IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1318 OF 2012

1	Vishnu Gunda Kumbhar Age 68 years, Occ. Agriculture.		
2	Yogesh Bharat Kumbhar Age 16 years, Occ. Education		
3	Girish Bharat Kumbhar Age 9 years, Occ. Education		
4	Jijabai Vishnu Kumbhar Age – 63, Occu.Household All are residing at Narsingpur, Tal. Walva, Dist. Sangli, (Nos. 2 to 3 are minors through their guardian No.1)	…	Appellants (Orig. Claimants)
	Versus		
1	Pundlik Ramchandra Lokhande, Age-Adult, Occu. Business, R/o. Tulsi Nilaya, “C” Block, Vidyanagar Haveri, Tal. Haveri, Karnataka, State – 581 110.		
2	The New India Insurance Co. Ltd., Gupta Building, Ashok Circle, Ranibennur, Karnataka State	…	Respondents

Mr. Tejpal S. Ingale along with Ms. Priyanka Babar, Advocate for the Appellants.
Mr. Sujit Padarat i/b. Mr. Sandeep Waghmare, Advocate for the Respondent No.1.
Mr. Ketan Joshi, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st FEBRUARY, 2024.

Oral Judgment :

1. By way of this appeal, the claimants are seeking enhancement of compensation.

2. It is the contention of learned counsel for the appellants/claimants that deceased was BHMS doctor. She was running a hospital but the Tribunal has considered her monthly income at Rs.10,000/- per month, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects while awarding compensation and the Tribunal has deducted ½ amount for personal expenses, it should be 1/4th as there are four claimants. Learned counsel further submitted that the consortium amount is awarded on lower side, it be awarded. Learned counsel further submitted that the Tribunal has considered 50% contributory negligence of the deceased in the said accident. She was a pillion-rider, so no question of her contributory negligence arises. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondent No.2-Insurance Company that while passing the order, the Tribunal has considered all the aspects and, on that basis, the judgment and order is passed. No interference is required in it. Learned counsel further submitted that no evidence was produced on record to prove that the deceased was earning Rs.10,000/- per month.

4. It is contention of learned counsel for respondent No.1-owner of the vehicle that appropriate order be passed.

5. I have heard all learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Sangli (for short "the Tribunal").

6. To prove the income of the deceased, the claimants have examined claimant No.1-Vishnu Kumbhar. He has stated that the deceased was his daughter-in-law. He further stated that the deceased and her husband were running a ten bedded hospital by name "Suyog Hospital". In the cross-examination, he has admitted that he is not aware whether the deceased was paying income tax or not. In support of the evidence of PW1, the claimants have examined PW2-Vaibhav Kamble, who was working as a Compounder, in the hospital of the deceased. He has stated that he knew deceased and Dr. Bharat, husband of the deceased. He was working with them as a compounder, since three years before the accident. The deceased and her husband were running

hospital by name “Suyog Hospital” in Shivnagar. This witness was doing duty for 12 hours and he was getting a salary of Rs.1500/- per month. Two more nurses were working in that hospital. The hospital was ten bedded hospital. In cross-examination, this witness admitted that the deceased and her husband were practising separately but in the same building. Nothing elicited in his cross-examination to disbelieve his evidence. Considering the evidence on record, the Tribunal has considered monthly income of the deceased at Rs.10,000/- per month. In my view, it is on lower side. It has come on record that the deceased was BHMS Doctor and she was assisting her husband to run the ten bedded hospital. In their hospital, one compounder and two nurses were working. They were paying salary to these persons. Considering the evidence on record, I am considering Rs.12,000/- as monthly notional income of the deceased.

While calculating the compensation, the Tribunal has deducted 1/2th amount for personal expenses. The deceased was married, there are four claimants, it should be 1/4th. Hence, I am considering 1/4th amount for personal expenses.

The Tribunal has considered 50% contributory negligence of the deceased, which is erroneous. As the deceased was pillion-rider, hence, question of her contributory negligence does not arise.

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.

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 future prospects.

Considering the above calculations, the claimants are entitled for following compensation :

Head		Amount
Annual Income (Rs.12,000/- x 12)	Rs.	144000.00
1/4th deductions for personal expenses	Rs.	36000.00
Total	Rs.	108000.00
40% future prospects	Rs.	43200.00
Total	Rs.	151200.00
Rs. 151200/- x 15 (multiplier)	Rs.	2268000.00
Loss of consortium (Rs.48000/- x 2 claimants)	Rs.	96000.00
Loss of estate	Rs.	18000.00
Funeral Expenses	Rs.	18000.00
Total Compensation	**Rs.**	**2455500.00**
Compensation awarded by Tribunal	Rs.	482750.00
Enhanced Compensation	Rs.	1972750.00

The claimants are entitled for enhanced amount of Rs.19,72,750/-.

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

O R D E R

1. The appeal is allowed.
2. The claimants are entitled for enhanced amount of Rs. 19,72,750/-@ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,32,000/- 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.
3. The respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
4. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)