IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1656 OF 2016

	United India Insurance Company Limited Pune Regional Office, Through its Divisional Office, Janata Shopping Centre, Navi Peth, Solapur	… Appellant
	Versus	
1	Namdeo Kaluram Dhotre Age : Major, Occ : Nil	
2	Mathura Namdep Dhotre Age : Major, Occ : Nil Both R/o : Bemble, Taluka-Madha, Dist:Solapur	Respondent No.1 to 2 (Original … claimants)
3	Ferokhan Chandkan Age : Major, Occ : Business, R/o : Block No.16/5, Humnabad, Dist:Bidar, Karnataka	… Respondent

……..

Mr. Amol Gatne, Advocate for the Appellant.
Mr. Sharad T. Bhosale, Advocate for Respondent Nos. 1 and 2.

CORAM : SHIVKUMAR DIGE, J.
DATE : 18th MARCH, 2024.

ORAL JUDGMENT :

1. The issue involved in this appeal is income of the claimant is considered on higher side.

2. It is contention of learned counsel for appellant/Insurance Company that at the time of accident the claimant was holding diploma in Civil Engineering and as per the claimants' case he was taking private construction work. The Tribunal has considered monthly income of the claimant at Rs.25,000/- per month which is on higher side. No evidence was produced on record to prove the said income, hence requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos. 1 and 2 /claimants that at the time of accident the deceased was 26 years old and he had done diploma in Civil Engineering. He was doing private construction work. The witness was examined to prove the income of the claimant. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount, it be awarded.

4. I have heard both the learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short "**the Tribunal**"). To prove the income of the deceased the claimants have examined the claimant No.1 father of the deceased, Namdeo Dhotre at Exhibit 18. He has stated that the deceased had diploma in Civil Engineering and he was doing private contractorship in construction and was getting Rs.50,000/- per month. He was solely dependent on the income of the deceased. In support of evidence of PW-1, the claimants have examined Kailas V. Navale at Exhibit-33. He has stated that he knew deceased Jaywant Dhotre who was Civil Engineer and he was doing construction work. This witness had given work of construction of his house to the deceased. As per the agreement, the said contract of construction of house was of 3800 sq.ft. and the construction rate was Rs.1300/- per sq.ft. In cross examination this witness admitted that he was not aware if the deceased had licence of construction or not and agreement with the deceased was not done on stamp paper. The agreement between this witness and deceased is at Exhibit-35. While dealing with the issue of income of the deceased the Tribunal has observed that the deceased was diploma holder in Civil Engineering and was engaged in the business of construction as a private contractor. He was having proprietary firm in the name and style as Mathura Building Construction at Bemble, Tal. Mhada. Considering the nature of business and the qualification of the deceased, the Tribunal has considered monthly income of deceased at Rs.25,000/-. In my view, it is on higher side. As the deceased was holding diploma in Civil Engineering and he was doing construction work and the accident occurred in the year 2011, I am considering monthly income of the deceased at Rs.14,000/- per month. The Tribunal has not awarded future prospects. As per the view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi***[1], the claimants are entitled for 40% future prospects. The Tribunal has not awarded consortium amount. As per the view of the Hon'ble Apex

1 2017 ACJ 2700 (SC),

Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram***[2], each claimant is entitled for Rs.48,000/- as consortium amount.

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

Particulars	Rs.	Entitlement
Monthly Income	Rs.	14,000.00
Future prospects 40%	Rs.	5,600.00
Personal deduction ½ being bachelor	Rs.	9,800.00
Annual Income (Rs.9,800 X 12)	Rs.	1,17,600.00
Multiplier 17 (Age 26)	Rs.	19,99,200.00
Consortium @ Rs.48,000 X 2	Rs.	96,000.00
Loss of Estate	Rs.	18,000.00
Funeral charges	Rs.	18,000.00
Total compensation	Rs.	**21,31,200.00**
Less compensation awarded by the Tribunal	Rs.	26,00,000.00
Total amount refunded	Rs.	**4,68,800.00**

The Tribunal has awarded Rs.26,00,000/- as compensation if this amount deducts from the compensation amount considered by this Court, it comes to Rs.4,68,800/-. This is excess amount.

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

<u>O R D E R</u>

i. The appeal is party allowed.

ii. The appellant/Insurance Company is permitted to withdraw Rs.4,68,800/- along with proportionate interest.

2 2018 ACJ 2782 (SC)

iii. The claimants are permitted to withdraw balance amount along with proportionate interest.

iv. The statutory amount along with interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.

v. All pending applications, if any, also disposed of.

7. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)