IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.2139 OF 2007

1. Laxmi Prabha Pralhad Rao
Age-42 years, Occ : Household

2. Vrushali Pralhad Rao
Age-23 years, Occ : Education

3. Varun Pralhad Rao
Age-11 years, Occ : Education,
Minor Through Natural Guardian Mother No.1.

4. Shri.Satyanarayan Rao
(Deleted in Trial Court as per Order on Exh.22)

5. Smt.Kaveri Satyanarayana Rao
Age-68 years, Occ : Nil
All R/at 27, "Vrushali", Government Colony, Vishrambag, Sangli, District-Sangli.

(Appellant No.5 deleted as per Order dated 29/2/2024 since deceased)

(Org.Claimants)
...Appellants

Versus

1. Shri.Bahal Jarnail Singh
Age-Major, Occ : Owner
R/at Andhra Road Courier, Road-2, Hizapur, Raipur, State Chaatisgarh

2. Mr.Gulzarsingsingh J. Pannu
(Deleted in Trial Court as per Order on Exh.17)

3. The New India Assurance Co. Ltd.	}	(Org.Respondents)
Raipur (C.G.) Policy No.450300/31/02044	}	
'Mata Building', Civil Hospital Road, Sangli	}	....**Respondents**

Mr.Tejpal S. Ingle a/w Ms.Priyanka Babar, for the Appellants.
Ms.S.S. Diwivedi, for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th FEBRUARY 2024

ORAL JUDGMENT :-

. By way of this Appeal, the Claimant's are seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellant -Claimant's that, the deceased was working as a Engineer in Irrigation Department of Panchayat Samiti, Atpadi and he was earning Rs.11,310/- per month as salary, but Tribunal has considered monthly income of deceased at Rs.5,500/- on the basis of the admission given by the wife of the deceased in cross-examination, which is erroneous. The learned counsel further submitted that, the Tribunal has deducted 1/3rd amount for personal expenses. There are five Claimant's, it should be 1/4th.

The 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 the learned counsel for the Respondent-Insurance Company that no evidence was produced on record to prove the income of the deceased. The wife of the deceased in cross-examination has admitted that, the deceased was getting salary of Rs.5,500/- and on that basis the Tribunal has considered the income of the deceased, which is proper. The learned counsel further submitted that, the Tribunal has considered all the aspects while passing the judgment and order. No interference is required in it.

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

5. To prove the income of the deceased the Claimant's have examined Claimant No.1 wife of the deceased Laxmiprabha Rao at Exhibit-35. She has stated that her husband was working in Irrigation Department of Panchayat Samiti, Atpadi and he was

getting gross salary of Rs.11,310/- per month. The salary certificate is produced on record. It is at Exhibit-39. In cross-examination she has admitted that, her husband was getting Rs.5,500/- per month net take home salary.

6. While dealing with the issue of income of the deceased, on the basis of the admission given by wife of the deceased the Tribunal has considered monthly income of deceased at Rs.5,500/-, in my view, it is erroneous. It has come on record that, the deceased was working as a Junior Engineer and he was getting Rs.11,310/-. The Salary Certificate is produced on record. When the salary certificate shows the salary of deceased, mere admission given in the cross-examination cannot be ground to consider the said salary as income of the deceased if wife had stated in cross-examination that her husband was getting Rs.30,000/-, per month as salary. The Tribunal would not have considered it. Considering the amount mentioned in Salary Certificate and after deducting Rs.200/- as Professional Tax. I am considering monthly income of deceased at Rs.11,110/-. The Tribunal has deducted 1/3rd amount for personal expenses.

There are five Claimant's, it should be 1/4th. Hence, I am considering 1/4th for personal expenses. The Tribunal has considered consortium amount on lower side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram[1],*** each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate. Considering these calculations the Claimants are entitled for following compensation.

Particulars	**Amount**
Monthly Income	Rs.11,110.00
Annual Income	Rs.1,33,320.00
(-) Personal Expenses (1/4th amount)	Rs.33,330.00
Net Annual Loss of Income	**Rs.99,990.00**
Future Prospects 30%	(+) Rs.29,997.00
Total Loss of Income	**Rs.1,29,987.00**
Multiplier 14 (Age-42 years) Rs.1,29,987 X 14	**Rs.18,19,818.00**
Consortium (Rs.48,000 x 5)	Rs.2,40,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Total Just Compensation Payable	**Rs.20,95,818.00**
Awarded amount	Rs.7,15,000.00
Enhanced amount	**Rs.13,80,818.00**

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

ORDER

(i) The Appeal is allowed.

(ii) The Claimant's are entitled for enhanced amount Rs.13,80,818/- @ 7.5% per annum from date of the filing of the Claim Petition till realization of the amount. Out of this amount Rs.2,76,000/- is consortium amount, the Claimant's are entitled @ 7.5% interest on it from 1st November 2017, till realization of the amount.

(iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within 8 weeks after receipt of this order.

(iv) The Claimants are permitted to withdraw the deposited amount alongwith interest.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)