IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.588 OF 2023

1. Shri.Mohan Daji Chindarkar Age-57 years **2. Smt.Sandhya Mohan Chindarkar** Age-53 years (Deleted) 2(a). Varsha Sunil Harmalkar 2(b). Rupesh Mohan Chindarkar Both are R/at & Post Sandave, Old Sandave Wadi, Taluka-Devgad, District-Sindhudurg	}	(Amendment carried out as per Order dated 21/4/23 in IA No.3752 of 2023) **...Appellants**

Versus

1. Mr.Sakthivel Devendra R/at Sant Kutti Chawal No.1, Flat No.2, A.G. Khan Road, Worli Sea Face, Mumbai-400025.	}	
2. ICICI Lombard General Insurance Co. Ltd. 414, Verra Savarkar Marg, Near Siddhivinayak Temple, Prabhadevi, Mumbai-400 025.	}	**...Respondents**

Mr.T.J. Mendon, for the Appellants.
Mr.Rajesh Kanojia, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd APRIL 2024

ORAL JUDGMENT :-

. By way of this Appeal, the Appellant's-Claimant's are seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellant's-Claimant's that, the deceased was working in the company and he was getting salary of Rs.8,000/- per month. To prove the income of the deceased, employer of the company was examined, but the Tribunal has considered notional monthly income of the deceased at Rs.4,000/-, which is on lower side. The learned counsel further submitted that, the Tribunal has awarded consortium amount on lower side, it be awarded.

3. The learned counsel for the Respondent-Insurance Company vehemently submitted that witness of the company who examined to prove the income of the deceased was not aware that the deceased was permanent or temporary employee. He had not produced any documents before the Tribunal about employment of the deceased. Though it is case of the Claimant that deceased was driver but no driving license was produced before the Tribunal. The learned counsel further submitted that

the Tribunal has considered all the aspects while passing judgment and order. No interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Mumbai.

5. To prove the income of deceased, the Claimant's have examined Claimant No.1-Father of the deceased. He has stated that at the time of the accident deceased was working with Shaman Car Pvt Ltd., at Prabhadevi and was earning Rs.8,000/- per month. In support of the evidence of PW-1, the Claimant's have examined PW-2 Prakash Ruparelia, Commercial Head of Shaman Car Pvt. Ltd., at Exhibit-30. He has stated that the deceased was working as a driver in their company and he was getting salary of Rs.8,000/- per month. The Salary Certificate is at Exhibit-32. In cross-examination he has admitted that he had not brought attendance register of the deceased. He was not aware when deceased was appointed in their company.

6. While dealing with the issue of income of the deceased, the Tribunal has observed that no sufficient evidence is

produced on record to prove the income of the deceased, on that basis the Tribunal has considered notional monthly income of the deceased at Rs.4,000/- per month. I am unable to understand the observations of the Tribunal as father of the deceased has stated that the deceased was working in Shaman Car Pvt. Ltd., and he was getting salary of Rs.8,000/- per month and his evidence is supported by PW-2 Mr.Ruparalia, Commercial Head of the said company. There is no reason to disbelieve the evidence of PW-2. Considering the evidence on record, I am considering Rs.6,500/- as monthly income of the deceased. 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. V/s. Nanu Ram***[1]***,*** 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. Considering these calculations the Claimants are entitled for following compensation.

Particulars	**Amount**
Monthly Income	Rs.6,500.00
(+) Future Prospects (50%)	Rs.3,250.00

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Monthly Income After Future Prospects	**Rs.9,750.00**
(-) Personal Expenses (1/2nd amount)	Rs.4,875.00
Net Annual Loss of Income Rs.4875/- x 12 x 18	**Rs.10,53,000.00**
Consortium (Rs.48,000 x 2)	Rs.96,000.00
Loss of Estate	Rs.18,000.00
Funeral Expenses	Rs.18,000.00
Total Just Compensation Payable	**Rs.11,85,000.00**
Tribunal Awarded	Rs.4,62,000.00
Enhanced Amount	**Rs.7,23,000.00**

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

ORDER

(i) The Appeal is allowed.

(ii) The Claimant's are entitled for enhanced compensation of Rs.7,23,000/- @ 7.5% interest per annum from the date of the filing of the Claim Petition till realization of the amount. Out of this amount Rs.1,32,000/- is consortium amount, the Claimant's are entitled for interest on this amount @ 7.5% per annum from 1st November 2017 till realization of the amount.

(iii) The Respondent-Insurance Company shall deposit the enhanced compensation within six weeks, after receipt of this order.

(iv) The Claimant's shall pay Deficit Court Fees on enhanced amount, as per Rules.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)