IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 963 OF 2004

with

CROSS OBJECTION STAMP NO. 12420 of 2023

	The New India Assurance Co. Heard Office, Powai – Naka, Satara	))… Appellant
	versus	
1	Surekha Sankar Jagtap Age 28 yrs., Occup - Household	))
2	Smita Sankar Jagtap Age 9 yrs., Occup -Education	))
3	Prashant Sankar Jagtap Age 4 yrs.	))
4	Suraj Sankar Jagtap Age 2 yrs.	))
5	Kiran Sankar Jagtap Age 2 yrs.	))
6	Vyankar Maruti Jagtap (Deleted) All r/o. Shendurjane, Tal – Wai, Dist. Satara Nos. 2 to 5 being minors through their Legal Guardian mother applicant No.1 Surekha Sankar Jagtap	)))))
7	Mr. Brijmohan Nandlal Age Major, Occup – Transport Business R/o. Sumitra-kunj, Veenanagar, Khopoli, Dist. Raigad	))))… Respondents

Ms. Poonam Mital, Advocate for the Appellant.
Mr. Sharad T. Bhosale i/b. Mr. Dilip Bodake, Advocate for Respondent Nos. 1 to 5/claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 5th DECEMBER, 2024.

Judgment :

1. The appellant-Insurance Company has preferred this appeal against the judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short “the Tribunal”).

2. Respondent Nos.1 to 5/claimants have also filed cross-objection for interest amount and for awarding future prospects.

3. It is contention of learned counsel for the appellant-Insurance that the deceased was driver in S.T.Department and he was getting salary of Rs.4580/- but the Tribunal has considered the monthly income of the deceased at Rs.9,000/-, which is erroneous and, on that basis, compensation is awarded, which is on higher side. Hence, requested to allow the appeal.

4. It is contention of learned counsel for respondent Nos.1 to 5/claimants that at the time of the accident, the deceased was 32 year old, his 26 years service was left. Had he continued in service, he would have earned Rs.10,000/- to Rs.15,000/- per month. The monthly income of the deceased considered by the Tribunal is proper. Learned counsel further submitted that the Tribunal has not awarded future prospects while considering the monthly income of the deceased, the interest is awarded on lower side,the amount of consortium, funeral expenses and loss of income is awarded on lower side. Hence, requested to dismiss the appeal and allow cross objection .

5. I have heard both learned counsel, perused the impugned judgment and order passed by the Tribunal.

6. To prove the income of the deceased, claimant No.1 – Surekha Jagtap, wife of deceased, has examined herself at Exhibit -20. She has stated that her husband, at the time of the accident, was working as driver in S.T.Department and he was getting salary of Rs.6,000/-per month. To prove the income of the deceased, the claimants have examined CW2-Navnath Kamble, Senior Clerk in S.T. Depot, Bhiwandi. He has stated that the deceased was working as driver and he was getting salary of Rs.4580/-. At the age of 57 years, he would have got salary of Rs.9,000/- to Rs.10,000/- per month. While dealing with the income of the deceased, the Tribunal has observed that at the time of retirement, deceased would have earned around Rs.9,000/- as salary. On that basis, the Tribunal has considered the monthly income of the deceased at Rs.9,000/- per month. I am unable to understand the observations of the Tribunal as the claimant No.1 has stated that deceased was getting monthly salary of Rs.6,000/- per month and claimant No.2, who is senior clerk in S.T.Depot has stated that deceased was getting salary of Rs.4580/- per month, hence, the Tribunal should have considered evidence of these witnesses and the Tribunal should not have considered monthly income of the deceased on surmises and conjectures. Hence, I am considering monthly income of the deceased at Rs.6,000/- per month as stated by the wife of the deceased.

6.1. While awarding compensation, the Tribunal has not awarded future prospects. The deceased was permanent employee, 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 50% future prospects on the amount of Rs.6,000/-, which comes to Rs.3000/- and total comes to Rs.9,000/-. Hence, the monthly income of the deceased is considered as Rs.9000/- including future prospects.

6.2. The Tribunal has awarded consortium amount 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.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

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

Particulars	**Rs.**	**Amount**
Annual Income (Rs.6000/- x 12 months and 16 multiplier)	**Rs.**	11,52,000.00
50% future prospects	**Rs.**	5,76,000.00
Total	Rs.	17,28,000.00
1/4 deduction towards personal expenses	**Rs.**	4,32,000.00
Total	**Rs.**	**12,96,000.00**
Consortium (Rs.48,000/- x 5 (claimants)	**Rs.**	2,40,000.00
Funeral Expenses and Loss of Estate	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total Compensation	**Rs.**	**15,72,000.00**

The Tribunal has awarded Rs.10,00,000/-, if this amount is deducted from the amount of Rs.15,72,000/- considered by this Court, it comes to Rs.5,72,000/-. The claimants are entitled for this amount.

7. There is delay of 18 years and 23 days for filing cross-examination, it is inordinate delay without any proper explanation. Hence, I am not considering the issues raised in cross-objection filed by the claimants.

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

O R D E R

1. First Appeal No.963 of 2004 is partly allowed.

2. The cross-objection stands disposed of.

2. The claimants are entitled for enhanced compensation of Rs. 5,72,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.2,76,000/- is consortium amount, the claimants are entitled @ 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.

3. The appellant-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

4. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

5. The claimants shall pay court fees on enhanced amount as per Rule.

6. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

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

(SHIVKUMAR DIGE, J.)