IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.92 OF 2024

1	Savita Prasad Dandekar, Aged about 36 years, Widow of the deceased.		
2	Master Smith Prasad Dandekar, Aged about months, son the the deceased, both are residing at C/o: P. B. Telagevithal Niwas, Building No.1, Block No.2 at Seema Soc. Ghatla Village, Chembur, Mumbai – 71.	…	Appellants.
	Versus		
1	Baban Gulab Tawade, Aged about 40 years, truck owner, Residing at B-5, 2/1, Sector-9, Vashi, Navi Mumbai, District. Thane 400 613.		
2	The New India Assurance Co. Ltd., Charishma Centre, 19th Road, Chembur Mumbai, District Thane 400 613.		
3	Prabhakar Vinayak Dandekar, Aged about 70 yeaers, father of the deceased.		
4	Sumati P. Dandekar, Aged about 55 years, Mother of the deceased. Both are residing at post Poinad, Tel.Alibaug, Dist. Raigad.	….	Respondents.

Mr. V. B. Ghorpade, Advocate for the Appellants.
Ms. Jyoti Bajpayee, Advocate for Respondent No.2-Insurance Company.
Mr. Rajesh Telge, Advocate for Respondent Nos.3 and 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 27th FEBRUARY, 2024.

Oral Judgment :

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

2. It is contention of learned counsel for the appellants/claimants that deceased was working as a Manager with M/s. Kokan Tourism (I) Private Limited and he was a pharmacist. He was getting salary of Rs.10,000/- per month and Rs.4,000/- as incentive but the Tribunal has considered monthly income of the deceased at Rs.3,000/- per month, which is on lower side. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2-Insurance Company that no details of payment of salary of the deceased was produced on record. On the basis of evidence produced on record, the Tribunal has considered monthly income of the deceased at Rs.3,000/- per month, which is proper and no interference is required in it. Hence, requested to dismiss the appeal.

4. Learned counsel for respondent Nos.3 and 4 submitted that appropriate order be passed.

5. I have heard all learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short "the Tribunal").

6. To prove the income of the deceased, the claimants have examined claimant No.1-Savita Dandekar, wife of the deceased at Exhibit-22. She has stated that the deceased was working as a Manager with M/s. Kokan Tourism (I) Private Limited, Kanjurmarge East, Mumbai. He was pharmacist and was getting monthly salary of Rs.10,000/ and Rs. 4,000/- as incentives. In cross-examination, she has admitted that she does not know when her husband had joined the said company. In support of evidence of AW1, claimants have examined AW2-Ashok Dandekar, Managing Director of M/s. Kokan Tourism Private Limited. He has stated that the deceased was working as Manager in their company and he was getting monthly salary of Rs.10,000/- plus incentives of Rs.3000/- to Rs.4000/- per month. The certificate is at “Exhibit-33” and Exhibit-34 is Form 16.

While dealing with the issue of income of the deceased, the Tribunal has observed that from salary certificate at Exhibit-33, it appears that it is mentioned that the deceased was getting salary of Rs.10,000/- plus incentive of Rs.3000/- to Rs.4,000/- per month. The details of the payment are not given anywhere. The payment slip is not filed on record, therefore, it cannot be said that, at the time of the accident, the deceased was getting salary of Rs.10,000/- plus incentive of Rs.3,000/- to Rs.4,000/- per month. Therefore, the Tribunal has considered notional monthly income of the deceased at Rs.3,000/- per month. I am unable to understand the observations of the Tribunal regarding income of the deceased, as it has come in the evidence of AW1 that the deceased was working as a manager and he was getting salary of Rs.10,000/- plus Rs.4,000/- as incentive. The evidence of AW1 is supported by AW2-employer of the deceased. The deceased was maintaining the family of four persons. There is no reason to disbelieve the evidence of AW2, who is the Managing Director of the Company, where the deceased was working. Hence, I am considering Rs.10,000/- as monthly income of the deceased. I am not considering the incentive as income of the deceased.

While awarding the compensation, the Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18000/- for funeral expenses and Rs.18,000/- for loss of estate.

The Tribunal has not awarded future prospects. As per the 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.

In view of above, the claimants are entitled for following compensation :

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.10000/- pm x 12)	Rs.	120000.00
40% future prospects	Rs.	48000.00
Total	Rs.	168000.00
1/4th deductions towards personal expenses	Rs.	42000.00

Rs.1,26,000/- x 16(multiplier)	Rs.	2016000.00
Consortium (Rs.48000/- x 4claimants)	Rs.	192000.00
Loss of Estate	Rs.	18000.00
Funeral Expenses	Rs.	18000.00
Total Compensation.		**2244000.00**

The Tribunal has awarded Rs.4,82,000/-, if this amount is deducted from the amount of Rs.22,44,000/- considered by this Court, it comes to Rs.17,62,000/-. The claimants are entitled for this amount.

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

O R D E R

1. The appeal is allowed.
2. The claimants are entitled for enhanced compensation of Rs.17,62,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.2,28,000/-is consortium amount, the claimants are entitled for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
3. Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.
4. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

5. The claimants are not entitled for interest for the period of 2 years and 55 days as there was delay for filing the appeal.

6. The claimants shall pay court-fees on enhanced amount as per Rule.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)