IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 615 OF 2021

1	Sheshnath Ramanarayan Dubey Aged about 57 years, Father of the deceased		
2	Shailakumari Sheshnath Dubey Aged about 49 years, Mother of the deceased		
3	Damini Devi Sheshnath Dubey Aged about 21 years, Sister of the deceased		
4	Ankit Sheshnath Dubey Aged about 18 years, Brother of the deceased		
5	Atul Sheshnath Dubey Aged about 16 years, Brother of the deceased		
6	Saurabh Sheshnath Dubey Aged about 12 years, Brother of the deceased All residing at R No.20, Ram Karan Pandey Chawl, Vishal Pandey Nagar, Gaurai Pada Road, Near Joya Hospital, Nallasopara (East), Vasai, District Thane	…	Appellants
	versus		
	BEST Undertaking BEST Bhavan, Colaba, Mumbai	….	Respondent

Ms. Varsha Chavan, Advocate for the Appellants.
Ms. Karishma Jhaveri i/b Mr. Navdeep Vora Associates, Advocates for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 26th MARCH, 2024.

Oral Judgment :

1. By way of this appeal, appellants/claimants are seeking enhancement.

SHUBHADA SHANKAR KADAM

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2. It is contention of learned counsel for the appellants/claimants that, at the time of the accident, the deceased was 26 year old and he was driving tax. He was earning Rs.1200/- to Rs.1400/- per day and contributing Rs. 600/- to 700/- for his family. There are six family members dependent on the deceased but the Tribunal has considered daily income of the deceased at Rs.300/- per day and it is considered only for 20 days. 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 respondent that the deceased was driving taxi of his father. In the year 2012, income of Rs.6000/- per month considered by the Tribunal is on higher side. 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, Mumbai (for short "the Tribunal").

5. To prove the income of the deceased, the claimants have examined appellant No.1-Sheshnath Dubey, father of the deceased, at Exhibit -16. He has stated that the deceased was working as taxi driver and was earning Rs.1200/- to Rs.1400/- per day and he used to spend

Rs.600/- to Rs.700/- per day for household expenses. While dealing with the income of the deceased, the Tribunal has observed that no evidence is brought on record by the claimants to prove the earning of the deceased. The Tribunal has considered Rs.300/- per day as daily income of the deceased for 20 days. I am unable to understand the observations of the Tribunal regarding considering the income of the deceased for 20 days as taxi driver is not government servant who have holiday. Taxi driver work for maintaining their family in all days of week and without earning daily, they cannot maintain their family. So the Tribunal should have considered the income of deceased for 30 days. The deceased was taxi driver, he was skilled worker, he was maintaining family of six persons, hence, I am considering the daily income of deceased at Rs.350/- per day.

5.1. The Tribunal has not awarded future prospects. As per the view of the 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.

5.2. 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/- as consortium amount, Rs.18,000/- for funeral expenses and Rs.18,000/- for loss of estate.

5.3 In view of the above calculations, the claimants are entitled for following compensation:

Particulars	Rs.	Amount
Annual Income of the deceased (Rs.350/-x 30(days)x 12 (months))	Rs.	126000.00
40% future prospects	Rs.	50400.00
Total	Rs.	176400.00
½ deduction towards personal expenses	Rs.	88200.00
Total	Rs.	88200.00
Rs.88200/- x 17(multiplier) Total Dependency	Rs.	1499400.00
Consortium (Rs.48000/- x 6 claimants)	Rs.	288000.00
Loss of Estate	Rs.	18000.00
Funeral Expenses	Rs.	18000.00
Total Compensation.	**Rs.**	**1823400.00**

The Tribunal has awarded Rs.6,55,500/-, if this amount is deducted from the amount of Rs.18,23,400/- considered by this Court, it comes to Rs.11,67,900/-. The claimants are entitled for this amount.

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

O R D E R

1. The appeal is allowed.
2. The appellants/claimants are entitled for enhanced compensation of Rs. 11,67,900/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs3,24,000/- is

consortium amount. The claimants are entitled for interest @ 7.5% on this amount from 1st November 2017 till realisation.

3. Respondent No.1-Corporation shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

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

5. The appellants/claimants shall pay court-fees on enhanced amount as per Rule.

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

(SHIVKUMAR DIGE, J.)