IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2308 OF 2011

1. Madhuri Mahesh @ Mukesh Kulkarni }
Age-40 years, Occ: Household }

2. Madhavi Mahesh @ Mukesh Kulkarni }
Age-20 years, Occ: Education }

3. Monika Mahesh @ Mukesh Kulkarni }
Age-17 years, Occ: Education }

4. Prasad Mahesh @ Mukesh Kulkarni }
Age-15 years, Occ : Education, }
(Appellant Nos.3 and 4 being minors represented through their mother Appellant No.1) }

5. Vinayak Govind Kulkarni }
Age-80 Years, Occ: Nil, }
All R/o. Wani Plot, Behind School No.1, Barshi, District-Solapur } **(Org. Claimants)**
….Appellants

Versus

1. M/s.S.J.S.B. Kulkarni Sales Pvt. Ltd. }
At post Jamgeon, Taluka-Barshi, }
District-Solapur. }
Present Address : (Notice to be served on Kulkarni Sales Pvt. Ltd.,) Mahatma Gandhi Shopping Center, Pulwale Chowk, At Post, Taluka-Barshi, District-Solapur }

This Judgment is corrected in view of order dated 1st August 2025 passed in Review Petition Stamp No.241863/25

2. United India Insurance Co. Janta Shopping Centre, Navi Peth, Solapur	} }	
3. The Oriental Insurance Co. Ltd. West Mangalwar Peth, Opp. Telephone Exchange, Solapur	} } } }	**....Respondents**

Mr.R.S. Alange, for the Appellants.
Ms.Urmila K. Sanil, for Respondent No.2.
Mr.Mohit Turkhia i/b Mr.S.S. Vidyarthi, for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st NOVEMBER 2024

JUDGMENT :-

. By this Appeal, the Appellants are seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellants that deceased was Primary School Teacher and he was getting salary of Rs.8,896/-, but the Tribunal has considered salary of the deceased at Rs.3,469/- which is on lower side. The learned counsel further submitted that, Tribunal has not awarded 30% future prospects and the deduction for personal expenses should be 1/4th. But the Tribunal has deducted 1/3rd amount for personal expenses, which is erroneous. The learned counsel

further submitted that, the Tribunal has not awarded consortium amount to all the Claimants and amount for medical expenses as claimed has not been considered by the Tribunal. Hence, requested to allow the Appeal.

3. The learned counsel for the Respondent No.2-Insurance Company vehemently submitted that, the accident occurred due to head on collusion. There was contributory negligence of the deceased in the said accident. But these facts are not considered by the Tribunal. The learned counsel further submitted that, the income of the deceased is considered as per the evidence produced on record and the Tribunal has applied multiplier of 16, it should be 14. Hence, requested to dismiss the Appeal.

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

5. The deceased was Primary School Teacher. To prove the income of the deceased, the claimant's have examined PW-3-Devidas Aadekar at Exhibit-41 Headmaster in Zilla Parishad

Primary School. He has stated that, the deceased was working in their school as Assistant Teacher and his gross salary of month of January-2003 was Rs.8,896/-. PW-4-Hanumant Bhosale, Senior Clerk in the Office of Panchayat Samiti Karmala, Education Depatment at Exhibit-47 has stated that, the deceased was working as Assistant Teacher. Salary Certificate is at Exhibit-43.

6. While dealing with the issue of income of the deceased the learned Tribunal has observed that, the deceased was getting salary of Rs.3,469/- in hand. Hence, the Tribunal has considered monthly income of deceased at Rs.3,469/-. I am unable to understand the observations of the Tribunal as the deceased was a Government Employee and he was getting salary of Rs.8,896/-. It is settled principle of law that, the Claimants are entitled for last drawn salary. This fact is not considered by the Tribunal. Hence, I am considering last drawn salary of deceased. The Tribunal has not awarded future prospects as the deceased was permanent employee. As per view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi***[1]**,** the Claimants are entitled for future prospects. Hence, he is entitled

1 *2017 ACJ 2700 (SC)*

for 30% future prospects. The Tribunal has applied multiplier of 16, at the time of the accident the deceased was 42 years old. The proper multiplier is 14, hence, I am considering this multiplier. The Tribunal has not awarded consortium amount as per view of the Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram[2],*** each Claimant is entitled for Rs.48,000/- for consortium, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

7. It is contention of the learned counsel for the Respondent No.2-Insurance Company that, the medical expenses are not proved. In my view, the Tribunal has given exhibit number to medical bills and has observed in Paragraph No.10 and 17 of the judgment and order about it hence, the Claimants are entitled for this amount.

8. In view of above, the Claimants are entitled for following compensation:-

Particulars	Amount
Annual Income Rs.8896/- x 12 months	Rs.1,06,752.00
Less : Income Tax Rs.340/- per month and Professional Tax Rs.175/- per	Rs.6,180.00

2 **2018 ACJ 2782 (SC)**

month(Rs.6180/- Annual)	
Total	Rs.1,00,572.00
Add : 30% Future Prospects	Rs.30,172.00
Total	Rs.**1,30,744.00**
1/4th deductions towards personal expenses	Rs.32,686.00
Total	Rs.98,058.00
Rs.98,058/- x 14 Multiplier	Rs.**13,72,812.00**
Medical Expenses	Rs.14,630.00
Consortium Rs.48000/- x 5 claimants	Rs.2,40,000.00
Funeral Expenses	Rs.18,000.00
Loss of Estate	Rs.18,000.00
Total Compensation	Rs.16,63,442.00
Less Awarded Amount	Rs.4,65,662.00
Enhanced Amount	Rs.11,97,780.00

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

ORDER

(i) The Appellants/Claimants are entitled for enhanced amount Rs.11,97,780/- @ 7.5% per annum from the date of filing of the Claim Petition till realization of the amount. Out of this amount Rs.2,76,000/- is consortium amount the Claimant's are entitled for interest @ 7.5% on it from 1st November 2017 till realization of amount.

(ii) The Respondent No.2-Insurance Company shall deposit enhanced amount within four weeks along with accrued interest thereon.

(iii) The Claimant's are permitted to withdraw deposited amount along with accrued interest thereon.

(iv) The Claimant's shall pay Court Fees on enhanced amount, as per Rule, if any.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)