IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1359 OF 2016
WITH
CIVIL APPLICATION NO. 2629 OF 2016
IN
FIRST APPEAL NO. 1359 OF 2016

The Branch Manager,
The New India Assurance Co. Ltd.,
In front of Collector Office,
L.I.C. Bldg., Satara ... Appellant
versus

1. Smt. Iyatun Shahabuddin Khan
   Age 35 years, Occupation-Household
   for herself and guardian being mother
   for petitioner Nos. 2 to 5.

2. Kum. Sabir Shahabuddin Khan
   Age: 14 years, Occu: Education,

3. Kum. Sakir Shahabuddin Khan
   Age 13 years, Occu: Education,

4. Kum. Rashida Shahabuddin Khan,
   Age 11 years, Occu. Education,

5. Kum. Sahil Shahabuddin Khan,
   Age 9 years, Occu: Education.

6. Sou. Farida Khan Saddam Khan
   Age 22 years, Occu: Household.

7. Sou. Hamida Khatun Sakur Khan
   Age 20 years, Occu: Household
   All R/o. Ambedkarnagar, Wai,
   Tal. Wai, District- Satara. ... Respondents

Mr. D. R. Mahadik, for the Appellant.

Mr. Pradeep S. Gole, for the Respondent Nos. 1 to 7.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th JULY, 2025.

JUDGMENT :

1. This appeal is preferred by the appellant-Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Satara (for short “the Tribunal”).

2. It is the contention of the learned Counsel for the appellant-Insurance Company that the deceased was working with Scrap Merchant. There was no evidence on record to prove the income but the Tribunal has considered his monthly income at Rs.7,000/- per month, which is on higher side. Learned Counsel further submitted that the Tribunal has considered future prospects at 30%, it should be 25%, as the deceased was 42 years old. Learned Counsel further submitted that the Tribunal has awarded consortium amount on higher side. Hence, requested to allow the appeal.

3. It is the contention of learned Counsel for respondents-claimants that the deceased was working with Scrap Merchant and received Rs.15,000/- to Rs.17,000/- per month as salary and in holiday, he used to work extra and used to get Rs.3,000/- from it. His monthly income was around Rs.20,000/- per month. Learned Counsel further

submitted that the Tribunal has passed well reasoned order. No interference is required in it and requested to dismiss the appeal.

4. I have heard both the 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-Iyatun Khan. She has stated that the deceased was working in scrap shop and getting Rs. 15,000/- per month as salary. To prove the income of the deceased, the claimants have examined PW 2-Parshuram Yadav, the employer of the deceased. He has stated that the deceased was working in his scrap shop and he used to pay him Rs.15,000/- per month. He has further stated that in weekly holiday deceased used to work extra and he used to pay him Rs.500/- per day. While dealing with the issue of income of the deceased, the Tribunal has observed that PW-1 in her cross-examination admitted that her husband was doing labour work wherever it was available. On that basis, the Tribunal has considered monthly income of deceased at Rs.7,000/-. I do not find infirmity in it. In my view, the deceased was maintaining family of seven persons and at the time of accident, he was 42 years old. Hence, income considered by the Tribunal is proper. The Tribunal has awarded

30% future prospects. As per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi***[1] the claimants are entitled for 25% future prospects. The Tribunal has awarded Rs.7,00,000/- for loss of consortium and love and affection. It is on higher side. As per view of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***[2]***,*** 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.

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

Particulars	Rs.	Amount
Monthly Income	**Rs.**	7,000/-
1/5 deducted towards personal expenses i.e. Rs.7000/- less Rs.1400/-	**Rs.**	5,600/-
Added 25% future prospects	**Rs.**	1,400/-
Total	**Rs.**	**7,000/-**
Towards dependency (Rs.7000x12x14)	**Rs.**	11,76,000/-
Consortium (Rs.48,000/- x 7)	**Rs.**	3,36,000/-
Funeral Expenses	**Rs.**	18,000/-
Loss of Estate	**Rs.**	18,000/-
Total Compensation	**Rs.**	15,48,000/-
Compensation awarded by Tribunal	**Rs.**	**19,48,040/-**
Less actual compensation	**Rs.**	**(-) 15,48,000/-**
Refundable amount to Insurer	**Rs.**	**4,00,040/-**

1 2017 ACJ 2700 (SC)
2 2018 ACJ 2782 (SC)

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

<u>O R D E R</u>

1. The appeal is allowed.
2. The appellant-Insurance Company is permitted to withdraw excess amount of Rs.4,00,040/- along with proportionate interest thereon out of the deposited amount.
3. The respondents-claimants are permitted to withdraw the balance amount of Rs.15,48,000/- along with proportionate interest thereon.
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.
5. The first appeal stands disposed of.
6. R and P be sent back.
7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)