

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

FIRST APPEAL NO.1195 OF 2019

The Divisional Manager,	}	
The New India Assurance Co. Ltd.,	}	
Akluj	}	...Appellant

Versus

1. Smt.Kamal Hanumant Gadadare	}	
Age-48, Occ : Household	}	

2. Vikram Hanumant Gadadare	}	
Both R/at : "Gadadare Electronics, Ward	}	
No.4, Nira, Taluka-Purandar, District-Pune	}	

(expired on 12.08.2014
amended deleted as per
order dated 11th July 2019)

2. Shri.Nitin Baban Palange	}	
Age-Adult, Occ: Business	}	

3. Shri.Kiran Changdev Pawar	}	
Age-35 years, Occ : Driver,	}	
Both R/o. Khatik Galli, Natepute,	}	
Taluka-Malshiras, District-Solapur.	}	...Respondents

Mr.Himanshu Takke i/b Mr.M.V. More, for the Appellant.
Mr.Vaibhav R. Gaikwad a/w Mr.Atharava R.B., Mr.Yash Naik, for
Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATE : 23rd JANUARY 2025

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ORAL JUDGMENT :-

. The issues involved in this Appeal are that, the income of the deceased is considered on higher side, consortium amount is given on higher side and future prospects is awarded on higher side.

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the Tribunal has considered monthly income of deceased @ Rs.10,000/- per month without any evidence on record. The learned counsel further submitted that, the Tribunal has awarded Rs.3,25,000/- as consortium amount, which is on higher side. The learned counsel further submitted that, the Tribunal has awarded 15% future prospects, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent's-Claimant's that, the deceased was dealing in the business of sales and repair of electronic appliances and he was earning Rs.25,000/- per month. The bills were produced on record to prove the income of the deceased. The witness was examined to prove the income of the deceased, but the Tribunal

has considered monthly income of the deceased at Rs.10,000/- per month, which is on lower side. The Claimant's did not want to prolong the matter, hence they have not challenged the income considered by the Tribunal. The 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 learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Satara.

5. To prove the income of the deceased the Claimant's have examined Claimant No.1-Kamal Gadhave, wife of the deceased. She has stated that, the deceased was dealing in the business of sales and repairs of electronic items and electrical appliances under the name and style of "Gadadare Electronics, Nira" and he was earning Rs.25,000/- per month from the said business. She further deposed that, the deceased used to cultivate their land admeasuring one and half acre personally and earn Rs.50,000/- per annum from the produce of the land. Nothing elicited in cross-examination of this witness.

6. To substantiate the claim the Claimant's have examined PW-2 Kamalesh Gandhi, at Exhibit-30. He produced bills of purchase of electronic appliances which are at Exhibit-31. He has stated that, he runs wholesale shop of electronic and electrical goods at village Bigvan, under the name and style as "Arihant Electronics and Appliances" and the deceased was not only his customer, but also the customer of various electronic firms. He further deposed that, deceased used to earn Rs.25,000/- per month. In cross-examination he expressed his inability to state about the value of the electronic and electrical apparatus purchased by the deceased. Considering the evidence on record, the Tribunal has considered monthly income of deceased at Rs.10,000/- per month. I do not find infirmity in it. In my view, deceased was running electronic shop. The vouchers and bills produced on record, shows that he was purchasing and selling electronic items. There is no reason to disbelieve the evidence of PW-2 who was in wholesale business of electronics, the deceased was purchasing electronic items not only from him but from other shop owners. The deceased was also cultivating

land and he was getting income from it. He was Karta of his family. Hence, income considered by the Tribunal of Rs.10,000/- per month is proper.

7. At the time of the accident the deceased was 50 years old. The Tribunal has awarded 15% future prospects. In my view, it is on lower side. As deceased was 50 years old. As per view of the Hon'ble Apex Court in the case of *National Insurance Co. Ltd. V/s. Pranay Sethi*¹, it should be 25%, hence, I am considering 25% future prospects.

8. The Tribunal has awarded consortium amount on higher side. As per view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*², each Claimant is entitled for Rs.40,000/- as consortium amount and Rs.18,000/- for loss of estate and Rs.15,000/- for funeral expenses. Considering this calculation the Claimants are entitled for following compensation.

Particulars	Amount
Monthly Income	Rs.10,000/-

1 2017 ACJ 2700 (SC)

2 2018 ACJ 2782 (SC)

(+) Future Prospects (25% - Age 50 Yrs)	Rs.2,500/-
(-) Personal Expenses (1/3rd amount)	Rs.4,166/-
Total Monthly Income	Rs.8,334/-
Yearly Income Rs.8,334 x 12	Rs.1,00,008/-
Multiplier 13 (Rs.1,00,008 x 13)	Rs.13,00,104/-
Total Loss of Dependency	Rs.13,00,104/-
Add : Loss of Estate	Rs.18,000/-
Loss of Consortium (Rs.40,000/- x 2)	Rs.80,000/-
Funeral Expenses	Rs.15,000/-
Total Just Compensation Payable	Rs.14,13,104/-
Tribunal awarded	Rs.15,21,000/-
Refundable Amount	Rs.1,07,896/-

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

ORDER

- (i) The Appeal is partly allowed.
- (ii) The Appellant-Insurance Company is entitled for Rs.1,07,896/- from the deposited amount along with accrued interest thereon. The Claimant's are entitled for remaining amount of Rs.14,13,104/- with interest fixed by the Tribunal.
- (iii) The statutory amount alongwith interest be

transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) Record and Proceeding be sent back to the Tribunal.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)