

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 819 OF 2019**

Reliance General Insurance Co. Ltd.	}	
Thr. Its Manager Lega Mr.Khanjan Joshi	}	
4th Floor, Chintamani Avenue, Off	}	
Western Express Highway, Goregaon-East,	}	
Mumbai-400 063	}	...Appellant

Versus

1. Smt.Nilofar Abraham Khan	}	
2.Nadiya Ebrahim Khan	}	
3. Mummil Ebrahim Khan	}	
4. Mudssil Ebrahim Khan	}	
5. Mrs.Najmabi Mohamad Hanif Khan	}	
6. Mr.Mohamad Hanif Khan	}	
	}	
All R/at S.No. 101, Janwadi Vasahat, Pune	}	
7. Mr.Hanumant Parshuram Shirke	}	
R/at Priasingh Compound, Thakurpada,	}	
Tal. Bhiwandi, District-Thane	}	...Respondents

...

Mr. Rahul Mehta i/b KMC Legal Venture Advocate for the Appellant.
Mr. Yuvraj Narvankar, Advocate for the Respondents.

...

CORAM : S. G. DIGE, J.

DATE : 20TH FEBRUARY, 2023.

JUDGMENT :-

1. The issue involved in this appeal is excess and exorbitant compensation awarded by the Motor Accident Claims Tribunal, Pune

(for short “The Tribunal”).

2. It is the contention of learned counsel for appellant that the Tribunal has considered the income of deceased on higher side when no evidence was led before the Tribunal regarding income of the deceased.

3. Learned counsel further submits that the Tribunal has considered the income of deceased at Rs. 10,000/- per month when he was working as rickshaw driver, which is on higher side.

4. Learned counsel further submits that the Tribunal has awarded 50% future prospects which is improper. When the deceased was self employed then future prospects should have been considered 40% and not 50%.

5. The learned counsel further submit that the offending vehicle was not fit to ply at the time of accident, and driver was not holding valid permit but this fact is not considered by the Tribunal. Hence, requested to allow the appeal.

6. It is contention of learned counsel for Respondents-claimants that at the time of calculating compensation, the Tribunal has considered all the aspects. The deceased was rickshaw driver and earning Rs. 15,000/- per month but the Tribunal has considered only Rs. 10,000/- which is proper. The judgment and order passed by the Tribunal is legal and valid. Hence, requested to dismiss the appeal.

7. I have heard both learned counsel. Perused judgment and order passed by the Tribunal. To prove the income of the deceased, PW 1, wife of deceased, has stated that deceased was rickshaw driver and earning Rs. 15,000/- per month. She further stated that deceased was maintaining a big family consisting of 7 members. The driving licence of deceased is at Exhibit 14. The Tribunal, on the basis of bank statement of deceased and considering the evidence of PW 1, has considered his income at Rs. 10,000/- per month. I do not find any infirmity in it as deceased was skilled driver and he was maintaining his big family. The Tribunal has awarded 50% future prospects. As per the view of Hon'ble Apex Court in the case of **National Insurance Co. Ltd. V/s. Pranay Sethi & Ors.**¹ If the deceased was self employed, the future prospects

1 SLP Civil No.25590 of 2014

should be 40%. Hence, I am considering 40% future prospects instead of 50%. If the future prospect is considered as 40%, the amount of Rs.1,90,000/- will be reduced from the total compensation awarded by the Tribunal.

8. Though, learned counsel for appellant contends that the offending vehicle was not fit to ply at the time of accident, and not holding valid permit but no evidence was produced before the Tribunal in support of their contention. Hence, I do not see merit in it.

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

ORDER

- I. Appeal is partly allowed.
- ii. The appellant is permitted to withdraw amount of Rs. 1,90,000/- along with accrued interest thereon out of the deposited amount.
- iii. The respondents are permitted to withdraw the amount deposited by appellant along with accrued interest thereon excluding Rs. 1,90,000/- along with accrued

interest thereon.

- iv. The statutory amount alongwith interest be transferred to the Tribunal, parties are at liberty to withdraw it as per rule.

(S. G. DIGE, J.)