

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

FIRST APPEAL NO.1650 OF 2016

The New India Assurance Co. Ltd., } TP-Hub, 41-b, 4 th Floor, Maker Tower E } Cuffe Parade, Mumbai-400 005 }	...Appellant
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Versus

**NILAM
SANTOSH
KAMBLE**

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1. Sou. Kashibai @ Kasturabai Kallappa } Jakune } Age-40 years, Occ : Household }	
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2. Kallappa Nilappa Jakune } Age-50 years, Occ : Labour }	
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3. Satish Kallappa Jakune } Age-18 Years, Occ: Education }	
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All R/at Mandrup, Taluka-South Solapur, } District-Solapur, } Now R/at Umadi, Taluka-Jath, } District-Sangli }	
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4. Mahesh Ramchandra Patil } Age-29 years, Occ ; Driver, } R/o. Yedrav, Taluka-Mangalvedha, District- } Solapur. }	
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5. Chindanand Bhimanna Mali } Age-37 years, Occ : Agriculture & Service } R/o. Umadi, Taluka-Jath, District-Sangli. }	
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...Respondents

Ms.Poonam Mital, for the Appellant.
Mr.Balwant Vitthal Salunkhe, for Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th MARCH 2024

ORAL JUDGMENT :-

1. The issue involved in this Appeal is income of the deceased is considered on higher side.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the Tribunal has considered monthly income of the deceased at Rs.11,789/-. The deceased was working as a Lab Attendant. The documents produced on record at Exhibit-42, shows that the deceased was getting salary of Rs.10,589/-, but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the deceased was working as Lab Attendant in M.P. Mansinka Vidyalaya & Junior College, Sangli and he was getting salary of Rs.11,789/-. The witnesses was examined to prove the said income. The learned counsel further

submitted that the Tribunal has not awarded consortium amount, it be awarded, and requested to dismiss the Appeal.

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 PW-2-Kasturi, mother of the deceased. She has stated that the deceased Santosh was serving as a Lab Attendant. In support of evidence of PW-1, the Claimant has examined PW-2 Mallikarjun Kamate at Exhibit-45, Junior Clerk, working in M.P. Mansinka Vidyalaya & Junior College. He has stated that at the time of the accident, the deceased was working in their School and he was getting salary at Rs.11,789/-. The salary slip is at Exhibit-42. After deducting Rs.1,200/- tax amount from salary of the deceased total comes to Rs.10,589/-.

6. While dealing with the issue of income, the Tribunal has considered monthly income of the deceased at Rs.11,789/-. In my view the Tribunal has not considered a deduction of Rs.1,200/-, it should have been considered. After deducting this

amount, total comes to Rs.10,589/-. Hence, I am considering this amount as income of deceased. The Tribunal has not awarded consortium amount. As per view of Hon'ble Apex Court in the 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 this calculations, the Claimants are entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.10,589.00
Age- 25 = Rs.10589 X 18 (Multiplier) X 12	Rs.22,87,224.00
(+) Future Prospects 50%	Rs.11,43,612.00

	Rs.34,30,836.00
½ Deduction	Rs.17,15,418.00
Consortium (Rs.48,000 x 3)	Rs.1,44,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Total Just Compensation Payable	Rs.18,95,418.00
Add : Medical Expenses	Rs.16,948.00
Entitled for Compensation	Rs.19,12,366.00
Already Awarded	(-)Rs.18,47,102.00
Enhanced Amount	Rs.65,264.00

1 2018 ACJ 2782 (SC)

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

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Claimants are entitled for enhanced amount of Rs.65,264/- @ 7.5% interest per annum from the date of the filing of Claim Petition, till realization of the amount.
- (iii) The Respondent-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within six weeks after receipt of this order.
- (iv) The Claimants are permitted to withdraw the deposited amount alongwith interest.
- (v) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.
- (vi) The Claimant's shall pay Deficit Court Fees on enhanced amount, as per Rules.
- (vi) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)