IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.36 OF 2008

1. Mrs.Jyoti Dilip Shah	}	
Age-53 years, Occ : Household,	}	
	}	
2. Priyal Dilip Shah	}	(Org.
Age-24 years,	}	Claimants)
Both R/at 184/4995, Pant Nagar,	}	
Ghatkopar (E), Mumbao-400 075.	}	**...Appellants**

Versus

1. Murlidhar Shankar Khare	}	
Age-59 years, Occ : Driver	}	
2. Mr.Nandkumar Shamrao Tivale	}	
Both R/at-939, A-Ward, Shivaji Peth, Kolhapur.	}	
3. The New India Assurance Co. Ltd.	}	
Branch at Sangli	}	(Org.Opponents
	}	**…Respondents**

Mr.Tejpal Ingle a/w Ms.Priyanka Babar, for the Appellant.
Ms.Poonam Mital, for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th MARCH 2024

ORAL JUDGMENT :-

. By this Appeal, the Appellant's-Claimant's are seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellants-Claimant's that, the deceased was dealing in pharmaceutical business. He was active member of Chemists and Druggist Association. He was partner in Volga Chemists and Volga Agencies. He was earning Rs.6,000/- to Rs.10,000/- per month, but Tribunal has considered his monthly income at Rs.6,000/- per month, which is on lower side. The learned counsel further submitted that while awarding compensation the Tribunal has not awarded future prospects and consortium amount is awarded on lower side, it be awarded. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance Company that no evidence was produced on record to prove the income of the deceased. The Tribunal has considered monthly income of the deceased, on the basis of the evidence produced on record. The learned counsel further

submitted that the Tribunal has considered all the aspects while passing judgment and order, no interference is required in it. Hence 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's have examined Claimant No.1 Jyoti Dilip Shah, wife of the deceased at Exhibit-35. She has stated that deceased was holding diploma in Pharmacy from Bombay University. He was working as a partner in Volga Chemists and as a Manager in Volga Agencies and he was contributing Rs.7,000/- to Rs.8,000/- per month for expenses of family. The income of the deceased considered by the Tribunal is Rs.6,000/- per month. In my view, it is proper. Hence, I am considering same income. While awarding compensation 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

1 2017 ACJ 2700 (SC)

are entitled for 25% future prospects as at the time of the accident the deceased was 41 years old.

6. The Tribunal has awarded consortium on lower side. 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 this calculation the Claimants are entitled for following compensation.

Particulars	**Amount**
Monthly Income	Rs.6,000.00
(+) Future Prospects (25% - Age 41 Yrs) Rs.6,000/- + Rs.1500=	Rs.7,500.00
1/3rd Personal deduction Rs.7,500 – Rs.2500= Rs.5,000 x 12	**Rs.60,000.00**
Multiplier	**(X) 14**
Total Loss of Income	**Rs.8,40,000.00**
Consortium (Rs.48,000 x 2)	(+) 96,000.00
Loss of Estate	(+) Rs.18,000.00
Funeral Expenses	(+) Rs.18,000.00
Total Just Compensation Payable	**Rs.9,72,000.00**
Less already awarded amount	(-)Rs.7,00,000.00
Enhanced Compensation	**Rs.2,72,000.00**

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.2,72,000/- @ 7.5% from the date filing of the Claim Petition till realization of the amount. Out of this amount Rs.1,32,000/- is consortium amount, the Claimant's are entitled interest @ 7.5% on this amount from 1st November 2017 till realization of the amount.

(iii) The Respondent-Insurance Company shall deposit the enhanced amount along with interest thereon within six weeks after receipt of the order.

(iv) The Claimant's are permitted to withdraw amount deposited by the Respondent-Insurance company.

(v) The Claimants shall pay deficit Court Fees.

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

(SHIVKUMAR DIGE, J.)