

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.114 OF 2022

1. Mrs.Jayashri Shrinivas Shival	}	
Age-49, Occ : Household	}	
2. Mr.Shrinivas Balaprasad Shival	}	
Age-52 years, Occ : Service	}	
3. Kum.Shubhangi Shrinivas Shival	}	
Age-22 years, Occ : Education	}	
	}	
All R/at-Vishnu Apartment, Bhavani Peth,	}	
Solapur, District-Solapur.	}	Appellants

Versus

M/s.Pallavi Contrainer Movers	}	
Thr. Partner Shibha Bhalke	}	
Age-43 years, Occ : Business	}	
R/at 404, 4 th Floor, Shivplaza, Sector-1, E	}	
Kalamboli Node, Panvel	}	
Reliance General Insurance Company	}	
R/o. Old Employment Chowk, Solapur	}	Respondents

Mr.Rajeshkhar S. Alange, for the Appellants.
Mr.Akshay Kulkarni, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 28th FEBRUARY 2024

ORAL JUDGMENT :-

. By way of this Appeal, the Appellants-Claimants are

seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellants-Claimants that deceased was pursuing MBA and he had bright career, but Tribunal has considered his notional income at Rs.6,000/- Per month, which is on lower side. The Tribunal should have considered Rs.15,000/- per month as income of the deceased. The learned counsel further submitted that, the Tribunal has not awarded future prospects and consortium amount has not been awarded, it be awarded. Hence, requested to allow the Appeal.

3. The learned counsel for the Respondent-Insurance Company vehemently submitted that, the deceased was pursuing the MBA he was not getting any salary hence the notional income considered by the Tribunal is proper. The learned counsel further submitted that, while passing the order the Tribunal has considered all the aspects on that basis the judgment and order is passed. No interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ("The

Tribunal' for short), Solapur.

5. To prove the income of deceased the Claimant's have examined Claimant No.1 Jayshree Shival mother of deceased at Exhibit-11. She has stated that at the time of the accident the deceased was pursuing MBA and he was working in J.P. Laboratories and he was getting salary of Rs.15,000/- per month. Nothing elicited in her cross-examination. In support of evidence of PW-1 Claimants have examined PW-3 Mukund Jadhav husband of owner of J.P. Laboratories and Managing Director of J.P. Laboratories. He has stated that, the deceased Shubham was working as Trainee Marketing Officer in their company and he was getting salary of Rs.15,000/- per month. He produced copies of muster roll and salary register for the month of June to September-2015. It is at Exhibit-38 to 41. In cross-examination he admitted that, he is not owner of J.P. Laboratories. His wife is owner. He further admitted that he had not signed on the appointment letter of the deceased.

6. While dealing with the issue of income of the deceased the Tribunal has observed that, the documents

produced on record in respect of the employment of the deceased appears to be false and bogus, on that basis the Tribunal has considered notional monthly income of deceased at Rs.6,000/- per month. I am unable to understand the observations of the Tribunal, as it has come on record that the deceased was B.Com Graduate and he was pursuing MBA. PW-2 has categorically stated that, the deceased was working in their company as Trainee Marketing Officer. The muster roll of salary is produced on record to show that the deceased was working in the company. Though the Tribunal has observed that the documents produced on record by the PW-3 appears to be false. In my view, PW-3 in his cross-examination has stated that, the deceased was not his relative or partner. There is no reason to disbelieve that PW-3 has deposed false on oath. Considering evidence on record I am considering Rs.13,000/- as notional monthly income of the deceased as he was graduate, pursuing MBA and at the time of the accident he was 22 years old. The Tribunal has not awarded future prospects. As per view of the Hon'ble Apex Court in the

case of *National Insurance Co. Ltd. V/s. Pranay Sethi*¹, the Claimant's are entitled for 40% future prospects. The Tribunal has not awarded consortium amount. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*², 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. Considering these calculations the Claimants are entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.13,000.00
Annual Income	Rs.1,56,000.00
(+) Future Prospects (40%)	Rs.62,400.00
Annual Income After Future Prospects	Rs.2,18,400.00
Deduction 50%	1,09,200.00
Multiplier 18	Rs.19,65,600.00
Consortium (Rs.48,000 x 4)	Rs.1,44,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Total	Rs.21,45,600.00
Awarded Amount	Rs.6,78,000.00
Enhanced Amount	Rs.14,67,600.00

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

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

ORDER

- (i) The Appeal is allowed.
- (ii) The Claimants are entitled for enhanced amount of Rs.14,67,600/- @ 7.5% per annum from the date of the filing of Claim Petition till realization of the amount.
- (iii) The Respondent-Insurance Company shall deposit enhanced amount along with accrued interest thereon within six weeks after receipt of the order.
- (iv) The Claimants are permitted to withdraw the deposited amount alongwith interest.
- (v) The Claimants shall pay deficit Court Fees.
- (vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)