IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2232 OF 2007

1	Anuradha Dnyanchandra Ravan, Age : 42, Occu-Household.		
2	Amrut Dnyanchandra Ravan, Age : 14, Occu – Education.		
3	Pranit Dnyanchandra Ravan, Age : 7 months, Occu.-Nil. Nos.2 and 3 minor, Guardian-Mother-Applicant No.1.		
4	Sundar Gangadhar Ravan, Age : 73, Occu-Household, All R/o.-Dighanchi, Tal.-Atpadi, Dist.-Sangli.	…	Appellants/ Orig.Claimants
	versus		
1	Prashant Gangadhar Ravan, Age : 55, Occu-Owner/businessman. R/o. Dighanchi, Tal.-Atpadi, Dist.-Sangli.		
2	The New India Assurance Co.Ltd. Kamgar Bhavan, Sangli.		
3	Nitin Uday Honrao, Age : 33, Occu- Driver, R/o. Dighanchi, Tal.-Atpadi, District-Sangli.	….	Respondents/ Orig. Opponents

with

FIRST APPEAL NO. 1866 OF 2008

	The New India Assurance Co.Ltd. Kamgar Bhavan, Sangli.	….	Appellant (Orig. Opponent No.2)
1	Anuradha Dnyanchandra Ravan, Age : 42, Occu-Household.		
2	Amrut Dnyanchandra Ravan, Age : 11, Occu – Education.		

3	Pranit Dnyanchandra Ravan, Age : 6 months, Occu.-Nil. Nos.2 and 3 minor, Guardian-Mother- Applicant No.1.		
4	Sundar Gangadhar Ravan, Age : 73, Occu-Household, All R/o.-Dighanchi, Tal.-Atpadi, Dist.-Sangli.	…	Respondent Nos.1 to 4 Orig.Applicants
5	Prashant Gangadhar Ravan, Age : 52, Occu-Owner/businessman. R/o. Dighanchi, Tal.-Atpadi, Dist.-Sangli.	….	Orig. Opponent No.1
6	Nitin Uday Honrao, Age : 30, Occu- Driver, R/o. Dighanchi, Tal.-Atpadi, District-Sangli.	….	Orig. Opponent No.3 Respondents

Mr. Tejpal S. Ingale along with Ms. Priyanka Babar, Advocate for the Appellant in First Appeal No.2232 of 2007 and for Respondent Nos.1 to 4 in First Appeal No.1866 of 2008.
Ms. Poonam Mital, Advocate for the Appellant-Insurance Company in First Appeal No.1866 of 2008 and for Respondent No.2 in First Appeal No.2232 of 2007.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st APRIL, 2024.

Oral Judgment:

1. First Appeal No.2232 of 2007 is preferred by the appellants/claimants for enhancement of compensation. Respondent No.2-Insurance Company has also preferred cross appeal (First Appeal

No.1866 of 2008). As both appeal and cross appeal are against the same judgment and order, I am deciding it by this common judgment.

2. It is contention of learned counsel for the claimants that deceased was working in Vita Merchant Cooperative Bank and he was getting salary of more than Rs.5831/- but the Tribunal has considered Rs.4804/- as salary, which is on lower side. Learned counsel further submitted that the deceased was getting income of Rs.5,000/- per month from partnership, which is considered by the Tribunal. The Tribunal has awarded future prospects on lower side. Learned counsel further submitted that deceased was married but the Tribunal has deducted 1/2 amount for personal expenses, which is erroneous. Learned counsel further submitted that as per the age of the deceased, multiplier should be 15 but the Tribunal has applied 14, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Insurance Company that the deceased was partner in partnership firm and the offending vehicle was belonging to the partnership firm. The deceased stepped into the shoes of the owner of the vehicle, hence, the claimants are not entitled for compensation as the accident occurred when he was travelling in the vehicle belonging to the partnership firm but this fact is not considered by the Tribunal. Hence, requested to dismiss the appeal filed by the claimants.

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

5. To prove the income of the deceased, the claimants have examined AW3--Ranganath Gonjare at Exhibit-54, Senior Chief Officer of Vita Merchant Cooperative Bank. He has stated that deceased was serving as senior clerk in their bank and he was getting salary of Rs.5831/-. The salary certificate is at Exhibit-61. Nothing elicited in cross-examination of this witness. While considering the salary income of the deceased, the Tribunal has considered gross salary at Rs.4804/- after deduction of Rs.1027/-. In my view, it is settled principle of law that profession tax has to be deducted while considering salary income. After deducting profession tax of Rs.120/-, the salary of deceased comes to Rs.5711/-, hence, I am considering this amount as monthly income of the deceased. The Tribunal has already considered Rs.5,000/- a monthly income of the deceased from partnership firm. The said income has not been challenged by the Insurance Company.

5.1. It is contention of learned counsel for the Insurance Company that the deceased was travelling in the vehicle of partnership firm and the accident occurred. The deceased was partner in the said firm, as such, the deceased had stepped into the shoes of the owner, hence, he is not entitled for compensation. It has come on record that the offending vehicle was standing in the name of brother of the deceased and the offending vehicle was purchased prior to registration of partnership firm. It was not in the name of partnership firm. Hence, I do not find merit in the contention that deceased had stepped into the shoes of owner.

5.2. The Tribunal has awarded future prospects on lower side. 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 as the deceased was permanent employee of the bank as well as 40% future prospects as the deceased was also earning income from his partnership business.

5.3. The Tribunal has deducted 1/2th amount for personal expenses. The deceased was married and there are four claimants. The Tribunal should have deducted 1/4th amount for personal expenses, hence, I am considering 1/4th amount for personal expenses.

5.4. At the time of the accident, the deceased was 38 year old, the proper multiplier is 15 but the Tribunal has applied multiplier of 14, which is erroneous. Hence, I am considering multiplier of 15.

5.5. 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.

5.6. In view of above, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Monthly Salary Income	Rs.	5711.00
50% future prospects	Rs	2855.00
Total	Rs	8566.00
Monthly Partnership Business Income	Rs	5000.00
40% future prospects	Rs	2000.00
Total	Rs	7000.00
Total monthly salary and business Income (Rs.8566/- plus Rs.7000/-)	Rs	15566.00
1/4th deductions for personal expenses	Rs	3891.00
Total	Rs	11675.00
Rs.11675/- x 12(months) x 15(multiplier)	Rs	2101500.00
Consortium (Rs.48000/- x 4claimants)	Rs	192000.00
Loss of Estate	Rs	18000.00
Funeral Expenses	Rs	18000.00
Total Compensation.	Rs	**2329500.00**

The Tribunal has awarded Rs.9,54,000/-, if this amount is deducted from the amount of Rs.23,29,500/- considered by this Court, it comes to Rs.13,75,500/-. The claimants are entitled for this amount.

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

O R D E R

1. First Appeal No.2232 of 2007 is allowed.
2. First Appeal No.1866 of 2008 is dismissed. No order as to costs.

3. The claimants are entitled for enhanced compensation of Rs.13,75,500/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.2,28,000/- is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.

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

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

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

7. The statutory amount in First Appeal No.1866 of 2008 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.)