

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

FIRST APPEAL NO.217 OF 2021

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

Versus

1. Smt.Nirmal Sashikant Jagtap	}	
Aged-32 years, Occ : Household.	}	
2. Snehal Sashikant Jagtap	}	
Aged-13 years, Occ : Education	}	
3. Sayali Sashikant Jagtap	}	
Aged-13 years, Occ: Education	}	
4. Mrunali Shashikant Jagtap	}	
Aged- 10 years, Occ : Education	}	
5. Vrdhan Shashikant Jagtap	}	
Aged-5 years, Occ : Nil	}	
(Applicant Nos.2 to 5 being minor, on his	}	
behalf His Mother Applicant No.1)	}	
6. Tarabai @ Tarubai Atmaram Jagtap	}	
Aged-61 years, Occ : Nil	}	
7. Atmaram Baliba Jagtap	}	
Aged-68 years, Occ : Nil.	}	
All R/at Undawadi, K.P. Tal. Baramati,	}	
District-Pune.	}	

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KAMBLE

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8. Shri.Sunil Rameshlal Jaiswal	}	
Aged-42 years, Occ : Business	}	
R/at Lihakhed, Tal. Sillod, District-	}	
Aurangabad-431 003.	}	...Respondents

Ms.Poonam Mital, for the Appellant.

Mr.Ghanshyam S. Jadhav, for Respondent Nos.1 to 7.

CORAM : SHIVKUMAR DIGE, J.

DATE : 7th FEBRUARY 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, the deceased was painter. The Tribunal has considered monthly income of deceased at Rs.15,000/- per month, without any evidence on record, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimants that, the deceased was painter. He was skilled worker. The income considered by the Tribunal is proper. The learned counsel further submitted that, the Tribunal has awarded consortium amount on lower side, if it calculates it

comes to more than Rs.2 lakhs, it can be adjusted in the income considered by the Tribunal. 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. To prove the income of the deceased, the Claimant has examined Claimant No.6 Atmaram Jagtap, he has stated that, the deceased was Painter and he was earning Rs.20,000/- per month. He had passed drawing examination and he had completed Art Teacher Diploma and Computerized Financial Accounting Diploma. The Certificates of Diploma's are produced on record. Considering the evidence on record the Tribunal has considered monthly income of deceased at Rs.15,000/- per month. I do not find infirmity in it. In my view, Diploma Certificates produced on record shows that, the deceased was skilled painter he had completed various Diploma's and he was doing business of Painting. Moreover, the Tribunal has not awarded consortium amount to all the Claimant's. There are

seven Claimant's, if it calculates, the said amount goes to more than Rs.2 lakhs. If this amount merges with the income of deceased it matches with the income considered by the Tribunal. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Respondent's/Claimant's are permitted to withdraw amount deposited by the Appellant-Insurance Company along with accrued interest.
- (iii) The statutory amount along with interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rules.
- (iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)