

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.586 OF 2009

1	Lata Chandar @ Chandrakant Agawane age 31 years, Occ. Household	))	
2	Rameshwar Chandar alias Chandrakant Agawane, Age 17 years, Occ. Education	)))	
3	Umesh Chandar alias Chandrakant Agawane, Age 14 years, Occupation-Education, All r/o. Pimpalgaon (Deshmukh) Taluka Barshi Dist. Solapur Note : No.2 and 3 being minors through their mother GAL Applicant No.1 above	)))))))))	Appellants
	Versus		
	Maharashtra State Road Transport Corporation, having its Head Office at Bombay Central, Byculla, Mumbai. (Summons be served on its Divisional Controller, Solapur Division, Budhwar Peth, Solapur.	)))))))	...Respondent

Mr. R. S. Alange, Advocate for the Appellant.

Ms. P. M. Bhansali i/b. G. S. Hegde and Associates, Advocate for Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd JANUARY, 2024.

Oral Judgment :

1. By way of this appeal, the claimant is seeking enhancement of compensation.

2. It is contention of leaned counsel for the appellants/claimants that deceased was progressive agriculturist. He was doing milk business, looking after land of others as yearly labourer and he used to earn yearly income near about Rs.2,00,000/- but the Tribunal has considered monthly income of deceased at Rs.2,000/-, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount is awarded on lower side, hence, requested it be allowed.

3. Learned counsel for respondent/corporation submitted that while calculating the compensation the Tribunal has applied multiplier of 17, it should be 16. Learned counsel further submitted that while awarding compensation, the Tribunal has considered all the aspects, hence, no interference is required in it.

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

5. It is claimants' case that the deceased was a progressive agriculturist, he was having 2.5 acres of bagayat land situated within the limits of village – Pimpalgaon, he used take cash crops, he was doing milk business and he was looking after the land of others as yearly labourer. The deceased was getting Rs.1,00,000/- from agricultural land and Rs.6,000/- per month from milk business and he used to earn more than Rs.15,000/- to 20,000/- from grape garden. The yearly income of

the deceased was about Rs.2,00,000/-. To prove the income of the deceased, the claimants have examined PW-1-Lata Agawane, wife of deceased, at Exhibit-12. She has stated that yearly income of the deceased was Rs.2,00,000/-. In support of evidence of PW-1, the claimants have examined PW2-Ashok Pawar. He has stated that he used to collect milk from the deceased. The deceased used to supply 18 to 19 litres milk and he used to pay Rs.4,000/- per month to the deceased. The claimants examined PW-3 Rajaram Kadam, he has stated that deceased used to work in his field and he used to pay Rs.15,000/- per year to the deceased. Considering the evidence on record, the Tribunal has considered monthly income of deceased at Rs.2,000/- per month. I am unable to understand the reason given by the Tribunal as it has come on record that deceased was agriculturist, he was doing milk business and he was working as labourer in the field of witness, but, these facts are not considered by the Tribunal. Considering the evidence on record, I am considering the monthly income of deceased at Rs.3,000/-.

The Tribunal has not awarded 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 claimants are entitled for 40% future prospects. Hence, I am considering 40% amount of total income as future prospects.

The Tribunal has applied multiplier of 17, it should be 16 as the deceased was 35 year old at the time of accident.

The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in **Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)**, each claimant is entitled for Rs.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses.

Considering the above calculations, the claimants are entitled for following compensation :

Particulars	Amount
Monthly Income	Rs. 3000.00
40% future prospects	Rs. 1200.00
Total	Rs. 4200.00
Annual Income 4200 X 12	Rs. 50400.00
Rs.50400/- X 16(multiplier)	Rs. 806400.00
1/3rd deduction for personal expenses	Rs. 268800.00
Total	Rs. 537600.00
Less 50% Contributory Negligence	Rs. 268800.00
Total	Rs. 268800.00
Consortium (Rs.48,000/- x 3 (claimants))	Rs. 144000.00
Funeral Expenses and Loss of Estate	Rs. 16000.00
Loss of Estate	Rs. 16000.00
Total Compensation	Rs. 448800.00

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The Tribunal has awarded Rs.1,64,000/-, if this amount is deducted from the amount of Rs.4,48,800/- considered by this Court, it comes to Rs.2,84,800/-. The claimants are entitled for this amount.

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

ORDER

1. The appeal is allowed.
 2. The claimants are entitled for enhanced compensation of Rs. 2,84,800/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
 3. Respondent-Corporation shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
 4. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)