

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

FIRST APPEAL NO. 708 OF 2023

- | | | |
|-----------------------------------|---|----------------|
| 1. Shailesh Chunilal Gala, |) | |
| aged about 45 years, |) | |
| Residing at Vanraj Bhuvan, |) | |
| Ground Floor, Bhaudaji Road No.9, |) | |
| Matunga, Mumbai- 400 019 |) | |
| | | |
| 2. Kalpana Shailesh Gala |) | |
| aged about 44 years |) | |
| Residing at Vanraj Bhuvan, |) | |
| Ground Floor, Bhaudaji Road No.9, |) | |
| Matunga, Mumbai – 400 019 |) |Appellants |

Versus

- | | | |
|---|---|-----------------------|
| 1. Vikranjeet Singh, |) | |
| Maratch, Shree Gurusingh Sabha, |) | |
| Room No. 82/83, 1 st Floor, Mumbai-400012. |) | |
| (Owner of Motor Lorry No. MH-04-CP-619) |) | |
| | | |
| 2. The New India Assurance Co. Ltd. |) | |
| New India Centre, 1 st Floor, 17-A, |) | |
| Cooperage Road, Mumbai – 39. |) | |
| Policy No:- 121400/31/09/01/00000269 |) | |
| Valid from: 10.04.2009 to 09.04.2010 |) | |
| (Insurer of Motor Lorry No. MH-04-CP-619) |) |Respondents |
| | | Original Opp. Parties |

Mr. Jitendra Gor i/b Ms. Sushma P. Gor, Advocate for the Appellant.
Ms. Poonam Mital, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th JANUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is income of deceased is considered on lower side.

2. It is contention of learned counsel for the Appellants/Claimants that deceased was getting monthly income at Rs.16,000/- per month but the Tribunal has considered Rs.6,000/- per month, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects, it be awarded and consortium amount is awarded on lower side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondent No.2/Insurance company that while passing the order the Tribunal has considered all the aspects. No evidence was produced on record to prove the income of deceased. The order passed by the Tribunal is legal and valid 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, Mumbai (for short “the Tribunal”).

5. It is claimant’s case that deceased was serving as accountant in two companies and he was getting Rs.16,000/- per month as salary. He was also getting income from his agricultural land and he was earning Rs.2,00,000/- from agricultural income. To prove the income of deceased, the Claimants have examined Claimant No.1 Shailesh Gala, he has stated that deceased had agricultural income from the land situated at Kutch Anjar, Gujarat. He was also serving with P. K. Trading Company, Mumbai and H. K. Soni & Company, Mumbai. He was drawing salary of Rs.8,000/- per month from P. K. Trading Company as an Accountant and another Rs.8,000/- from Harish Soni & Company and he was earning Rs.2,00,000/- from agricultural land.

6. In cross-examination, he admitted that he has not produced documents on record to show the income from agricultural land. In

support of evidence of PW-1 the Claimants have examined PW-2 Paresh Cheda's at Exhibit-26, he has stated that deceased Devyash was working as Accountant with his firm and drawing Rs.8,000/- per month as salary. The salary certificate is at Exhibit-27. He further stated that, he was paying Rs.4,000/- as a bonus to deceased at the time of Diwali. Deceased was working with him as a part time employee. He was working three days in a week. In cross-examination, this witness admitted that he has no evidence to show that he had paid Rs.8,000/- per month salary to the deceased. The Claimants have examined PW-3 Harish Soni Tax Consultant, he has stated that deceased was writing accounts for his company as an Accountant, he used to pay him Rs.8,000/- per month as salary in cash. He used to give Rs.4,000/- as bonus at the time of Diwali to the deceased. The salary certificate is at Exhibit-29. In cross-examination, he has admitted that he has not produced salary vouchers of deceased on record. Considering evidence on record, the Tribunal has considered monthly income of deceased at Rs.6,000/- per month. In my view, it is on lower side. As deceased was Commerce Graduate and he was working as Accountant with PW-2 and PW-3. They have categorically stated that they were paying Rs.8,000/- per month salary

to the deceased.

7. Considering these facts, I am considering monthly income of deceased at Rs.10,000/- per month. 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. The consortium amount is awarded, on lower side. 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 to Rs.48,000/- for consortium amount and Rs.18,000/- for funeral expenses, and Rs.18,000/- for loss of estate.

8. Considering the above calculations, the claimants are entitled for following compensation.

Monthly Income	Rs.10,000/-
Add 40% Future Prospects	Rs.4,000/-
Total	Rs.14,000/-
Deduction ½ for personal expenses	Rs.7,000/-
Total Monthly Income	Rs.7,000/-
Annual Income Rs.7,000/- X 12	Rs.84,000/-
Multiplier Rs.84,000/- X 18	Rs.15,12,000/-
Loss of Estate	Rs.18,000/-
Funeral Expenses	Rs.18,000/-

Consortium amount Rs.48,000 X 2 (Claimants)	Rs.96,000/-
Total Compensation	Rs.16,44,000/-
Less awarded by the Tribunal	Rs.7,33,000/-
Enhanced amount	Rs.9,11,000/-

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

ORDER

- i. Appeal is allowed.
- ii. The Claimants are entitled for enhanced amount of Rs.9,11,000 @ 7.5.% per annum from date of filing claim petition till realisation of amount, out of this amount consortium amount is Rs1,32,000/- ,the Claimants are entitled interest @ 7.5% per annum on this amount from 1st November, 2017 till realisation of the amount.
- iii. The Respondent No.2/Insurance Company shall deposit the enhanced amount along with accrued interest thereon, within six weeks after receipt of the order.
- iv. The claimants are permitted to withdraw the deposited amount along with accrued interest

thereon.

10. Learned counsel Smt. Poonam Mital advocate for the Respondent undertakes to file Vakalatnama.

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

(SHIVKUMAR DIGE, J.)