

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 914 OF 2016

The New India Assurance Co. Ltd.
Atur Chamber, IInd floor, Moledina Road Camp.
Pune

... Appellant

Versus

- | | |
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| <ol style="list-style-type: none"> 1 Khairunbi Babulal Shaikh
Age 35 years, Occ : Nil 2 Miss Malanbi Babulal Shaikh
Age 14 years, Occ : Nil 3 Master Hussain Saib, Babulal Shaikh
Age 12 years, Occ: Nil 4 Master Riyaz Babulal Shaikh
Age 1 years, Occ : Nil 5 Salimabi Babulal Shaikh
Age 6 years, Occ : Nil 6 Malasab Babulal Shaikh
Age 8 years, Occ : Nil
Applicant No.1 for herself and as Natural guardian
of Applicant Nos. 2 to 6 7 Nathumabi Fakirsab Shaikh
Age 60 years, Occ : Nil
All residing at Inamdar Vasti, Koregaon Mul, Taluka
Haveli, District Pune 8 Shri Laxman Dnyaoba Sawant
Age Major, Occ : Agriculture
Residing at Kunjirwadi, Taluka Haveli, District Pune 9 Mahadu Daulat Gulanjkar
Age Major, Occ : Agriculture
R/o Peth, Taluka Haveli, Dist. Pune | <p>... Respondents</p> |
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Mr. Shrikant M. Dange, Advocate for the Appellant.

Mr. Vilas A. Jadhav i/b. Mr. Sudhir S. Hardikar, Advocate for Respondent
No.1 to 7.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th APRIL, 2024

ORAL JUDGMENT :

1. The issues involved in this appeal are income of the deceased is considered on higher side and future prospects should not have been awarded.

2. It is contention of learned counsel for the appellant/Insurance Company that the Tribunal has considered daily income of deceased at Rs.150/- per day. The deceased was working in nursery, the Tribunal has considered daily income of the deceased for 30 days it should have been taken for 26 days excluding holidays. Learned counsel further submitted that the Tribunal has awarded future prospects it should not have been awarded as deceased was daily worker, hence requested to allow the appeal.

3. It is contention of learned counsel for the respondent Nos.1 to 7 that the Tribunal has considered all the aspects while passing the Judgment and Order, hence no interference is required in it.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Pune (for short “the Tribunal”). To prove the income of the deceased claimants have examined claimant No.1 she has stated that deceased was working in nursery and he was getting Rs.150/- per day. Considering evidence on

record the Tribunal has considered monthly income of the deceased at Rs.4,500/-. It is contention of learned counsel for the appellant that the Tribunal should have deducted the income of holidays. In my view, the deceased was in private service it has not come on record that whether deceased was getting holiday or not. It has also not come on record whether his Rs.150/- was deducted for holiday from his income, no question was put to the witness in the cross examination that he was working only for 26 days. Hence I do not find merit in the contention that the income of deceased should have been considered only for 26 days. As per view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700(SC)***, the claimants are entitled for future prospects. It is contention of learned counsel for the appellant that the Tribunal has awarded 50% for future prospects it should be 40%. While awarding compensation, the Tribunal has awarded 50% for future prospects it is on higher side. In my view, there are 7 claimants the Tribunal has awarded consortium amount of Rs.2,25,000/-. 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, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. The consortium amount awarded is on lower side if 10% more amount awarded under the head of future

prospects adjusted in the consortium amount, it would suffice and I pass following order.

ORDER

- (i) The appeal is dismissed.
- (ii) The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (iii) The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.
- (iv) Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)

SONALI
SATISH
KILAJE

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