

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 650 OF 2016

1	Surbhi Jaykumar Shah, age about 60 years, occupation Housewife, widow of the deceased		
2	Ashish Jaykumar Shah, age about 38 years, Occupation Business, son of the deceased.		
3	Mehul Jaykumar Shah, age about 32 years, occupation business, son of the deceased. All appellants are residing at Pardhi Agyari, Near Vaniya Wada, Kila Pardhi, Old Post office, Dist. Balsad, Gujrat State		Appellants/ Original Applicants
	Versus		
1	Sabira Siddique, Address at Sadara Khatun, Room No.12229, Nisai Phata, Pehlar, Dist.Thane (Owner of Motor Tanker No.Mh-04-CP-9331)	...	Respondent No.1/ Original Opponent No.1
2	Reliance General Insurance Co. Ltd. through its Divisional Manager, having their office at (old address ;- Rectifier House, Naigaum, Cross Road, Wadala, Mumbai – 31) New Address of Respondent No.2: Vishnu Nagar, Naupada, Gokhale Road, at Malhar Theatre Compound, Thane West, Thane, PIN 400 602 (Insurer of Motor Tanker No.MH-04-CP-9331)		Respondent No.2/ Original Insurer

Ms. Rina Kundu, Advocate for the Appellant.

Ms. Shalini Shankar, 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 learned counsel for the appellants/claimants that deceased was doing business and he was earning Rs.3,83,524/- per annum from the said business. The income tax returns are filed on record to prove the income of the deceased but the Tribunal has considered monthly income of deceased at Rs.9,000/- per month, which is on lower side. Hence, requested to allow the appeal.
3. It is contention of learned counsel for respondent No.2 /Insurance Company that after the death of deceased, business of deceased is continued. The income considered by the Tribunal is proper, no interference is required in it. Hence, requested to dismiss the appeal.
4. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Palghar (for short "the Tribunal").
5. To prove the income of the deceased, the claimants have examined claimant No.1- Surbhi Shah at Exhibit-22. She has stated that her husband – Jaykumar Shah was doing business of cement and kota and his annual income for the Assessment Year 2009-2010 was

Rs.3,52,711/- and for the year 2010-2011 was Rs.3,83,524/-. In cross-examination, she has denied the suggestion that her husband was not doing business. In support of evidence of PW1-, the claimants have examined PW-2 – Shankaran Menon -Income Tax Officer, Palghar at Exhibit-41. He has stated that the deceased had filed Income Tax Returns for the Year 2009-2010 and 2010-2011 in his office, which are at Exhibits – 42 and 43. Nothing elicited in his cross-examination. Considering the evidence on record, the Tribunal has considered, monthly income of the deceased at Rs.9,000/- per month. In my view, it is on lower side. It has come on record that the deceased was doing business and he had filed income tax returns. In the income tax returns, the income of the deceased is shown around Rs.30,000/- per month. It has not come on record whether after the death of the deceased, his business is closed or not, hence, considering the evidence on record, I am considering the monthly income of the deceased at Rs.13,000/-.

The Tribunal has awarded consortium amount of Rs.1,35,000/-, it is 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	Rs.	Amount
Monthly Income	Rs.	13000.00
1/3rd deduction for personal expenses	Rs	4333.00
Total	Rs	8667.00
Dependency (Rs.8667/- x 12(months) x 7 (multiplier))	Rs	728028.00
Dead body transportation to native place	Rs	21000.00
Consortium (Rs.48000/- x 3 (claimants))	Rs	144000.00
Loss of estate	Rs	18000.00
Funeral Expenses	Rs	18000.00
Total Compensation	Rs	929028.00
Compensation awarded by the Tribunal	Rs	635000.00
Enhanced Amount	Rs	294028.00

The claimants are entitled for enhanced amount of Rs.2,94,028/-.

6. 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 amount of Rs. 2,94,028/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- 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.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)