

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 561 OF 2015

1	Bhagyashree Sunil Godage,	)	
	Age: 38 years, Occ: Household	)	
2	Poonam Sunil Godage,	)	
	Age: 19 years, Occ: Education	)	
3	Prakash Sunil Godage,	)	
	Age: 16 years, Occ: Education,	)	
4	Sagar Sunil Godage,	)	
	Age: 11 years, Occ: Education,	)	
	(Appellant Nos. 3 & 4 are minor	)	
	Through Guardian appellant No.1)	)	
	All R/o. C/o. Subhash Kasabe	)	
	Datta Nagar, Mahol, Tal. Mohol	)	
	District: Solapur	)	
	At present R/o. Kurdu,	)	
	C/o. Kalyan Sambhu Chopade,	)	
	Tal. Madha, District: Solapur	)	Appellants (Original Claimants)

Versus

1	Kaluram Namdev Gaikwad,	)	
	Age: adult, Occ: Business,	)	
	R/o. Chakan, Medankarwadi,	)	
	Tal. Khed, District: Pune	)	
2	The Divisional Manager,	)	
	I.C.I.C.I. Lombard General Insurance	)	
	Co. Ltd. Mahavir Chowk,	)	
	Hotagi Road, Solapur.	)	Respondents.

Mr. Sharad Bhosale, Advocate for the Appellants.

Smt. Varsha Chavan, Advocate for the Respondent No.2-Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th JANUARY, 2024.

Oral Judgment :

1. The issue involved in this appeal is income of the deceased is considered on lower side.
2. It is contention of learned counsel for the appellants/claimants that deceased was running Vadapav Trolley and was getting Rs.6000/- to Rs.7000/- per month but the Tribunal has considered the monthly income of the deceased at Rs.3000/- per month, which is on the lower side. Learned counsel further submitted that, at the time of the accident, deceased was 43 year old and he was maintaining a family of four persons, so the Tribunal should have considered monthly income of the deceased at Rs.7,000/- per month. Hence, requested to allow the appeal.
3. It is contention of learned counsel for respondent No.2- Insurance Company that no evidence was produced on record to prove the income of the deceased. The income considered by the Tribunal is proper and no interference is required in it. Learned counsel further submitted that the Tribunal has applied wrong multiplier of 15, instead of 14. Hence, requested to dismiss the appeal.
4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short "the Tribunal").

5. To prove the income of the deceased, the claimants have examined claimant No.1-Bhagyashree Godage. She has stated that her husband was running Vadapav Trolley and was getting Rs.6000/- to Rs.7,000/- per month. While dealing with the issue of income of deceased, the Tribunal has observed that the claimants have not produced any proof to prove the income of the deceased. Hence, The Tribunal has considered monthly income of deceased at Rs.3,000/- per month i.e. Rs.100 per day. I am unable to understand the observations of the Tribunal as the claimant No.1 has specifically stated that deceased was running Vadapav Trolley and he was earning Rs.6,000/- to Rs.7,000/- per month, it should have been considered by the Tribunal. The deceased was maintaining family of four persons. As the deceased was running vadapav business, no question of documentary evidence is required. Considering evidence on record, I am considering the monthly income of deceased at Rs.5,000/-.

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.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses.

Learned counsel for respondent No.2-Insurance Company has pointed out that deceased was 43 year old at the time of the accident, the Tribunal has applied multiplier of 15, it should be 14. I am considering the

multiplier of 14.

Considering the above calculations, the claimants are entitled for following compensation :

Annual Income of deceased (Rs.5,000 pm x 12 months)	Rs.	60000.00
Future prospects (25%)	Rs.	15000.00
Total	Rs.	75000.00
less : 1/3rd personal expenses	Rs.	25000.00
Grand Total Income	Rs.	50000.00
Rs.50,000/- x 14 (multiplier)	Rs.	700000.00
Consortium Rs.48000 x 4 (claimants)	Rs.	192000.00
Funeral Expenses	Rs.	18000.00
Loss of estate	Rs.	18000.00
Total Compensation	Rs.	928000.00
Compensation awarded by the Tribunal	Rs.	387000.00
Enhanced Amount	Rs.	541000.00

The claimants are entitled for enhanced amount of Rs.5,41,000/-.

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

O R D E R

1. The appeal is allowed.
2. Appellants/claimants are entitled for enhanced compensation of Rs.5,41,000/- @ 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 interest @ 7.5% on this amount from 1st November 2017 till realisation.

3. The Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks from the receipt of this order.
4. Appellants/claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

The appeal stands disposed off.

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

(SHIVKUMAR DIGE, J.)