

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

FIRST APPEAL NO. 19 OF 2020

The New India Assurance Co. Ltd.	}	
Baramati Branch, Bhigwan Chowk, Taluka-	}	
Baramati, District-Pune,	}	
Through Its Legal Hub at TP-41 B, 4 th Floor,	}	
Maker Tower, E Cuffe Parade,	}	
Mumbai-400 005.	}	...Appellant

Versus

1. Smt.Pushpa Mahadeo Bagade	}	
Aged-41 years, Occ : Household	}	
2. Kalyani Mahadeo Bagade	}	
Aged-23 years, Occ: Nil	}	
3. Poonam Mahadeo Bagade	}	
Aged-21 years, Occ : Education	}	
4. Rohit Mahadeo Bagade	}	
Age-17 years, Occ : Education	}	
(Applicant No.4 being Minor, on his behalf	}	
His Mother Applicant No.1)	}	
5. Anusay Dagade Bagade	}	
Aged-72 years, Occ : Nil	}	
6. Dagade Balku Bagade	}	
Aged-77 years, Occ : Nil	}	
7. Shri.Sunil Rameshlal Jaiswal	}	
Aged-42 years, Occ :Business	}	
R/at. Lihakhed, Taluka-Sillod,	}	
District Aurangabad-431 003.	}	...Respondents

Ms.Poonam Mital, for the Appellant.

Mr.G.S. Jadhav, for the Respondent Nos. 1 to 6.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 24th JANUARY 2024

ORAL JUDGMENT :-

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

2. It is contention of the learned counsel for the Appellant that, deceased was doing the centering work. But the Tribunal has considered monthly income of deceased at Rs.7,000/- per month, which is on higher side. No evidence was produced on record to prove the income of the deceased. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, deceased was doing centering work. He was also supplying milk to a local diary and he was earning more than Rs.7,000/- per month. The Order passed by the Tribunal is legal and valid, no interference is required in it. Hence, 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), Baramati.

5. While dealing with the issue of income of deceased the Tribunal has observed that, the deceased was doing the centering work and he was supplying milk to local dairy. Considering age of deceased and his family background, the Tribunal has considered monthly income of deceased at Rs.7,000/- per month. I do not find infirmity in it.

6. In my view the deceased was 43 years old and he was maintaining family of seven persons. The income of Rs.7,000/- per month considered by the Tribunal is proper. The Tribunal has awarded consortium amount to Claimant No.1 only. As per view of Hon'ble Apex Court in case of *Magma General Insurance Co. Ltd. V/s. Nanu Ram¹*, each claimant is entitled for Rs.48,000/- as consortium amount. There are five Claimants it comes to Rs.2,40,000/-. The Claimant's are entitled for this amount.

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

1 2018 ACJ 2782 (SC)

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimants are entitled for enhanced amount of Rs.2,40,000/- @ 7.5% per annum from 1st November 2017 till realization of the amount.
- (iii) The Appellant-Insurance Company shall deposit enhanced amount along with accrued interest thereon within six weeks after receipt of the order.
- (iv) The statutory amount along with interest be transferred to the Tribunal. The parties are at liberty to withdraw it, as per Rules.
- (v) Pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)