

## IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CIVIL APPELLATE JURISDICTION

## FIRST APPEAL NO. 637 OF 2009

The New India Assurance Co. Ltd.  
Ahmednagar Divisional Office at Sangamner,  
At Post & Tal. Sangamner, District Ahmednagar

... Appellant

Versus

- 1 Smt. Parvati Suryadeo Yadav  
Age 38 years, Occ : Nil
- 2 Kumar Akash Suryadeo Yadav  
Age 16 years, Occ : Education
- 3 Kumari Swapna Suryadeo Yadav  
Age 14 years, Occ : Education
- 4 Kumar Yuvraj Suryadeo Yadav  
Age 8 yrs. Occup. Education  
Applicant Nos. 2 to 4 are minor,  
Through their Natural guardian  
Mother i.e. Applicant No.1  
All residing at Ale Phata, Taluka Junnar, Dist.Pune
- 5 Baban Damu Adsare  
Age Adult, Occup. Business  
A/O A/P Narayangaon, Tal. Junnar, Dist. Pune

... Applicants

... Respondents

.....

Mr. S. M. Dange, Advocate for the Appellant.

Mr. Yogesh Pande, Advocate for Respondent Nos. 1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 10<sup>th</sup> APRIL, 2024**ORAL JUDGMENT :**

1. The issue involved in this appeal is income of the deceased is considered on higher side.
2. It is contention of learned counsel for the appellant that the

Tribunal has considered the income of the deceased at Rs.60,000/- per year which is on higher side. Learned counsel further submitted that no evidence was produced on record to prove the income of the deceased, hence requested to allow the appeal.

3. It is contention of learned counsel for respondent Nos. 1 to 4/claimants that deceased was doing business of glass and aluminum sliding work and he was earning Rs.7,000/- per month. The witnesses are examined to prove the income of the deceased but the Tribunal has considered yearly income at Rs.60,000/- i.e. Rs.5,000/- per month which is proper. Learned counsel further submitted that there are four claimants, the Tribunal has deducted  $\frac{1}{3}^{\text{rd}}$  amount for personal expenses it should be  $\frac{1}{4}^{\text{th}}$ . Learned counsel further submitted that the Tribunal has granted consortium amount on lower side, it be awarded.

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 claimant, the claimant No.1 PW-1 Parvati Yadav examined herself, she has stated that deceased was doing business of glass and aluminum sliding work and he used to earn Rs.7,000/- per month. In support of evidence of PW-1 the claimants have examined Mr. Chetan at Exhibit-33. He has stated that he runs a shop of aluminum material at Parel, Mumbai and the deceased used to come to his

shop for purchasing of aluminum material and used to purchase such material worth Rs.40,000/- per month. This witness further stated that the deceased would get 50% profit from his business. The claimants have examined Santosh Lasurne at Exhibit-35. He was running shop of footwear adjacent to the business premises of the deceased. He has stated that the deceased used to earn profit from his business. While dealing with the issue of income of the deceased, the Tribunal has observed that the deceased was doing the business and he was maintaining the family of 5 elder members. Considering the evidence on record the Tribunal has considered Rs.5,000/- per month as income of the deceased. I do not find infirmity in it. In my view, PW-2 and PW-3 have supported the claimants' case that deceased was doing business of glass and aluminum sliding work. He was maintaining family of 5 persons. Hence, income considered by the Tribunal is proper. Moreover, the Tribunal has not awarded 40% future prospects for which the claimants are entitled. If this amount calculated in the amount considered by the Tribunal it is proper. While calculating compensation, the Tribunal has deducted  $\frac{1}{3}^{\text{rd}}$  amount for personal expenses. There are four claimants it should be  $\frac{1}{4}^{\text{th}}$ . Hence, I am considering  $\frac{1}{4}^{\text{th}}$  amount for personal expenses.

5. The Tribunal has awarded consortium amount of Rs.5,000/-, Rs.2,000/- for funeral expenses and Rs.20,000/- for loss of love and

affection. In my view it is on lower side. As per the view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram reported in 2018 ACJ 2782 (SC)*, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. There are four claimants. Total comes to Rs.2,28,000/- and after considering 1/4<sup>th</sup> deduction of personal expenses the excess amount comes to Rs.2,71,000/-. The claimants are entitled for this amount.

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

**ORDER**

- i. The appeal is dismissed.
- ii. The claimants are entitled for enhanced amount of Rs.2,71,000/- @ 7.5% interest per annum from date of filing claim petition till realisation. Out of this amount, Rs. 2,28,000/- is consortium amount, the claimants are entitled for interest at 7.5% per annum on this amount from 1<sup>st</sup> November 2017 till realisation of the amount.
- iii. The Insurance Company shall deposit the enhanced amount along with interest within six weeks after receipt of the order.

- iv. The claimants are permitted to withdraw the amount deposited by the Insurance Company along with accrued interest thereon.
- v. The statutory amount along with accrued interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per rule.
- vi. The claimants shall pay deficit Court fees for enhanced amount if any as per rule.
- vii. All pending civil/interim applications stand disposed of.

SONALI  
SATISH  
KILAJE

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by SONALI  
SATISH KILAJE  
Date:  
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(SHIVKUMAR DIGE, J.)