

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

FIRST APPEAL NO. 396 OF 2017

The New India Assurance Co. Ltd.)
 Nikunj signature, 3rd Floor,)
 Above Corporation Bank, Manav Mandir Road)
 Tal. Vasai, Dist: Thane)
 Insurer of Trailer No. MH-06-K-6521)
 Vide Policy No.14080031110100000472)
 Valid from 24.04.2011 to 20.04.2012)

....Appellant
(Orig. Insurer)

Versus

1. Ushakumari Brijkumar Yadav)
 Age: 25 years, Occ: Household)
2. Mr. Ramchandra Sarju Yadav)
 Age: 52 years, Occ: Labourer)
3. Sharadadevi Ramchandra Yadav)
 Age: 50 years, Occ: Household)
- All R/at Gram Mogalpur, Post – Sonbhad)
 Thane Karpi, Dist. Arval)
 State Bihar)
4. Mr. Swaraj Singh Gurbux Singh Maniktala)
 At Godown No. 126, Truck Terminal,)
 Near Libra, Kalamboli, Tal. Parnel,)
 Dist. Raigad 410 218)

....Respondents
 (Owner of the Trailer No. MH-06-K-6521)
 (Res. Nos. 1 to 3 = Orig. Applicants and
 Respondent No.4 = Opp. Party.)

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Mr. Himanshu Takke i/b Mr. Milind V. More, Advocate for the
Appellant.
Mr. Shirshak Chavanke, Advocate for the Respondent Nos. 1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th FEBRUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is deduction of amount for personal expenses and consortium amount is awarded on higher side.

2. It is contention of learned counsel for the Appellant/Insurance Company that there are 3 Claimants but Tribunal has deducted 1/4 amount for personal expenses, it should be 1/3 amount. Learned counsel further submitted that the Tribunal has awarded 50% future prospects, it should be 40%. Learned counsel further submitted that the Tribunal has awarded Rs.2,05,000/- as consortium amount, which is on higher side. Hence, requested to allow the Appeal.

3. Learned counsel for the Respondents/Claimants submitted that while passing order, the Tribunal has considered all the aspects and on that basis, the judgment and order is passed and no interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Vasai (for short “the Tribunal”).

5. The deceased was driver on private vehicle. The Tribunal has awarded 50% future prospects, it should be 40%. Hence, I am considering 40% future prospects. There are three claimants, the Tribunal has deducted 1/4 amount for personal expenses, it should be 1/3 hence, I am considering 1/3 amount for personal expenses. The Tribunal has awarded Rs.2,05,000/- under non pecuniary head. 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 and Rs.18,000/- for funeral expenses and Rs.18,000 for loss of estate.

6. Considering above calculations, the Claimants are entitled for following compensation.

Monthly Salary	Rs.8,000/-
Add: 40% future prospects	Rs.3,200/-
Sub total	Rs.11,200/-
Less 1/3rd towards personal expenses	Rs.3,733/-
Total monthly income	Rs.7,467/-
Annual Income (Rs.7,467/- X 12)	Rs.89,604/-
Multiplier 18 (Rs.89,604/- X 18)	Rs.16,12,872/-
Loss of estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-
Consortium amount (Rs.48,000/- X 3 claimants)	Rs.1,44,000/-
Medical Expenses	Rs.1,500/-
Total Compensation	Rs.17,94,372/-
Less awarded by the Tribunal	Rs.21,50,500/-
Balance amount refundable to appellant	Rs.3,56,128/-

The excess amount is Rs.3,56,128/-, the Appellant/Insurance Company is entitled for this amount.

7. In view of above, I pass following order.

ORDER

- i. Appeal is allowed.
- ii. The appellant/insurance company is permitted to withdraw Rs.3,56,128 with proportionate

interest, out of deposited amount.

iii. The claimants are permitted to withdraw the balance amount along with proportionate interest thereon.

iv. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)