

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 123 OF 2021

TALLE
SHUBHAM
ASHOKRAO

Digitally signed by
TALLE SHUBHAM
ASHOKRAO
Date: 2024.02.29
18:13:29 +0530

1. Smt. Anita Shashikant Mane
Age- 42 Yrs., Occ-Household,
R/o. Pandurang Vasti, Behind Taluka Police
Station, South Sadar Bazar, Solapur.
 2. Rohit Shashikant Mane
Age- 26 yrs., Occ-Education,
R/o Pandurang Vasti, Behind Taluka Police Station,
South Sadar Bazar, Solapur.
 3. Smt. Gangubai Dagadu Mane (Deceased)
R/o Pandurang Vasti, Behind Taluka Police Station,
South Sadar Bazar, Solapur.
-Appellants

Versus

1. Mr. Naveen Nageshappa Gouda
Age- Adult, Occ-Business
R/o. Vidya Nagar, Barshi Naka, Osmanabad.
2. ICICI Lombard General Insurance Company. Ltd, ... Respondents.
Old Hotagi Naka Branch, Solapur.

Mr. Yogesh Thorat a/w Adv. N.M. Khupsare i/by Adv. Ashok B.
Tajane, Advocate for the Appellant.
Adv. R. S. Alange, for Respondent No. 1.
Adv. Rajesh Kanojia i/b Res Juris for Respondent No. 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th FEBRUARY, 2024.

ORAL JUDGMENT. :

1. By this Appeal the Appellant/Claimants are seeking

enhancement of the compensation.

2. It is contention of learned Counsel for the Appellants/Claimants that the deceased was Rikshaw Driver and he was getting Rs. 6,000/- p.m., but the Tribunal has considered his monthly income at Rs. 3,600/- which is on lower side. Learned Counsel further submitted that the Tribunal has not awarded future prospects, it be awarded. Learned Counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded. Hence requested to allow the Appeal.

3. It is contention of learned Counsel for the Respondent/Insurance Company that the Tribunal has considered all the aspects while passing Judgment and Order, no interference is required in it. Learned Counsel for the Respondent/Owner of the vehicle submitted that appropriate Order be passed.

4. I have heard both learned Counsel, perused the Judgment and order passed by the Motor Accident Claims Tribunal, Solapur, (for short "the Tribunal").

5. To prove the income, the Claimants have examined the Claimants No. 1 Smt. Anita Mane, is at exhibit-20, she has stated that deceased was driving Rickshaw and he was getting Rs. 6,000/- p.m.

Considering the evidence on record the Tribunal has considered income of the deceased at Rs. 3,600/- p.m. In my view the income considered by the Tribunal is on lower side as, the deceased was Rickshaw driver and he was maintaining family of 4 persons. The evidence of PW-1 cannot be disbelieved as she is wife of the deceased. She was aware of the income of the deceased. She has stated that the deceased was earning Rs. 6,000/- p.m. Considering evidence on record, i am considering notional monthly income of the deceased at Rs. 5,000/- p.m. 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 awarded consortium amount on lower side, it should be awarded 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. 48,000/- as consortium amount and Rs. 18,000/- for funeral expenses and Rs. 18,000/- for loss of estate.

Considering above calculations, the Claimants are entitled for following compensation.

Monthly Income-Notional	Rs. 5,000/-
-------------------------	-------------

40% Future Prospects	Rs. 2,000/-
Total monthly Income	Rs. 7,000/-
Yearly income 7000x12	Rs.84,000/-
1/3rd Deduction for living expenses (Rs. 84,000 – 28,000)	Rs. 56,000/-
Multiplier Rs. 56,000 x 15	Rs. 8,40,000/-
Total income	Rs. 8,40,000/-
Loss of consortium = 48000x3	Rs. 1,44,000/-
Loss of Estate	Rs. 18,000/-
Funeral Expenses	Rs. 18,000/-
Total	Rs. 1,80,000/-
Total Compensation Rs. 8,40,000 + Rs. 1,80,000/-	Rs.10,20,000/-
Award Amount	Rs. 4,15,000/-
Total Enhancement Amount	Rs. 6,05,000/-

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

ORDER

- a) The Appeal is allowed.
- b) The Claimants are entitled for enhanced amount of Rs. 6,05,000/- @ 7.5 interest per annum from the date of filing Claim Petition, till the realisation of the amount, out of this amount the consortium amount is Rs.1,80,000/-, the claimants are entitled 7.5 % interest on this amount from 1 st November, 2017 till realisation of the amount.
- c) The Respondent/Insurance Company shall deposit

the enhanced amount along with accrued interest thereon, within eight weeks after receipt of the order.

d) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

7. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)