

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

FIRST APPEAL NO. 1391 OF 2016

Reliance General Insurance Co. Ltd.)
Through its Manager, Mr. Amit Ashwini Sharma)
Having its office at 4th Floor Chintamani Avenue)
Off Western Express Highway,)
Near Virwani Industrial Estate,)
Goregaon (East), Mumbai 400 063)....Appellants
(Ori. Opp. Party No.3)

Versus

1. Surekha Dnyandev Girme)
Aged 24 years, Occ: Household)

2. Pratik Dnyandev Girme)
Age: 5 months, Occ: Nil,)

3. Bhikoba Ganpat Girme)
Age: 58 years, Occ: Agri.)

4. Shantabai Bhikoba Girme)
Age: 50, Occ: Agri.)

All are residing At Sherewadi,)

Tal. Baramati, Dist. Pune

)

5. Ganesh Khandu Dorge,

)

Age: 29 years, Occ: Agri. & Business

)

R/at. Yevat, Tal. Daund, Dist. Pune

)

6. Sunil Maruti Darekar,

)

Age: 42 years, Occ: Agri.

)

R/at: Karandi, Tal. Shirur, Dist: Pune

)

....Respondents

(Present Res. Nos. 1 to 4

being original Applicants

and present Res. Nos. 5 & 6

being original opp. Party

No.1 & 2 and Insured).

Mr. Rajesh Kanojia i/b Res Juris, Advocate for the Appellant.

Mr. Anuj Tiwari i/b Mr. Vivek Salunke, Advocate for the Respondent
Nos. 1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st FEBRUARY, 2024.

Oral Judgment. :

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

2. It is contention of learned counsel for the Appellant that the Tribunal has considered monthly income of deceased at Rs.84,000/- per annum from business of Nikhil Batteries and Rs.50,000/- per annum from agricultural land. Learned counsel further submitted that agriculture land is standing in the name of father of deceased and he is claimant no.3. No evidence was produced on record to show that deceased was earning income from agricultural land. Learned counsel further submitted that accident occurred due to contributory negligence of the deceased as, he dashed the Bolero Jeep but, this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that the motorcycle of deceased was dashed by the driver of offending Bolero Jeep by coming on wrong side of the road. The driver of Bolero Jeep did not step into witness box to prove the negligence of the deceased. Learned counsel further submitted that the deceased was cultivating his fathers land as well as his own land of two acres and he was doing the business of batteries. Learned counsel further submitted that the Tribunal has awarded consortium

amount on lower side, it be awarded and requested to dismiss the Appeal.

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

5. To prove the income of the deceased, the claimants have examined Applicant No.1 wife of deceased, she has stated that deceased was doing the business of two wheeler and four wheeler batteries under the name of Nikhil batteries at village Supa Tal. Baramati, District: Pune and was earning Rs.7000 per month from his business. She produced receipt books given to customer during the course of business which is at Exhibit-47. She further stated that the deceased was getting agricultural income and he was cultivating two acres agricultural land. Nothing elicited in cross-examination of this witness.

6. In support of evidence of PW-1, the claimants have examined PW-2 Sachin Khaire at Exhibit-57, Secretary at Trimurti

Gramin Bigar Sheti Sahakari Maryadit, Vanewadi. He has stated that deceased had obtained a loan of Rs.50,000/- for his business of Auto Electrical on 20th August, 2010, he repaid the entire loan amount on 1st February, 2011. Considering evidence on record the Tribunal has considered income of the deceased from battery business at Rs.84,000/- per annum and Rs.50,000/- per annum as income from agricultural land. I do not find infirmity in it. In my view, the income considered by the Tribunal from agricultural land is slightly on higher side. As, it has come on record, the deceased was cultivating land of his father and two acres agricultural land of his own so, I am considering Rs.30,000/- income per annum from agricultural land i.e. Rs.2500/- per month. To prove the negligence of the deceased the Appellant has not examined driver of Bolero jeep. Moreover, the offence was registered against the driver of Bolero Jeep. It is claimant's case that when deceased was riding on motorcycle the driver of offending jeep came on wrong side of the road and gave dash to the motorcycle of the deceased. I do not see merit in the contention that accident occurred due to contributory negligence of the deceased. 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.

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

Annual Income	Rs.9500/-
Annual Income	Rs.1,14,000/-
Add: 50% future prospects	Rs.57,000/-
Total income	Rs.1,71,000/-
Less $\frac{1}{4}$ for personal expenses	Rs.42,750/-
Total	Rs.1,28,250/-
Multiplier 17 (Rs.21,80,250/- X 17)	Rs.21,80,250/-
Consortium (Rs.48,000/- X 4 Claimants)	Rs.1,92,000/-
Loss of estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Total Compensation	Rs.24,08,250/-
Amount awarded by the Tribunal	Rs.26,98,100/-
Excess amount	Rs.2,89,850/-

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

ORDER

- i. Appeal is partly allowed.
- ii. The Appellant/Insurance Company is permitted to

withdraw Rs.2,89,850/- along with proportionate interest, out of deposited amount.

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

iv. 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.)