**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.1715 OF 2007**

1 Chhaya Hambirrao Kurane
Age-38 years, Occ: Household

2 Hemlata Hambirrao Kurane
Age-21 Years, Occ: Education

3 Rohit Hambirrao Kurane
Age-19 years, Occ: Education
All R/at Padali Khurd, Taluka-Karveer,
District-Kolhapur, …..Appellant

*Versus*

1 Sanjay Bhau Koli,
Age-Major, Occ: Transport
R/o. Gadmudshingi, Taluka-Karveer,
District-Kolhpure.

2 The New India Assurance Co. Ltd.
Divisional Office, Opp. Of Parvati,
Talkies 'E' Ward, Kolhapur …. Respondents

Mr.Jayant Bardeskar, Advocate for the Appellants.
Ms.Sneha S. Dwivedi, for Respondent No.2-Insurance Company.

**CORAM : SHIVKUMAR DIGE, J.**
**DATE : 16th JULY, 2025.**

**<u>Judgment. :</u>**

1. This appeal is preferred by the claimants for enhancement of compensation.

2. It is contention of learned counsel for the appellants/claimants that the deceased was serving in college as Library Assistant and he was getting salary of Rs.8395/- but the Tribunal has deducted the amount of Rs.3288/- towards General Provident fund, which is erroneous and considered monthly income at Rs.5107/- per month, which is on lower side. The future prospects is not awarded, it be awarded. Consortium amount is awarded on lower side, it be awarded. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2-Insurance Company that the Tribunal has passed well reasoned order on the basis of evidence produced on record. The Tribunal has correctly deducted the amount which was invested in provident fund. No interference is required in the judgment and order passed by the Tribunal and requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal**,** Kolhapur (for short "the Tribunal").

5. To prove the income of the deceased, claimant No.3 has examined himself. He has stated that his father was serving in D Pharmacy College, Ujalawaiwadi and drawing salary of Rs.8,395/-. PW2-Shivaji Sutar, Account Clerk in Pharmacy College stated that the deceased was getting salary of Rs.8395/- which was his gross salary. While dealing with the issue of income, the Tribunal has observed that

there was deduction of Rs.3288/- as General Provident Fund. On this ground, the Tribunal has deducted this amount from the salary income of the deceased and has considered the monthly income of the deceased at Rs.5107/-. I am unable to understand the observations of the Tribunal regarding deduction of the amount of General Provident Fund from the salary. It is settled principle of law that the gross salary of the deceased has to be considered as monthly income of the deceased. At the time of the accident, the deceased was drawing salary of Rs.8,395/- per month, hence, I am considering it as monthly income of the deceased.

6. The Tribunal has not awarded future prospects. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. ltd. vs. Pranay Sethi , 2017 ACJ 2700( SC)***, the claimants are entitled for 30% future prospects.

7. At the time of the accident, the deceased was 44 year old. The Tribunal has applied multiplier of 13, it should be 14. Hence, I am considering multiplier of 14.

8. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses.

9. Considering the above calculations, the claimants are entitled for following compensation :

| Particulars | Rs. | Amount |
|---|---|---|
| Annual Income (Rs.8395/- x 12) | **Rs.** | 1,00,740.00 |
| 30% future prospects | **Rs.** | 30,222.00 |
| **Total** | **Rs.** | 1,30,962.00 |
| 1/3 deduction towards personal expenses | **Rs.** | 43,654.00 |
| **Total** | **Rs.** | **87,308.00** |
| Rs.87,308/- x 14(multiplier) | **Rs.** | 12,22,312.00 |
| Consortium (Rs.48,000/- x 3 (claimants)) | **Rs.** | 1,44,000.00 |
| Funeral Expenses | **Rs.** | 18,000.00 |
| Loss of Estate | **Rs.** | 18,000.00 |
| **Total Compensation** | **Rs.** | **14,02,312.00** |

The Tribunal has awarded Rs.5,43,000/-, if this amount is deducted from the amount of Rs.14,02,312/- considered by this Court, it comes to Rs.8,59,312/-. The claimants are entitled for this amount.

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

**O R D E R**

(1) The appeal is allowed.

(2) The claimants are entitled for enhanced compensation of Rs.8,59,312/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- is consortium amount, the claimants are entitled @ 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.

(3) Respondent No.2-Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

(4) The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

(5) The claimants shall pay deficit court fees on enhanced amount, if any, as per Rule.

(6) Record and Proceedings be sent back to the Tribunal.

7. Pending applications, if any, stand disposed.

**(SHIVKUMAR DIGE, J.)**