

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

FIRST APPEAL NO. 878 OF 2023

SHANTANU
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1. Meena Datta Rokade)
Age: 43 years, Occ- Household)
2. Akshay Datta Rokade)
Age: 24 years, Occ- Education)
Both R/o. C/O. Mahadev Kavale,)
Ramling Nagar, Housing Society,)
Vijapur Road, Solapur.)....Appellant
(Org. Claimants)

Versus

1. Vijaykumar Laxman Bhosale)
Age: Major, Occ: Business)
R/o. Datta Nagar, Kakade Plot,)
Osmanabad.)
2. Bajaj Alliance General Insurance Co. Ltd.)
Sat Rasta, Opposite Big Bazaar,)
Near Government Rest.)
House, Solapur.)
3. Datta Kisan Sherkhane)
Age- Major, Occ- Business)

R/o. Sunder Colony, Sidharth Nagar,)
Plot No. 8/9, Near Saibaba Temple)
Thergaon, Pune.)....Respondents
(Org. Respondents)

Mr. R. S. Alange, Advocate for the Appellant.
Mr. Sarthak S. Diwan, Advocate for the Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th FEBRUARY, 2024.

Oral Judgment. :

1. By this appeal, the Appellant/Claimant is seeking enhancement of compensation.

2. It is contention of learned counsel for the Appellant/Claimant that, the deceased was doing fruit business, from the said business he was earning Rs.20,000/- per month as net income but, the Tribunal has considered monthly income of the deceased at Rs.6,000/-, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects 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 no evidence was produced on record. To prove the income of deceased, Income Tax Returns were filed on record but, those were filed in income tax office after death of the deceased. The income considered by the Tribunal is proper and no interference is required in it. Learned counsel further submitted that while passing the order, the Tribunal has considered all the aspects and on that basis the judgment and order is passed by the tribunal 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, Solapur (for short “the Tribunal”).

5. To prove the income of deceased, the Claimants have examined PW-1 Meena Rokde at Exhibit-30, she has stated that her husband Datta Rokde was doing business of fruits in the name of Balaji Fruits and Company at Padwal Nagar, Thergaon, Chinchwad. He used to bring the fruits from different markets and sale on fruit stall. He was having shop Act licence, he used to earn more than Rs.20,000 per month as net income from the said business. In cross-examination, she admitted that she had no documentary evidence to

show that her husband had hired the said tempo and he was carrying the goods in tempo. The shop Act licence in the name of deceased is produced on record, it is at Exhibit-41. While dealing with the issue of income of the deceased, the Tribunal has observed that no evidence was produced on record to prove the income of deceased hence, the Tribunal has considered Rs.6,000/- as notional monthly income of the deceased. In my view, it is on lower side. It has come on record that at the time of accident, the deceased was returning to Pune in offending tempo with purchased mangoes from Gujrath and accident occurred. It shows that, he was doing fruit business. Moreover, the shop Act licence produced on record supports the claimant's case. The deceased was doing fruit business in the area of Pimpri Chinchwad District, Pune, which is urban and developed area.

6. Considering these facts, I am considering monthly income of deceased at Rs.9,000/- 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 Tribunal has awarded consortium amount 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 for Rs.48,000/- for consortium amount and Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

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

Monthly Income	Rs.9,000/-
Annual Income	Rs.1,08,000/-
Add: 25% future prospects	Rs.27,000/-
Total income	Rs.1,35,000/-
Multiplier X 14	Rs.18,90,000/-
Less 1/3rd deduction for personal expenses	Rs.6,30,000/-
Total amount	Rs.12,60,000/-
Consortium amount Rs.48,000/- X 2 (claimants)	Rs.96,000/-
Loss of estate	Rs.18,000/-
Funeral expenses	Rs.18,000/-
Total Compensation	Rs.13,92,000/-
Less awarded by the Tribunal	Rs.7,92,000/-
Enhanced amount	Rs.6,00,000/-

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

ORDER

- i. Appeal is allowed.
- ii. The Claimants are entitled for enhanced amount of Rs.6,00,000/- @ 7.5% interest per annum from date of filing claim petition, till realisation of the amount.

Out of this amount Rs.1,32,000/- is consortium amount, the claimants are entitled @ 7.5% interest per annum on this amount from 1st November, 2017 till realisation of the amount.

- iii. The Respondent/Insurance Company shall deposit 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.

9. The Tribunal has passed pay and recover order. The Respondent/Insurance Company is at liberty to recover entire amount along with accrued interest from the owner of the vehicle as directed by the Tribunal.

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

(SHIVKUMAR DIGE, J.)