IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1855 of 2024

1 Sharada Shivshankar Kantikar @ Kathikar,
Age : 59 years, Occ: Household.

2 Shivshankar Madiwalayya Kantikar @
Kanthikar … Appellants
Age-49 years, Occ-Pujari, (Orig.
Both R/o. 181, Shelgi Gaonthan, Applicants)
Tal. Nort Solapur, Dist. Solapur.

Versus

1 G. Ravi Govindraj,
R/o. 3/3/41, E,
3rd Ward Karumbalai Road,
Karuppur, Omalur,
Tk. Salem – 636012,
Tamil Nadu.

2 Divisional Manager,
National Insurance Co. Ltd.,
R/o. - Subharai Towers,
Datta Chowk, Solapur. … Respondents

Mr. R. S. Alange, Advocate for the Appellants.
Ms. Poonam Mital, Advocate for Respondent No.2-Insurance Company.

CORAM : SHIVKUMAR DIGE, J.

DATE : 17th JANUARY, 2025.

Judgment :

1. The issues involved in this appeal are that the income of the deceased is considered on lower side and consortium amount is given on lower side.

2. It is contention of learned counsel for the appellants that the deceased was doing business of selling and purchasing dogs and he was earning Rs.20,000/- per month from the said business. The evidence in that regard is produced on record but the Tribunal has considered monthly income of the deceased at Rs.6,000/- which is on lower side. Learned counsel further submitted that the consortium amount, which is awarded, is on lower side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent-Insurance Company that no evidence is produced on record to show that the deceased was doing business of selling and purchasing dogs. Only evidence in respect of shop business is produced on record, which does not show about the business of the deceased. The Tribunal has passed reasoned order, no interference is required in it. Hence, requested to dismiss the appeal.

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

5. To prove the income of the deceased, the claimants have examined claimant No.1-Sharada Shivshankar Kantikar @ Kanthikar. She has stated that the deceased was her son and he was doing business of selling and purchasing dogs. She has produced application for intimation

under Maharashtra Shops and Establishment Act 2018 in Form “F” at Exhibit-18 and its receipt at Exhibit-17. Nothing elicited in the cross-examination of this witness.

5.1. While dealing with the issue of the income of the deceased, the Tribunal has observed that the claimants have failed to prove that the deceased was earning Rs.20,000/- per month from his business. Therefore, the Tribunal has considered monthly income of the deceased at Rs.6,000/-. I am unable to understand the observations of the Tribunal as Exhibit-18 is the application for intimation of Maharashtra Shop Establishment Act in form “F” and its receipt at Exhibit-18. These documents show that in column No.7, it is mentioned sale and purchase of different breeds of dogs. It shows that the deceased was doing business of purchase and sale of various breeds of dogs. At the time of the accident, the deceased was 22 year old and he was maintaining his family. Considering these facts, I am considering monthly income of the deceased at Rs.12,000/-.

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.12,000/- x 12)	**Rs.**	144000.00
40% future prospects	**Rs.**	57600.00
Total	**Rs.**	201600.00
1/2 deduction towards personal expenses	**Rs.**	100800.00
Total	**Rs.**	**100800.00**
Rs.1,00,800/- x 18(multiplier)	**Rs.**	**1814400.00**
Consortium (Rs.48,000/- x 2 (claimants))	**Rs.**	96000.00
Funeral Expenses	**Rs.**	18000.00
Loss of Estate	**Rs.**	18000.00
Total Compensation	**Rs.**	**19,46,400.00**

The Tribunal has awarded Rs.10,17,200/-, if this amount is deducted from the amount of Rs.19,46,400/- considered by this Court, it comes to Rs. 9,29,200/-. 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 amount of Rs.9,29,200/- @ 7.5% interest per annum from the date of filing claim petition 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 of.

(SHIVKUMAR DIGE, J.)