

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

FIRST APPEAL NO. 646 OF 2012

THE NEW INDIA ASSURANCE CO. LTD.)

Having its Regional at Nehru Memorial)

Hall, Dr. Ambedkar Road, Pune)

....Appellant

(Orig. Opp. No. 2)

Versus

1. Shalini Pawan Birangal,)

Age: 39 years, Occ: Business)

2. Mangesh Pawan Birangal)

Age: 19 years, Occ: Business)

3. Sushma Pawan Birangal)

Age: 17 years, Occ: Education.)

4. Pratiksha Pawan Brangal)

Age: 16 years, Occ: Education)

All are Resident of Adinath Nagar,)

Gavhane Wasti, Bhosari, Dist: Pune.)

..(Orig. Applicants

Nos. 1 to 4).

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5. M/s. Khemka Road Lines,)
 Shivaji Colony, Rohtak, Dist: Rohtak,)
 Haryana.) ... (Orig. O. P. No.1)
6. Suryabhan Shivram Birangal,)
 Age: 65 years, Occ: Agriculturist,)
 R/o. Sonagaon, Tal- Jamkhed,) ... (Orig. O. P. No.3)
 District: Ahmednagar,)
7. Shakuntala Suryabhan Birangal,)
 Age: 60 years, Occ: Agriculturist,)
 R/o. Sonagaon, Tal-Jamkhed,)
 District: Ahmednagar,) ... (Orig. O. P. No.4)
Respondents

Mr. Sandeep Sharad Jinsiwale, Advocate for the Appellant.
 Mr. Ravindra Panchundkar, Advocate for the Respondent Nos.1 to 4
 and 6 & 7.

CORAM : SHIVKUMAR DIGE, J.

DATE : 4th MARCH, 2024.

Oral Judgment. :

1. The issue involved in this appeal is income of deceased is considered on higher side and interest awarded by the tribunal.

2. It is contention of learned counsel for the Appellant/Insurance Company that it is Claimants' case that deceased was doing transport business and milk business and from it, he was earning Rs.14,000/- to Rs.15,000/- per month. The Tribunal has considered Rs.12,000/- per month as income of deceased, which is on higher side. No evidence was produced on record to prove the income of deceased as well as the Tribunal should have considered managerial loss as, after the death of deceased, the said businesses are continued. Learned counsel further submitted that after three months of the disposal of the claim petition, the Tribunal has awarded interest on the compensation amount, which is erroneous. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondents/Claimants that deceased was earning Rs.60,000/- per month from the hotel business and Rs.21,000/- per month from Tempo business but, the Tribunal has considered Rs.12,000/- per month, which is proper. Learned counsel further submitted that the Tribunal has not awarded consortium amount, it be awarded.

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

5. To prove the income of the deceased, the Claimants have examined Claimant No.1 Shalini wife of the deceased. She has stated that deceased Pavan was initially running a canteen namely Bhawani Tea House and later on he was running Hotel Green Park from which, he was earning daily Rs.1500/- to Rs.2000/-. So also deceased was doing transport business in the name of Jay Bhavani Tempo Service and he was earning Rs.500/- to Rs.700/- daily. In cross examination, she admits that after death of her husband, business is continued in the same condition. In support of evidence of PW-1, Claimants have examined PW-2 Mangesh, son of the deceased. He has stated the same income of the deceased as stated by PW-1. The Claimants have examined PW-3 Babanrao Karadkar, at Exhibit-36, who is Manager of Hotel Business. He has stated that since the year 1995, he was serving as a manger with deceased. The Claimants have examined PW-4 Rahul Sethia, he has stated that deceased was doing transport business and after his death, the Tempo was sold to this witness.

6. Considering evidence on record, the Tribunal has considered Rs.12,000/- per month as income of the deceased. In my view, it has come in the evidence of PW-1 and PW-2 that after the death of the deceased, the businesses which deceased was running are continued so, Tribunal should have considered managerial income hence, I am considering Rs.10,000/- as managerial loss. The Tribunal has awarded consortium amount on lower side. As per the 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 for Rs.48,000/- as consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. Though, the Tribunal has awarded interest on compensation amount after disposal of the claim petition, as earlier interest on compensation amount was not awarded. In my view, the Claimants are entitled interest on compensation amount from the date of filing of claim petition. Hence, I do not see merit in the contention that interest is awarded after three months of the disposal of the claim petition.

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

Monthly Income	Rs.10,000/-
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Yearly Income	Rs.1,20,000/-
Less ¼ Dependency	Rs.30,000/-
Total	Rs.90,000/-
Multiplier X 14 (Rs.90,000/- X 14)	Rs.12,60,000/-
Consortium Rs.48,000/- X 6 (Claimants)	Rs.2,88,000/-
Funeral Expenses	Rs.18,000/-
Loss of estate	Rs.18,000/-
Total compensation	Rs.15,84,000/-
Less awarded by the Tribunal	Rs.15,37,000/-
Enhanced Amount	Rs.47,000/-

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

ORDER

- i. Appeal is partly allowed.
- ii. The Respondents are entitled for enhanced amount of Rs.47,000/- @ 7.5% interest per annum from the 1st November, 2017 till realisation of the amount.
- iii. The Appellant/Insurance Company shall deposit enhanced amount along with accrued interest within six weeks after receipt of the order.
- iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

- v. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)