ashvinbhai Jayantilal Modi (supra)*** has observed that the

deceased was a student of medical at the time of accident while determining his future income. The courts below have wrongly ascertained the future income of deceased at only Rs.18,000/- per month, which in our view is too less for medical graduate these days. Therefore, the courts below have failed in following the principles laid down by this Court in this aspect in the above case. The deceased was a diligent and outstanding student of medicine who could have pursued his M.D. after his graduation and reached greater heights. Today, medical practice is one of the most sought after and rewarding professions. With the tremendous increase in demand in medical professionals, their salaries are also on the rise. Therefore, we have no doubt in ascertaining the future income of deceased at Rs.25,000/- per month i.e. Rs.3,00,000/- per annum. In the above referred case, the deceased was 19 year old and was pursuing his medical degree. The facts of the cited case are squarely applicable to the present case as both deceased were pursuing MBBS and they were 18 year old. Hence, I am considering the monthly income of deceased at Rs.25,000/- per month.

6. The Tribunal has awarded consortium amount in both the claim petitions on lower side. As per the view of the Hon’ble Apex

Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for consortium amount of Rs.40,000/- with 10% increase, Rs. 16,500/- for funeral expenses and Rs.16,500/- for loss of estate.

7. The Tribunal has not awarded future prospects. As per the view of the 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 @40%.

8. In view of the above calculations, the claimants in First First Appeal No. 945 of 2022 are entitled for following compensation:

| **Particulars** | **Rs.** | **Amount** |
|---|---|---|
| Monthly Notional Income | **Rs.** | 25,000.00 |
| Annual Notional Income Rs.25,000/- x 12 | **Rs.** | 3,00,000.00 |
| Add: Future Propects (40%) | **Rs.** | 1,20,000.00 |
| Total | **Rs.** | 4,20,000.00 |
| Less Dependency (50%) as Bachelor | **Rs.** | 2,10,000.00 |
| **Rs.2,10,000.00 x 18 (multiplier)** | **Rs.** | **37,80,000.00** |
| Add : Consortium (2 claimants) | **Rs.** | 88,000.00 |
| Loss of Estate | **Rs.** | 16,500.00 |

| | | |
|---|---|---|
| Funeral Expenses | **Rs.** | 16,500.00 |
| Medical Expenses & Ambulance Charges | **Rs.** | 10,000.00 |
| **Total Amount Payable** | **Rs.** | **39,11,000.00** |
| Less Amount granted by Tribunal | **Rs.** | 10,12,000.00 |
| **Enhanced Amount payable** | **Rs.** | **28,99,000.00** |

The claimants in First Appeal No.974 of 2022 are entitled for following compensation :

| **Particulars** | **Rs.** | **Amount** |
|---|---|---|
| Monthly Notional Income | **Rs.** | 25,000.00 |
| Annual Notional Income Rs. 25,000/- x 12 | **Rs.** | 3,00,000.00 |
| Add: Future Propects (40%) | **Rs.** | 1,20,000.00 |
| Total | **Rs.** | 4,20,000.00 |
| Less Dependency (50%) as Bachelor | **Rs.** | 2,10,000.00 |
| **Rs.2,10,000.00 x 18 (multiplier)** | **Rs.** | **37,80,000.00** |
| Add : Consortium (2 claimants) | **Rs.** | 88,000.00 |
| Loss of Estate | **Rs.** | 16,500.00 |
| Funeral Expenses | **Rs.** | 16,500.00 |
| Medical Expenses & Ambulance Charges | **Rs.** | 1,21,298.00 |
| **Total Amount Payable** | **Rs.** | **40,22.2980.00** |
| Less : Amount granted by Tribunal | **Rs.** | 11,23,298.00 |
| **Enhanced Amount payable** | **Rs.** | **28,99,000.00** |

The claimants in both appeals are entitled for enhanced amount of Rs.28,99,000/-.

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

1. First Appeal Nos.945 of 2022 and 974 of 2022 are allowed.

2. First Appeal No. 54 of 2017 and First Appeal No. 428 of 2016 are dismissed.

3. In First Appeal Nos.945 of 2022 and 974 of 2022, the claimants are entitled for enhanced amount of Rs.28,99,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs. 1,21,000/- is consortium amount, the claimants are entitled for interest @ 7.5% per annum on this amount, from 1st November 2017 till realisation of the amount.

4. The appellant-Insurance Company is directed to deposit the enhanced amount along with accrued interest thereon within eight weeks from the date of receipt of the order.

5. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

6. The statutory amount in First Appeal No. 54 of 2017 and First Appeal No. 428 of 2016 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

10. Pending applications, if any, stand disposed of.

**(SHIVKUMAR DIGE, J.)**