

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

FIRST APPEAL NO. 1454 OF 2016

Digitally
signed by
SHANTANU
SHANKARSA
DHUDUM
Date:
2023.04.28
18:03:46
+0530

The New India Assurance Co. Ltd.
Having its Divisional Office at
Shivkrupa Commercial Complex
3rd Floor, Gokhale Road, Naupada,
Thane.

....Appellant
(Original Opponent No.2/Insurer)

Versus

1. Smt. Veena Nitin Bose Nair
Age - 21 years,
Occupation - Housewife,
(Widow of the Deceased)
2. Shri. P. Narayana Pilla Narendra Nair
Age - 68 years,
Occupation - Retired,
Both are residing at Flat No. 439
Building No.44, Type III, Sector 25,
Near Uran Phata, Nerul,
Navi Mumbai, District - Thane.
3. Smt. Kamrunnisa Mohammed Ali
Age - Adult,
Occupation - Business,
Room No. 141, Plot No. 115,
Wadavali Naka, Bhiwandi Road,
Taluka - Wada, District - Thane.

....Respondents
(Resp. Nos. 1 & 2 Ori. Applicant Nos. 1 & 2.)
(Respondent No. 3 Orig. Opponent No.1)

Mr. Shrikant M. Dange for the Appellant.
Ms. Rina Kundu for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th APRIL 2023.

JUDGMENT :

1. The issues involved in this Appeal are income of deceased is considered on higher side and future prospects are given on higher side.

2. It is contention of learned counsel for the Appellant that deceased joined the service on 02 December 2008, and accident occurred on 31 December, 2008. The deceased could not complete one month of new service before that he died in accident, before that deceased was unemployed. The tribunal has considered the monthly income of deceased at Rs.15,000/- without any documentary evidence on record which is improper. Learned counsel further submits that deceased was not permanent employee but tribunal has awarded 50% future prospects, it should be 40%. Hence, requested to

allow the appeal.

3. It is contention of learned counsel for the respondents/claimants that deceased had joined the service and his salary was fixed at Rs.20,000/- per month. The employer of the previous company in which the deceased was employed was examined, he has stated that deceased was getting salary of Rs.15,000/- per month, on that basis, the tribunal has considered monthly income of deceased at Rs. 15,000/- which is proper. Learned counsel further submit that the tribunal has awarded consortium amount on lower side. Hence, requested to award proper consortium amount.

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

5. To prove income of the deceased, the claimants have examined claimant no.2 Shri P. Narayana Pilla Narendran Nair father of the deceased. He has stated that deceased was his son and he was working as Financial Sale Consultant and was getting yearly income

of Rs.2,40,000/-, at the time of accident. He was getting salary of Rs. 2,40,000/- per year. He has stated about original appointment letter dated 6th December, 2008. To support the evidence of this witness, the claimants have examined Shri. Amar Pandya at Exhibit-'52'. He has stated that, he was accountant in Nishant Overseas Distribution Company. Deceased was their employee and he was in service in their company till the end of December, 2007. He was getting salary of Rs.15,000/- per month. Though, the appointment letter of deceased in 'secure investment' dated 6th December, 2008 is filed on record but it is not exhibited. This document shows that deceased was appointed in this company on 6th December, 2008 and his annual salary was fixed at Rs. 2,40,000/- per annum.

6. Considering the evidence on record, the tribunal has considered monthly income of deceased at Rs.15,000/- per month. I do not find any infirmity in it. As before accident, deceased was working in other company and thereafter, he joined new company. Where his salary was increased to Rs.2,40,000/- per annum. But the tribunal has considered it Rs.1,80,000/- per annum on the basis of salary of earlier company.

7. The tribunal has awarded 50% 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 tribunal has considered notional monthly income of deceased at Rs.15,000/-, the deceased was not permanent employee. Hence, it should be 40% and on that basis I am considering 40% future prospects. The tribunal has awarded consortium amount at Rs.10,000/-, which is on lower side. 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)***, each claimant is entitled for Rs. 40,000/- as consortium amount, Rs.15,000/- for funeral expenses, Rs.15,000/- for loss of estate.

8. Considering above the calculations, the claimants are entitled for following compensation.

Notional Income per month	Rs.	15,000/-
Add 40% Future Prospects	Rs.	6,000/-
Total Income per month	Rs.	21,000/-
Annual Income Rs.21,000/- X 12	Rs.	2,52,000/-
Less 1/3 rd towards personal expenses	Rs.	84,000/--

Total Income	Rs.	1,68,000/-
Rs. 1,68,000/- X 17 (Multiplier as deceased was 28 years old.)	Rs.	28,56,000/-
Add : Funeral Expenses	Rs.	15,000/-
Add : Loss of Estate	Rs.	15,000/-
Add : Consortium	Rs.	80,000/-
Total Compensation	Rs.	29,66,000/-
Amount awarded by tribunal	Rs.	30,90,000/-
Excess amount	Rs.	1,24,000/-

9. The tribunal has awarded Rs.30,90,000/-. As per the calculations of this Court, the amount comes to Rs.29,66,000/-. If this amount is deducted from the amount awarded by the tribunal, it comes to Rs. 1,24,000/-, it is an excess amount. The appellants are entitled for this amount.

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

ORDER

- i. Appeal is allowed.
- ii. The appellant is permitted to withdraw the amount of Rs.1,24,000/- out of deposited amount, along with

accrued interest thereon.

- iii. The claimants are permitted to withdraw the remaining deposited amount along with accrued interest thereon.
- iv. The statutory amount be transmitted to the tribunal.
The parties are at liberty to withdraw it, as per Rule.
- v. Appeal is disposed of.

(SHIVKUMAR DIGE, J.)