

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2090 OF 2011

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| 1 Baban Ganpat Panchal |] | |
| Aged about 65 years |] | |
| 2 Mrs. Vandana Baban Panchal |] | |
| Aged about 58 years |] | |
| Both are residing at Indapur (Gaothan), |] | |
| Taluka Mangaon, Dist. Raigad |] | Appellants |
| Versus | | |
| 1 Altaf Hamid Kazi |] | |
| Resident of Tonde, Taluka & Dist. Ratnagiri |] | |
| 2 New India Assurance Co. Ltd. |] | |
| 87, M.G.Road, Fort, Mumbai- 400 001 |] | Respondents |

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Mr. T. J. Mendon, Advocate for the Appellants.

Ms. Poonam Mital i/b. D. R. Mahadik , Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 18th MARCH, 2024.

ORAL JUDGMENT:

1. By this appeal appellants/claimants are seeking enhancement of compensation.

2. It is contention of learned counsel for the appellants/claimants that deceased was holding degree of H.S.C. D.Ed and he was a Teacher but the Tribunal has considered monthly income of the deceased at Rs.1,500/-. Learned counsel further submitted that deceased was getting

salary of Rs.5,790/- per month. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side and future prospects has not been awarded, it be awarded. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2/Insurance Company that the deceased was not permanent teacher, he was working as a replacement teacher, the Tribunal has considered all the aspects while passing Judgment and Order. 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, Mangaon (for short “**the Tribunal**”). To prove the income of the deceased the claimants have examined applicant No.2, mother of the deceased Vandana Panchal at Exhibit-22. She has stated that the deceased was doing job of teacher at J.B.Sawant High School, Panhalghar-Lonere, and thereby he was getting salary of Rs.5,790/- per month. He was likely to be promoted in the service and his salary would have been increased in future. He was also driving rickshaw and getting Rs.3,000/- per month. In cross examination she admitted that her son was in Government Service, in addition to it he was doing the rickshaw business. While dealing with the issue of income, the Tribunal has observed that the income of deceased is not proved by

producing cogent and consistent evidence on record. On that basis the Tribunal has considered monthly income of the deceased at Rs.1,500/-. I am unable to understand the observations of the Tribunal as the deceased was H.S.C. D.Ed and he was working as a teacher. It appears from the record that the witness summons was issued to the Headmaster of J.B.Sawant High School, Panhalghar-Lonere, where deceased worked as a teacher and as per the witness summons the Headmaster produced payment slip, appointment letter and Muster Register of the deceased. The list of documents is at Exhibit-31/3. These documents shows that deceased worked as a teacher on a temporary basis in the said school and he was getting different salaries for various different period and in March-1999 the deceased had received salary of Rs.5,790/-. In the month of March he worked for 01.04.1999 to 20.04.1999. It was only for 20 days. Considering the salary/payment slip of the deceased and the letter issued by the headmaster of J.B. Sawant High School, Panhalghar-Lonere, Taluka Mangaon and the deceased was HSC, DEd. I am considering monthly income of deceased at Rs.5,790/-. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court ***Magma General Insurance Co. Ltd. vs. Nanu Ram***¹, each claimant is entitled to Rs.48,000/- as consortium amount, Rs.18,000/- as a funeral expenses, Rs.18,000/- for loss of estate.

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5. Considering above calculations the claimants are entitled for following compensation:

Particulars	Rs.	Entitlement
Monthly Income	Rs.	5,790.00
Annual Income X 12 X 17	Rs.	11,81,160.00
50% Future Prospects	Rs.	5,90,580.00
Total	Rs.	17,71,740.00
Personal expenses $\frac{1}{2}$	Rs.	8,85,870.00
Consortium (Rs.48,000/- X 2 claimants)	Rs.	96,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	10,17,870.00
Less compensation awarded by the Tribunal	Rs.	1,06,000.00
Total enhanced amount	Rs.	9,11,870.00

The claimants are entitled for enhanced amount of Rs.9,11,870/-.

6. In view of the above, I pass following order:

ORDER

- i. The appeal is allowed.
- ii. The claimants are entitled for enhanced amount of Rs.9,11,870/- @7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount Rs.1,32,000/- is consortium amount. The claimants are entitled for

interest @7.5% on this amount from 1st November, 2017 till realisation of the amount.

- iii. Respondent No.2 /Insurance Company shall deposit enhanced amount along with accrued interest thereon within six weeks after receipt of the order. The claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- iv. The claimants shall pay deficit Court fees, if any, as per rule on enhanced amount.

7. The appeal is disposed of. Pending applications, if any also disposed of.

(SHIVKUMAR DIGE, J.)

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