

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

FIRST APPEAL NO. 790 OF 2016

The New India Assurance Co. Ltd., } 22, Mittal Chambers, } Thr. Centralized Motor TP Claims HUB } 41-B, 4 th Floor, Maker Tower-E, Near } World Trade Centre, Cuffe Parade, } Mumbai-400 005. }	Appellant
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V/s.

**NILAM
SANTOSH
KAMBLE**

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1. Smt.Swati Ajit Pawar } Age – 26 years, Widow of deceased, } 2. Kum.Prem Ajit Pawar } Age-7 years, Son of deceased } 3. Smt.Meena Baban Pawar } Age-54 years, Mother of deceased, } Respondent No.2 being minor though his } mother natural guardian Respondent } No.1 } All R/at Mangaon, Maharana Pratap } Nagar, Post & Taluka-Mangaon, Dist- } Raigad. } } 4. Shri.Dinesh J. Kothari, } Age-Adult, Occ : Owner, } A/11, Draupadi Chhaya Compound, } Purna Village, Taluka Bhiwandi, Dist- } Thane. }	Respondents (Resp. Nos.1 -3 Ori. Claimants, Resp. No.4 Opp. Party)
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Mr.D.S. Joshi, for the Appellant.
 Ms.Varsha Chavan, for Respondent Nos.1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 8th JANUARY 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal are wrong application of multiplier, the income of deceased is considered on higher side, compensation is awarded on higher side and accident caused due to sole negligence of deceased.

2. It is contention of the learned counsel for the Appellant that, the accident occurred due to sole negligence of the deceased, but this fact is not considered by the Tribunal. The learned counsel further submitted that, the deceased was 27 years old, but Tribunal has applied multiplier of 18, it should be 17. The learned counsel further submitted that, the Tribunal has considered monthly salary of the deceased at Rs.8,000/- per month without any evidence on record, which is on higher side. The learned counsel further submitted that, the Tribunal has awarded Rs.2,25,000/- as consortium amount which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the

Respondent-Claimant that, the accident occurred due to sole negligence of the driver of the offending tempo. The offence was registered against the driver of the tempo. No witness was examined to prove the negligence of the deceased. The learned counsel further submitted that, the FIR shows the offending tempo came to wrong side of the road and gave dash to the dumper of the deceased. The learned counsel further submitted that, deceased was working with Shree Developers and he was drawing salary of Rs.8,000/- per month and Rs.100/- as a Bhatta per day. But the Tribunal has considered Rs.8,000/- as salary of deceased, which is lower side. As Claimant's did not want to prolong the matter, hence, Claimant's have not filed Cross-objection for enhancement of the compensation. The learned counsel further submitted that, judgment and order passed by the Tribunal is legal and valid, 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. It is Claimant's case that on 25th March 2011 at about

11.15 hours, the deceased was proceeding towards Mumbai by driving his motor dumper No. MH-06-AQ-9916 on Mumbai Goa Highway Road. When the said motor dumper reached near within the vicinity of Palas Village at that time the offending motor tempo bearing registration No.MH-04-DK-3367 came from opposite direction with excessive and high speed. It came on wrong side of the road and dashed against the motor dumper of the deceased. Due to impact of the said accident the deceased was sustained injuries and while taking treatment he died. The offence was registered against the driver of the tempo. Considering the evidence on record the Tribunal has considered that, accident occurred due to sole negligence of the driver of the tempo. I do not find infirmity in it. As it has come on record that the driver of the tempo came on wrong side and gave dash to the vehicle of the deceased. Moreover, to prove negligence of the deceased driver of the offending tempo did not enter into witness box.

6. To prove the income of the deceased the Claimant's have examined Swapnil Nage as AW-2. He has stated that, he

was paying salary of Rs.8,000/- per month to the deceased. Considering evidence on record the Tribunal has considered salary of deceased at Rs.8,000/- per month, but Tribunal has not considered Rs.100/- bhatta, paid to the deceased. I do not find infirmity in it.

7. The Tribunal has awarded amount of Rs.2,25,000/- as consortium amount. As per view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*¹, each Claimant is entitled for Rs.48,000/- as consortium amount and Rs.18,000/- for loss of estate and Rs.18,000/- for funeral expenses. At the time of the accident deceased was 27 years old. The Tribunal has considered multiplier of 18. As per Hon'ble Apex Court in the case of *Sarla Verma & Ors vs Delhi Transport Corp.& Anr.*², proper multiplier is 17.

8. It is contention of the learned counsel for the Appellant that, the Tribunal should have exonerated the Appellant from paying compensation as there was breach of terms and conditions of the Insurance Policy. In my view, the Tribunal

1 *2018 ACJ 2782 (SC)*

2 *AIR 2009 SC 3104*

has observed that, the driver of the offending vehicle was not holding effective and valid driving license at the time of the accident and on that basis Tribunal has passed pay and recover order, which is proper.

9. Considering the above calculations the Claimant's are entitled for following compensation.

Particulars	Amount
Monthly Income Rs.8,000/- x 12	Rs.96,000.00
Add : FP 50%	Rs.48,000.00
	Rs.1,44,000.00
Less : 1/3rd	Rs.48,000.00
	Rs.96,000.00
Multiplier 17 Rs.96,000 x 17	Rs.16,32,000.00
Add : Consortium	Rs.1,44,000.00
Add: Funeral Expenses	Rs.18,000.00
Add : Loss of Estate	Rs.18,000.00
Total	Rs.18,12,000.00
Less : Amount granted	Rs.19,53,000.00
Amount to be refunded to the Appellant	Rs.1,41,000.00

10. The Appellant is entitled for excess amount of Rs.1,41,000/-.

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

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Appellant is permitted to withdraw amount of Rs.1,41,000/- alongwith proportionate interest.
- (iii) The Claimants are permitted to withdraw the balance amount alongwith proportionate interest.
- (iv) The statutory amount along with interest be transferred to the Tribunal. The parties are at liberty to withdraw it as per Rule.
- (v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)