

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

FIRST APPEAL NO.1776 OF 2019

1. Smt.Mangal Ramkrisha Survase } Age – 58 years, Occ : Housewife } 2. Ramkrishna Vithoba Survase } Age-69 years, Occ : Retired } Both R/at Flat No.F14, Adiraj Complex, } Sector No.8, Kharghar -Navi Mumbai } Taluka – Panvel, District-Raigad }	Appellants
--	-----------------------

Versus

1. Smt.Kalyani Shaktikuar Survase } Age- 25 years, Occ : Housewife } R/at Plot No.B-404, Urban Gram Society, } Kondve Dhavde, Pune-411 023. }	
2. Shri.Vilas Bhagwat Dhule } Age-Major, Occ: Business, } R/at Terkheda, Taluka-Vashi, District- } Usmanabad. }	Respondent No.2 deleted as per Court's Order dated 26/9/2018
3. United India Insurance Company Ltd. } 5 th Floor, Union Co-operative Insurance } Building, Sir, P.M. Road, Fort, Mumbai- } 400 001. }	Respondents

**WITH
FIRST APPEAL NO.1385 OF 2017**

United India Insurance Company Ltd.
 Motor Third Party Hub
 5th Floor, Union Co-operative Insurance
 Building, Sir, P.M. Road, Fort, Mumbai-
 400 001.

....Appellant
 (Original
 Insurer)

**NILAM
SANTOSH
KAMBLE**

Digitally signed by
NILAM SANTOSH
KAMBLE
Date: 2024.01.23
17:24:30 +0530

Versus

1. Smt.Kalyani Shaktikuar Survase	}	(Org.
Age- 21 years, Occ : Housewife	}	Applicant No.1)
2. Ramkrishna Vithoba Survase	}	Original
Age-61 years, Occ : Nil	}	Applicant No.2
3. Smt.Mangal Ramkrisha Survase	}	
Age – 55 years, Occ : Housewife	}	
All R/at F-14, Adiraj Complex, Plot No.8,	}	Orig.
Sector-8, Kharghar, Navi Mumbai-	}	Applicant No.3
410201	}	
4. Shri.Vilas Bhagwat Ghule	}	
Age-Not known, Occ: Business,	}	Original
R/at Terkheda, Taluka-Vashi, District-	}	Opponent No.1
Usmanabad.	}	Respondents

Ms.Kalpna Trivedi, for the Appellant in FA No.1776 of 2019.

Mr.Nikhil Mehta i/b KMC Legal Venture, for the Appellant in FA No.1385 of 2017.

Ms.Vrushali Maindad a/w Mr.Saheen Kapadia, Mr.Shaheen Kapadia and Mr.Mahendra Khan, for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th JANUARY 2024

ORAL JUDGMENT :-

. These two Appeals are preferred against judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Alibag, Raigad. As these three Appeals are against the same judgment and order, I am deciding it by this

common judgment.

2. The issues involved in these Appeal are the income of deceased is considered on higher side and future income awarded, which is not proper.

3. It is contention of the learned counsel for the Appellant that, after the death of the deceased, the Claimant No.1 has received job in the same public sector hence the Claimant's are not entitled for any compensation. The learned counsel further submitted that, Tribunal has considered monthly income of deceased at Rs.13,555/- which is on higher side. No evidence was produced on record to prove the said salary. The learned counsel further submitted that, the Tribunal has awarded future prospects, which is not proper. Hence, requested to allow the Appeal.

4. It is contention of the learned counsel for the Respondent-Claimants that, while passing the Order the Tribunal has considered all the aspects on that basis the judgment and award is passed, hence, no interference is not required in it.

5. I have heard all learned counsel's. Perused judgment

and order passed by the Tribunal.

6. It is settled principal of law that, the Claimant's are entitled for compensation, if wife or any family member from the family of deceased got the job on compassionate ground. Hence, I do not see merit in the contention that, as the Claimant No.1 got the job after the death of the deceased. They are not entitled for compensation.

7. The deceased was in Government Service and evidence has been lead to prove the income of deceased. Considering the evidence on record the Tribunal has considered monthly income of deceased at Rs.13,708/-, I do not find infirmity in it.

8. As per view of the Hon'ble Apex Court in the case of *National Insurance Co. Ltd. vs. Pranay Sethi*¹, the Claimant's are entitled for future prospects. I do not see merit in the contention of the learned counsel for the Appellant that, the Claimant's are not entitled for future prospects.

9. The learned counsel for the Appellant submits that,

1 2017 ACJ 2700 (SC)

the Tribunal has awarded total consortium amount of Rs.2,25,000/- it should be Rs.1,80,000/-. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram*², each claimant is entitled for Rs.48,000/-, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. There are three Claimants, it comes to Rs.1,80,000/-. If this amount deducts from amount of Rs.2,25,000/-, it comes to Rs.45,000/-. The Appellant is entitled for refund of Rs.45,000/-.

10. It is contention of the learned counsel for the Appellant in Appeal No.1776/2019 that, the issue in this Appeal is in respect of apportionment of compensation amount awarded by the Tribunal. There is dispute between parents of the deceased and the widow of the deceased, it be decided. In my view, the Appellant can file Application before the Tribunal regarding the apportionment of amount. The Tribunal shall decide the said Application on its own merit.

11. In view of the above, I pass following order.

2 2018 ACJ 2782 (SC)

ORDER

- (i) First Appeal No.1385 of 2017 is partly allowed.
- (ii) First Appeal No.1776 of 2019 is disposed of.
- (iii) The Appellant's are permitted to withdraw Rs.45,000/- along with proportionate interest on it.
- (iv) The Respondents-Claimants are permitted to withdraw balance amount along with proportionate interest.
- (v) Both the Claimant's in both Appeals can file Application before the Tribunal for apportionment of their share.
- (vi) The Tribunal shall decide the said Application on its own merit within three months after filing the Application.
- (vii) The statutory amount be transferred to the Tribunal. Parties are at liberty to withdraw it as per Rules.
- (viii) All pending Civil/Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)