

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 264 of 2010**

- 1 Sunita Anilkumar Athwale
Age 42 years, Occ : Nil.
 - 2 Nitin Anilkumar Athwale,
Age : 22 years, Occ: Education.
 - 3 Seema/Reshma Anilkumar Athwale,
Age : 19 years, Occ: Education.
 - 4 Sachin Anilkumar Athwale,
Age : 17 years, Occ: Education.
(No.4 being minor represented through
Appellant No.1 as the Natural mother and
guardian)
All R/o. Railway Colony, RPI 92,
Kuruwadi, Dist : Solapur.
- ... Appellants
(Original applicants
/claimants)

versus

- 1 Santosh Bhiva Nargal,
Age : Adult, Occ : Jeep Driver,
R/o. : Kalas, Tal : Indapur,
District : Pune.
 - 2 New India Assurance Co.Ltd.,
Hutatma Memorial Mandir Complex,
Park Chowk, Solapur.
- Respondents

Mr. R. S. Alange, Advocate for the Appellants.

Mr. Sandeep S. Jinsiwale, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th JANUARY, 2025.

Judgment:

1. This appeal is preferred by the appellants/claimants against the judgment and order passed by the Motor Accident Claims Tribunal, Solapur (for short "the Tribunal").

2. It is contention of learned counsel for the appellants that the deceased was a government employee and he was getting salary of Rs.10,144/- but the Tribunal has considered his salary at Rs.5549/- which is on lower side. Learned counsel further submitted that the Tribunal has awarded consortium amount on lower side and the Tribunal has deducted 1/3rd amount for personal expenses as there are four claimants, it should be 1/4th. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2- Insurance Company that on the basis of evidence produced on record, the Tribunal has considered monthly income of the deceased, which is proper. Learned counsel further submitted that at the time of the accident, the deceased was 48 year old, hence proper multiplier is 13 but the Tribunal has applied multiplier of 15, which is on higher side. Learned counsel further submitted that the Tribunal has passed well reasoned order and no interference is required in it and requested to dismiss the appeal.

4. I have heard both learned counsel, perused the judgment and order passed by the Tribunal.

5. To prove the income of the deceased, the claimants have examined claimant No.1-wife of the deceased. She has stated that the deceased was working as Rangari in railway workshop and he was getting salary of Rs.9000/- per month. The claimants have examined

PW3-Bashir Pathan, Head Clerk in Central Railway Workshop at Kurduwadi at Exhibit-37. He has stated that in September 2003, at the time of the accident, the salary of the deceased was Rs.10,144/- per month and he received Rs.5549/-. While dealing with the issue of income of the deceased, the Tribunal has observed that in September 2003, the deceased had received an amount of Rs.5549/-. On that basis, the Tribunal has considered monthly income of deceased at Rs.5549/-. I am unable to understand the observations of the Tribunal as PW3-Bashir Pathan, has specifically stated that in September 2003, the salary of deceased was Rs.10144/-. The date of the accident is 17th October 2003. It is settled principle of law that in respect of salary, the Court has to consider the last drawn salary. The deceased was a government employee. Considering this fact, I am considering salary of the deceased at Rs.9819/- per month after deducting income tax and professional tax.

5.1. 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.

5.2. 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.48000/- as consortium amount, Rs.18,000/- for loss of estate and Rs.18000/- for funeral expenses.

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

Particulars	Rs.	Amount
Annual Income (Rs.9819/- x 12)	Rs.	117828.00
30% future prospects	Rs.	35348.00
Total	Rs.	153176.00
1/4 deduction towards personal expenses	Rs.	38294.00
Total	Rs.	114882.00
Rs.1,14,882/- x 13(multiplier)	Rs.	1493466.00
Consortium (Rs.48,000/- x 4 (claimants))	Rs.	192000.00
Funeral Expenses	Rs.	18000.00
Loss of Estate	Rs.	18000.00
Hospital and medical expenses	Rs.	22360.00
Total Compensation	Rs.	1743826.00

The Tribunal has awarded Rs.7,05,000/-, if this amount is deducted from the amount of Rs.17,43,826/- considered by this Court, it comes to Rs.10,38,826/-. The claimants are entitled for this amount.

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

ORDER

- (1) The appeal is allowed.
- (2) The claimants are entitled for enhanced compensation of Rs.10,38,826/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.2,28,000/- 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.
8. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)