

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

FIRST APPEAL NO.1159 OF 2018

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Shriram General Insurance Co. Ltd.	}	
Thr. Legal Manager, Mr.Satpalsingh Rajput	}	
Office No.106, Road No.22, Lodha	}	
Suprumus-2, Wagle Estate, Near New	}	
Passport Office, Thane-West-400 604.	}	(Org. Opposite
Maharashtra	}	Party No.1)
Thr. Legal Manager Mr.Satpalsingh Rajput	}	...Appellant

Versus

1. Smt.Kajal Babasaheb Jadhav	}	Org. P.No.1
Age-21 years, Occ: Household	}	
2. Kum.Yash Babasaheb Jadhav	}	Org. P.No.2
Age-2 and 1/2 years, Occ: Nil	}	
3. Kum.Omkar Babashaeb Jadhav	}	Opp P.No.3
Age-1 month, Occ: Nil	}	
4. Aruna Dadaso Jadhav	}	Opp.P.No.4
Age-46, Occ: Household	}	
5. Dadaso Bhagwan Jadhav	}	R.No.5 deleted as
Age-52, Occ : Nil	}	per order
	}	dt.10/7/23 and
	}	28/06/21
	}	(Org. P.No.5)
Applicant No.1 is guardian of Minor	}	
Applicant No.2 and 3	}	
All R/at Behind Gram Panchayat office,	}	
Ankali, Taluka-Miraj, District-Sangli	}	

6. **Shri.Suraj Bhart Tarate** } Org. Opposite
Age-40 years, Occ : Business } Party No.1
R/at Dhamani Nagar, Laxmi Peth, Solapur, }
District-Solapur. }
7. **Mr.Dattatraya Babu Bandgar** }
Age-40 years, Occ: Truck Driver }
R/at Andhalgaon, Taluka Mangalvedha, }
District-Solapur. }Respondents

Mr.Nikhil Mehta i/b KMC Legal Venture, for the Appellant.
Mr.Kuldeep Nikam a/w Mr.Prasad Avhad, for Respondent Nos.1
to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 10th MAY 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is income of the
deceased is considered on higher side.

2. It is contention of the learned counsel for the
Appellant that, the Tribunal has considered monthly income of
deceased at Rs.12,000/- per month without any evidence on
record, which is on higher side and on that basis compensation is
awarded, which is erroneous. Hence, requested to allow the
Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the deceased was working as labourer in bricks factory and he was getting Rs.600/- per day. But the Tribunal has considered his monthly income at Rs.12,000/-, which is proper. The learned counsel further submitted that, the Tribunal has awarded consortium amount on lower side, it be awarded and requested to dismiss the Appeal.

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

5. To prove the income of the deceased the Claimant No.1 Kajal Jadhav widow of deceased examined herself. She has stated that deceased was working as labourer in bricks factory of Umesh Kumbhar and he was getting Rs.600/- per day. In support of evidence of PW-1, the Claimant's have examined PW-2 Umesh Kumbhar at Exhibit-41, owner of the factory. He has stated that the deceased was working as labour in his factory and he was paying him Rs.600/- per day. The Salary Certificate is at

Exhibit-42. He further stated that in off season he used to pay Rs.300/- per day as wages to the deceased. Nothing elicited in the cross-examination of this witness. Considering the evidence on record, the Tribunal has considered Rs.400/- per day as labour wages and considered Rs.12,000/- as monthly income of the deceased. In my view, it is on little higher side. Hence I am considering Rs.10,000/- as monthly income of the deceased. The Claimants are also entitled for 30% future prospects. The Tribunal has awarded consortium amount of Rs.60,000/-. In my view, it is on lower side. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram¹*, 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. There are four claimants, total comes to Rs.2,28,000/-.

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

Annul income (Rs.10,000/- X 12)	Rs.1,20,000/-
Multiplier X 17	Rs.20,40,000/-
Less $\frac{3}{4}$ for personal expenses	Rs.5,10,000/-
Total amount	Rs.15,30,000/-

1 2018 ACJ 2782 (SC)

Add:30% future prospects	Rs.4,59,000/-
Consortium amount (Rs.48,000/- X 4)	Rs.1,92,000/-
Loss of estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total amount	Rs.22,17,000/-

The Tribunal has awarded Rs.24,46,800/-, if Rs.22,17,000/- considered by this Court is deducted from it, it comes to Rs.2,69,800/-. This is an excess amount. The Appellant/Insurance Company is entitled for it.

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

ORDER

(i) The Appeal is partly allowed.

(ii) The Appellant-Insurance Company is permitted to withdraw excess amount of Rs.2,69,800/- with proportionate interest, out of the deposited amount, the Claimant's are permitted to withdraw balance amount along with proportionate interest.

(iii) The statutory amount along with interest be transferred to the Tribunal. Parties are at liberty to

withdraw it, as per Rules.

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

(SHIVKUMAR DIGE, J.)