

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 260 OF 2023**

Divisional Controller,]
Maharashtra State Road Transport Corporation,]
Having office at Vahatuk Bhavan, Kurla-Kirol]
Road, Vidyavihar, Mumbai – 400086] Appellant

Versus

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|---|---|---|-------------|
| 1 | Pinky Ajay Jaiswar,
Age-28 years, Occupation : Housewife,
(Widow of deceased) |]
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] | |
| 2 | Sukhraji w/o. Prithiraj Jaiswar,
Age – 55 years, Occupation – Housewife,
(Mother of deceased) |]
]
]
] | |
| 3 | Sweeti Ajay Jaiswar,
Age – 5 years,
(Minor daughter of deceased)
Through her Mother / Next Friend,
Pinky Ajay Jaiswar,
All residing at Room No.3, Building No.3,
Bahari Building, J. B. Road, Opp. Kenara Bar,
Sewri (W), Cotton Green, Mumbai – 400 015 |]
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] | Respondents |

Mr. Amit Ashok Gharte, Advocate for the Appellant.

Mr. Niketan Nakhawa along with Mr.Pramod Purav, Advocate for the Respondents/Claimants

CORAM : SHIVKUMAR DIGE, J.

DATE : 25th JANUARY, 2024.

Oral Judgment :

- The issue involved in this appeal is monthly income of the deceased is considered on higher side.

2. It is contention of learned counsel for the appellant-Corporation that the Tribunal has considered the monthly income of the deceased at Rs.12,000/- without evidence on record, which is on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondents/claimants that deceased was working as salesman with Shree Enterprises and earning Rs.15,000/- per month. To prove the income of the deceased, the bank statements were filed on record but the Tribunal has considered income of deceased at Rs.12,000/- per month, which is proper.

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 the claimant No.1- Pinky Jaiswar at Exhibit-16. She has stated that deceased was working as salesman with Shree Enterprises and he was getting salary of Rs.15,000/- per month. To prove the income of deceased, the claimants examined – Shrikant Patil, Assistant Manager of Union Bank of India, Matunga Branch. He has stated that deceased was having bank account in his bank. He produced the bank statements of deceased at Exhibits-31 and 32. While dealing with the issue of income of the deceased, the Tribunal has observed that deceased was 27 year old at the time of the accident and the bank entries shows deposit of the

amounts, on that basis, the Tribunal has considered monthly income of deceased at Rs.12,000/- per month. In my view, the income considered by the Tribunal is on higher side as no evidence was produced on record to prove the income of Rs.12,000/-. The deceased was maintaining a family of four persons. He was 27 year old. Considering this fact, I am considering the income of the deceased at Rs.10,500/- per month. Considering this income, the claimants are entitled for following compensation :

Annual Income (Rs.10500/- p.m. x 12)	Rs. 1,26,000.00
40% future prospects	Rs. 50,400.00
Total	Rs. 1,76,400.00
less : 1/3rd Dependency	Rs. 58,800.00
Total	Rs. 1,17,600.00
(Rs.1,17,600/- x 17(multiplier) as deceased was 27 year old)	Rs.19,99,200.00
Consortium	Rs. 40,000.00
Loss of Estate	Rs. 15,000.00
Funeral Expenses	Rs. 15,000.00
Total Compensation	Rs.20,69,200.00
Awarded by Tribunal	Rs.23,54,800.00
Difference	Rs. 2,85,600.00

Rs.2,85,600/- is an excess amount. The appellant-Corporation is entitled for this amount.

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

O R D E R

1. The appeal is partly allowed.
 2. Appellant-Corporation is permitted to withdraw Rs.2,85,600/- along with proportionate interest thereon out of the deposited amount.
 3. The respondents/claimants are permitted to withdraw the balance amount with proportionate interest.
 4. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
The first appeal stands disposed of.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)