IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 135 OF 2011

1. Smt. Kaushalya Balu Bhoi
Age 27 years, Occu – Household.

2. Tai Bhoi
Age 8 years, Occu – Nil.

3. Reshma Balu Bhoi
Age 6 years, Occ – Nil.

4. Reshma Balu Bhoi
Age 3 years, Occu – Nil.
[Applicants Nos.2 to 4 being minor Through their mother GAL Applicant no.1]

5. Dayaram Babu Boi
Age 52 years, Occu-Nil.

6. Kesharbai Dayaram Bhoi
Age 47 years, Occu – Household
All R/o. Chandaj, Tal – Madha,
District – Solapur. … Appellants [Original Claimants]

versus

1. M/s. Ashok Leyland Hyderabad
Shri M. Basavraj s/o. Mallappa Malkera,
Ter Maidan
R/o. Humnabad, Dist – Bidar, Bidar,
Karnatak State – 686101.

2. The New India Assurance Co. Ltd.
Summons be served on its Branch Manager,
Hutatma Complex, Park Chowk, Solapur.

3. Rajendra Bhaskar Patil
Age adult, Occu – Agriculture
R/o. Bhimnagar, Tal – Madha, District- Solapur.

4. The Oriental Insurance Co. Ltd.
Summons be served on its Branch Manager,
West Mangalwar Peth, Solapur. …. Respondents [Original Respondents]

Mr. R. S. Alange, Advocate for the Appellants.
Mr. Shubham Misar, Advocate for Respondent No.2/Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st FEBRUARY, 2024.

Oral Judgment :

1. By this appeal, appellants/claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the appellants/claimants that deceased was working as agricultural labourer and he was getting Rs.4,000/-. A witness was examined to prove the income but the Tribunal has considered income of deceased at Rs. 15,000/- per annum, which is on lower side. Learned counsel further submitted that the Tribunal has deducted 1/3rd amount for personal expenses, there are six claimants, it should be 1/4th. Learned counsel further submitted that future prospects are not awarded and consortium amount is awarded on lower side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2-Insurance Company that deceased was agricultural labourer. No evidence was produced on record to show his income. The income considered by the Tribunal is proper. Learned counsel further submitted that as per the age of the deceased, the proper multiplier is 17 but the Tribunal has wrongly applied multiplier of 18. Learned counsel further

submitted that the the Tribunal has considered all the aspects while passing the order, no interference is required in it.

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

4. To prove the income of the deceased, the claimants have examined claimant No.1 at Exhibit-27. She has stated that the deceased was working in the land owned by one – Sanjay Patil. He was a skilled worker in irrigated land. He was earning Rs.4,000/- per month. To support the evidence of PW-1, the claimants examined PW-3 Sanjay Patil at Exhibit -35. He has stated that deceased – Balu was working as mukadam with him. He was looking after maintenance of grape garden and he had knowledge about grape garden. He was paying Rs.4,000/- per month to Balu. In cross-examination, this witness admitted that he had no document to show that the deceased was working with him and paying Rs.4,000/- per month to him. Considering the evidence on record, the Tribunal has considered yearly income of the deceased at Rs.15,000/- per annum. I am unable to understand the observations of the Tribunal as it has come in the evidence of PW-1, wife of the deceased that her husband was working with Sanjay Patil and he was paying salary of Rs.4,000/- per month to her husband. Her evidence is supported by the evidence of PW3-Sanjay Patil. Mere not producing the documents about the salary, cannot be a ground to say that the deceased was not

working with Mr. Sanjay Patil. Deceased was working as mukadam with farmer, so it cannot be said that the farmer can maintain the record of the salary of mukadam but this fact is not considered by the Tribunal. Moreover, the deceased was maintaining family of seven members. Hence, I am considered monthly income of the deceased at Rs.4,000/- per month. While calculating compensation, 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.

The Tribunal has applied multiplier of 18, it should be 17.

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. There are six claimants.

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

Particulars	**Amount**	
Annual Income (Rs.4000/- pm x 12)	Rs.	48000.00
40% future prospects	Rs.	19200.00
Total	**Rs.**	**67200.00**
1/4th deduction towards personal expenses	Rs.	16800.00
Total	**Rs.**	**50400.00**

(Rs. 50400/- x 17(multiplier)	**Rs.**	**856800.00**
Consortium (Rs.48,000/- x 6 (claimants))	Rs.	288000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total Compensation	**Rs.**	**1180800.00**

The Tribunal has awarded Rs.1,87,000/-, if this amount is deducted from the amount of Rs.11,80,800/- considered by this Court, it comes to Rs.9,93,800/-. The claimants are entitled for this amount.

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

O R D E R

1. The appeal is allowed.
2. The claimants are entitled for enhanced amount of Rs. 9,93,800/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.3,24,000/- is towards consortium, the claimants are entitled for interest @ 7.5% interest on this amount from 1st November 2017 till realisation of the amount.
3. Respondent No.2-Insurance Company is directed to deposit the enhanced amount along with accrued interest thereon within eight weeks from receipt of this order.

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

The first appeal stands disposed of.

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

(SHIVKUMAR DIGE, J.)