

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 781 OF 2023

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1 Mrs. Pratibha Ratnakar Phatale)
(Since deceased through her legal heirs))
1(a) Shri Mayur Ratnakar Phatale)
Age:45 yrs., Occ.Nil,)
1(b) Miss. Manisha Ratnakar Phatale)
Age : 48 yrs., Occ. Private Service,)
1(c) Mr. Ratnakar Keshav Phatale)
Age : 80 yrs., Occ. Nil,)
All R/at : 29, Navi Mahatma Phule Peth,)
Mahalaxmi Apartment, Flat No. 5, 2nd Floor,)
818 Ganj Peth, Pune-411 042)
[amendment carried out as per order dated 28th)
November 2023 in IA No.16518/2023])
... Appellants

Versus

1 Mr. Niraj Thakur)
Age : Adult, Occ : Driver, R/at : Loh Mandi,)
Indore, Madhya Pradesh)
2 Smt. Pushpa Durgashankar Jaiswal)
Age : Adult, Occ : Business)
R/at : 42/2, Vyasphalla, Chandrabhaga)
Juni Indore, Madhya Pradesh)
3 National Insurance Co. Ltd.)
Office at : Malwa Towers Old Palasis, Indore)
... Respondents

Mr. Yogesh Pande i/b. Mr. Vilas B. Tapkir, Advocate for the Appellant.
Ms. Shalini Shankar, Advocate for Respondent No.3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 20th MARCH, 2024.

Oral Judgment :

1. By this Appeal, the Claimants are seeking enhancement of compensation.
2. It is contention of learned counsel for the Appellants/Claimants that deceased was Mehendi Artist and he was earning more than Rs.20,000/- per month but, the Tribunal has considered his monthly income at Rs.7,900/- per month, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects. Learned counsel further submitted that at the time of accident, the deceased was 27 years old. The Tribunal has applied multiplier of 13, it should be 17. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side, it be awarded. Hence, requested to allow the Appeal.
3. It is contention of learned counsel for the Respondent No.3/Insurance Company that the Tribunal has considered all the aspects while passing the judgment and order. The deceased was not permanent in service at any place. No evidence was produced on record to prove the income of the deceased. The Tribunal has considered proper income of the deceased and on that basis compensation is awarded, which is proper. No interference is required in it.
4. I have heard both learned counsel. Perused judgment and order

passed by Motor Accident Claims Tribunal, Pune (for short “the Tribunal”).

5. To prove the income of the deceased, the Claimants have examined Claimant No.3 Mayur Phatale brother of the deceased at Exhibit-36. He has stated that his brother was working as Mehendi Artist with two hotels and was earning income of Rs.25,000/- per month. In support of evidence of PW-1, the Claimants have examined PW-2 Satish Herekar, Banquette Manager with Hotel Ambassador. He has stated that deceased was working as Mehendi Artist at hotel Ambassador on daily wages of Rs.300/- from 8:00 p.m. to 11:00 p.m. The certificate is at Exhibit-57. This certificate shows that the deceased Atul was getting payment of Rs.1,500/- for working on two days in week apart from the tips from the customer. The Claimants have examined Abhishek Shetty at Exhibit-65 son of owner of Kalinga Restaurant and Bar. He has stated that deceased Atul used to attend work as Mehendi Artist at his hotel from Wednesday to Friday from 8:00 p.m. – 11:00 p.m. and he was being paid Rs.2,000/- per week. This witness further stated that deceased was getting tips of Rs.200/- per day from customers. In cross-examination, this witness admitted that for applying Mehendi on full palm, artist usually take 45 minutes. This witness further admitted that no record was maintained by the hotel relating to payment made to the deceased Atul. It is Claimants’

case that deceased was serving with Sarvodaya Apparels as a part time worker. To prove it, the Claimants have examined PW-3 Raju, he has stated that deceased was working from 10:00 a.m. to 2:00 p.m. with Kirti Apparels and he was being paid salary of Rs.2,000/- per week. The certificate is at Exhibit-62.

6. Considering the evidence on record, the Tribunal has considered monthly income of the deceased at Rs.7,900/-. In my view, it is on lower side. It has come on record, the deceased was Mehendi Artist and he was working as a part time worker in Sarvodaya Apparels and in Kirti Apparels. Considering evidence on record, I am considering Rs.10,000/- as monthly income of the deceased. The Tribunal has not awarded future prospects. As per 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 40% future prospects. The Tribunal has applied multiplier of 13 at the time of accident, deceased was 27 years old so, proper multiplier is 17. The Tribunal has awarded consortium amount on lower side. As per 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 loss of estate and Rs.18,000/- for funeral expenses. There are two Claimants. The Tribunal has observed that only parents of the deceased

are entitled for the compensation hence, consortium amount has to be considered only for two Claimants.

7. In view of above, the claimants are entitled for following compensation

Monthly Income	Rs.10,000/-
Annual Income	Rs.1,20,000/-
Add: 40% future Prospects	Rs.48,000/-
Total income	Rs.1,68,000/-
Deducts 50% personal expenses	Rs.84,000/-
Total income	Rs.84,000/-
Multiplier 17	Rs.14,28,000/-
Consortium amount Rs.48,000/- X 2 (Claimants)	Rs.96,000/-
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs.18,000/-
Total compensation	Rs.15,60,000/-
Less awarded by the Tribunal	Rs.6,66,200/-
Enhanced amount	Rs.8,93,800/-

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

ORDER

- i. Appeal is allowed.
- ii. The Claimants are entitled for enhanced amount of Rs.8,93,800/- @ 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 @

7.5% interest per annum on this amount from 1st November, 2017, till realization on the amount.

- iii. The Respondent No.3/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.
 - v. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
 - vi. The Claimants shall pay deficit Court's fees on enhanced amount.
9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)