

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

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FIRST APPEAL NO. 815 OF 2008

- | | | |
|---|---|-----------------------|
| 1. Pratibha Laxman Patil |) | |
| Age: 52 years, Indian Inhabitant |) | |
| An Advocate. |) | |
| | | |
| 2. Pritesh Laxman Patil |) | |
| Age: 6 years, a minor through Appellants |) | |
| No.1 Residing at – 15/480, Shastrinagar |) | |
| 3 rd Floors, Goregaon (W), Mumbai. |) | ...(Orig. Applicants) |
| | |Appellants |

Versus

- | | | |
|---------------------------------|---|------------------|
| 1. Jarnailsing Shingarasingh |) | |
| 6, Mechanic Nagar, Indore, |) | |
| State of Madhya Pradesh. |) | |
| | | |
| 2. New India Assurance Co. Ltd. |) | |
| 87, M. G. road, Fort, Mumbai |) | |
| Mumbai (No.234/111400/99990 |) | |
| Valid up to 3/3/1997) |) | |
| | | |
| 3. Parvati Karbhari Patil |) | ...(Deleted) |
| Residing at Khirdi Satheye, |) | vide Order dated |
| Tal. Yeola, Dist. Thane |) | 03/07/2012 |

Passed in F.A.

Orig. Respondent

....Respondents

Ms. Ketki Gokhale i/b Mr. A. M. Gokhale, Advocate for the Appellant.
Ms. Poonam Mital, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 30th APRIL, 2024.

Oral Judgment :

1. By way of this appeal, Appellants/Claimants are seeking enhancement of compensation.
2. It is contention of learned counsel for the Appellants that deceased was contractor, developer and farmer and he was earning Rs.25,000/- per month but the Tribunal has considered his monthly income at Rs.6,000/-, which is on lower side. Learned counsel further submitted that 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 learned counsel for the Respondent

No.2/Insurance Company that no evidence is produced on record to show the income of the deceased. The Tribunal has considered all the aspects while passing the judgment and order, no interference is required in it.

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

5. To prove the income of the deceased, the Claimants have examined Claimant No.1 Pratibha Patil, she has stated that deceased owned agricultural land around 2 hector and 95 yards. The 7/12 extract are at Exhibit-34. He was builder, contractor and developer and he was earning Rs.25,000/- per month. She further stated that the main source of income of her husband was from the agricultural income. In support of evidence of PW-1, Claimants have examined PW-3 I. B. Shaikh, Talathi, he has stated about the agricultural land of the deceased.

6. While dealing with the issue of income of the deceased the

Tribunal has observed that the Claimants have not produced any clinching evidence to establish that the deceased was earning Rs.25,000/- per month by doing an agriculture work as well as other work such as builder, contractor and developer. Considering evidence on record the Tribunal has considered Rs.6,000/- as monthly income of the deceased. In my view, it is on little lower side. The 7/12 extract produced on record shows that deceased owned agricultural land, he was doing other business also. Considering evidence on record, I am considering Rs.7,000/- as monthly income of the deceased. The Tribunal has not awarded future prospects. As per view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)***, the claimant is entitled for 40% future prospects. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each Claimant is entitled to Rs.48,000/- for consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses.

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

Monthly income	Rs.7,000/-
Annual Income	Rs.84,000/-
Add: 40% future prospects	Rs.33,600/-
Total income	Rs.1,17,600/-
1/3rd deduction for personal expenses	Rs.39,200/-
Total income	Rs.78,400/-
Multiplier X 16	Rs.12,54,400/-
Loss of Consortium Rs.48,000/- X 3 (Claimants)	Rs.1,44,000/-
Loss of estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total compensation	Rs.14,34,400/-
Less awarded by the Tribunal	Rs.7,93,000/-
Enhanced amount	Rs.6,41,400/-

8. In view of above, I pass following order.

ORDER

- i. Appeal is allowed.
- ii. The Claimants are entitled for enhanced amount of **Rs.6,41,400/- @ 7.5% interest per annum** from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- is consortium amount. The Claimants are entitled @ 7.5% interest per annum on this amount from 1st November, 2017, till realisation of the amount.
- iii. The Respondent No.2/Insurance Company shall

deposit the enhanced amount along with accrued interest thereon.

- iv. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - v. The Claimants shall pay the deficit Court's fees on enhanced amount, if any, as per Rule.
9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)