

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 509 OF 2009

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| 1. Durgaprasad Baijnath Mishra
An adult, aged about 61 years
Father of the deceased person. | |
| 2. Savitridevi Durgaprasad Mishra
An adult, aged about 58 years,
Both residing at Village Sidhwar
Post Bhelsi (Barout), (Dist : Allahabad (U.P.) | Appellants
(Orig.
Claimants) |

Versus

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| 1. Gaud Prem Sagar Sahdeo Prasad
Ganesh Murthi Nagar, Plot No.213, Room No.13,
Captain Prakash Pathe Marg, Colaba,
Mumbai – 400005 | |
| 2. The New India Assurance Co. Ltd.
87, M.G.Road, Fort, Mumbai – 400001
Police No. 110500/31/98/85478
Validity 27.3.1998 to 26.03.1999 | Respondents
(Orig. Opp.
parties) |

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- Ms. Kalpana Trivedi, Advocate for the Appellants.
- Ms. Jyoti Bajpayee, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th JANUARY, 2024.

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 had passed M.A. in Hindi language and he was pursuing Ph.D. in Hindi language, but the Tribunal has considered his monthly income at

Rs.2,000/- per month which is on lower side. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side. Learned Counsel further submitted that the Tribunal has not awarded future prospects it be awarded hence requested to dismiss the appeal.

3. It is the contention of learned counsel for the respondent No.2/Insurance Company that the Tribunal has considered all the aspects while passing the Judgment and Order and no interference is required in it, hence requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Mumbai (for short “**the Tribunal**”). It is claimants’ case that deceased was pursuing Ph.D from Bombay University and he was taking tuition of various subjects and earning Rs.11,400/- per month. While dealing with the issue of income, the Tribunal has observed that there is no document on record to show that deceased was the Ph.D. schooler and in cross examination of the claimants / witness it has come on record that the deceased was earning Rs.2,000/- per month from one Ajit Pandey. Considering the evidence on record the Tribunal has considered Rs.2,000/- as monthly income of the deceased. I am unable to understand the observations of the Tribunal as it has come on record that deceased was M.A. graduate in Hindi and he had

also obtained Certificate of acting. It has come on record that he was taking tuition. The monthly income of deceased considered by the Tribunal is on lower side, hence I am considering the monthly income of deceased at Rs.7,000/- per month. At the time of accident, the deceased was 26 years old. 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 Sethi¹***, the claimants are entitled for 40% future prospects. 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 Ram²***, each claimant is entitled for Rs.48,000/- as a consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. Considering the above reasons, the claimants/appellants are entitled for following compensation:

Particulars	Rs.	Entitlement
Monthly Income	Rs.	7,000.00
40% Future prospects	Rs.	2,800.00
Annual Income	Rs.	9,800.00
1/2 Deduction towards personal expenses of deceased	Rs.	4,900.00
Multiplier Rs. 4,900 X 12 X 17	Rs.	9,99,600.00
Consortium (Rs.48,000/- X 2 claimants)	Rs.	96,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00

1 2017 ACJ 2700(SC)

2 2018 ACJ 2782 (SC)

Total	Rs.	11,31,600.00
Less compensation awarded by the Tribunal	Rs.	84,500.00
Total enhanced amount	Rs.	10,47,100.00

Considering the above calculations, the claimants are entitled for enhanced compensation of Rs. 10,47,100/-.

5. In view of above, I pass following order :

ORDER

- i. The appeal is allowed.
- ii. The appellants/claimants are entitled for enhanced amount of Rs.10,47,100/-/- @ 7.5% interest per annum from the date of filing of the claim petition till realisation of the amount. Out of this amount, the amount of Rs.1,32,000/- is for consortium amount and loss of estate and funeral expenses, the claimants are entitled for interest @7.5% per annum on this amount from 1st November, 2017 till realisation.
- iii. 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.

iv. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

6. The appeal is disposed of.

(SHIVKUMAR DIGE, J.)

SONALI
SATISH
KILAJE

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