IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 127 OF 2014

1	Vijaya Vitthal Desale Aged about 48 years		
2	Rahul Vitthal Desale, Aged about 27 years, Residing at Saidham Apartment, Building No.3, 4th Floor, Flat No.14, Near Saileela Hospital, Birla College Road, Chikanghar, Kalyan (West), Dist. Thane.	..	Appellants
	versus		
1	Sadanand T. Tiwari, Manisha Nagar, Beturkar Pada, Kalyan, Dist. Thane.		
2.	The New India Assurance Co. Ltd. New India Assurance Building, 87, M. G. Road, Fort, Mumbai – 400023.	…	Respondents

Mr. T. J. Mendon, Advocate for the Appellant.
Ms. Poonam Mital, Advocate for Respondent No.2/Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st FEBRUARY, 2024.

Oral Judgment :

1. By way of this appeal, the claimants are seeking enhancement of compensation.

2. It is contention of the learned counsel for the appellants/claimants that the Tribunal has considered monthly income of the deceased at Rs.12448/- per month. The deceased was working as

Tax Collector in the Collector's Office and he was getting salary of Rs.13,708/- per month. The salary considered by the Tribunal is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects, the multiplier applied by the Tribunal is wrong and the Tribunal has awarded consortium amount on lower side. Hence, requested to allow the appeal.

3. It is the contention of learned counsel for the respondent No.2-Insurance Company that after deducting taxes, the monthly income of the deceased considered by the Tribunal is proper. 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 the judgment and order passed by Motor Accident Claims Tribunal, Kalyan (for short "the Tribunal"). To prove the income of the deceased, the claimants have examined claimant No.1-wife of deceased. She has stated that the deceased was working as Tax Collector in Collector's Office, Thane. The salary certificate is produced on record, which is at Exhibit-25. On the basis of Exhibit-25, the Tribunal has considered monthly income of the deceased at Rs.12448/-. In my view, it is on lower side. Exhibit-25 shows gross salary of the deceased was Rs.13708/- and after deducting profession tax of Rs.200/-, it would come to Rs.13,508/-. While considering the monthly income of the deceased, the Tribunal has deducted the amount of Provident Fund and Group Insurance Scheme, it

cannot be deducted from the salary of the deceased. Hence, I am considering Rs.13,508/- as monthly income of the deceased.

The Tribunal has not awarded future prospects. At the time of the accident, the deceased was 50 year old. 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 30% future prospects.

The Tribunal has applied multiplier of 7, it is wrong, it should be 13 as the deceased was 50 year old at the time of the accident.

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.

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

Heads		**Amount**
Monthly Income	Rs.	13508.00
30% future prospects	Rs.	4052.00
Total	Rs.	17560.00
1/3rd deduction for personal expenses	Rs.	5853.00
Total	Rs.	11707.00
Rs.11707/- x 12(months) x 13(multiplier)	Rs.	1826292.00
Consortium (Rs.48000/- x 2 claimants)	Rs.	96000.00

Funeral Expenses	Rs.	18000.00
Loss of Estate	Rs.	18000.00
Total Compensation	Rs.	1958292.00
Compensation awarded by Tribunal	Rs.	391920.00
Enhanced Amount	Rs.	1566372.00

The claimants are entitled for an enhanced amount of Rs.15,66,372/-.

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

O R D E R

1. The appeal is allowed.
2. The claimants are entitled for enhanced compensation of Rs.15,66,372/-@ 7.5% interest per annum from the 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 for 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
3. The respondent No.2-Insurance Company is directed to deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

4. The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

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

(SHIVKUMAR DIGE, J.)