

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1296 OF 2017

- | | | | |
|--------|---|---|-----------------|
| 1 | Sou. Vandana Vijay Otari |) | |
| | Age : 57 Yrs., Occ : Household, |) | |
| | R/o. Budhwar Peth, Shaniwar Wada, |) | |
| | Teli Galli, Phalatan, Dist : Satara |) | |
| 2 | Vijay Sonaba Otari |) | |
| | Age : 57 Yrs., Occ : Household, |) | |
| | R/o : Budhwar Peth, Shaniwar Wada, |) | |
| | Teli Galli, Phalatan |) | ... Appellants |
| Versus | | | |
| 1 | Reliance General Insurance Co. Ltd. |) | |
| | Having office at Nalgaon Cross Road |) | |
| | Next to Royal Industrial Estate |) | |
| | Wadala (W), Mumbai – 400 031 |) | |
| 2 | Ajiinath Rambhai Jaibhaye |) | |
| | Age : 45 Yrs., Occ : Transport, |) | |
| | R/o : A/04, Prabhakunj Housing Society, |) | |
| | Sector No.8, Khanda Colony, |) | |
| | New Panvel, Raigad – 402 305 |) | ... Respondents |

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Mr. Yuvraj P. Narvankar a/w. Ms. Raufia Shaikh, Advocate for the Appellants.

Ms. Shalini Shankar, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.

DATED : 9th JANUARY, 2025.

ORAL JUDGMENT :

1. By this appeal the appellants/claimants are seeking enhancement of compensation.
2. It is contention of learned counsel for the appellants / claimants

that deceased was working as a labourer and he was earning Rs.6,000/- per month but the Tribunal has considered monthly income of the deceased @Rs.3,000/-, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects it be awarded and consortium amount is awarded on lower side, hence requested to allow the appeal.

3. It is contention of learned counsel for respondent No.1- Insurance company that the deceased was labourer. No evidence was produced on record to show that he was earning Rs.6,000/- per month. The Tribunal has rightly considered his monthly income @Rs.3,000/-. No interference is required in it. Learned counsel further submitted that the Tribunal has passed well reasoned order and requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused Judgment and Order passed by Motor Accident Claims Tribunal, Satara (for short “the Tribunal”). To prove the income of the deceased the claimant No.2 Vijay Otari has examined himself. He has stated that deceased was doing labour work and was earning Rs.6,000/- per month and he was only earning member of his family. To prove the income of the deceased, the claimants have filed on record the documents issued by Government Labour Officer, Satara (Exhibit-41) showing minimum wages for the unskilled labourer.

It has not come in the evidence of claimant No.2 that what type of labour work deceased was doing. In the absence of such pleading it cannot be said that deceased was earning an amount of Rs.6,000/- per month, on that ground the Tribunal has considered Rs.3,000/- per month as monthly income of the deceased. I am unable to understand the observations of the Tribunal as the deceased was the only earning son of the of the claimants family. The claimants are old aged persons, the deceased was taking care of claimants and he was doing labour work, so labour can work anywhere where he gets the job. It cannot be said that evidence needed to be given for labour work. As per Minimum Wages Act, the labour of around 31 years age like deceased, would get more than Rs.6,000/- per month as wages. Considering these facts, I am considering Rs.5,000/- per month as monthly income of the deceased. 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 40% future prospectus hence, I am considering it. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of ***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 funeral expenses and Rs.18,000/- for loss of estate.

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

Particulars	Rs.	Entitlement
Loss of Dependency	Rs.	5,000/-
Future prospects 40%	Rs.	2,000/-
½ deduction towards personal income	Rs.	3,500/-
Yearly Income X Multiplier (16)	Rs.	6,72,000/-
Consortium (Rs. 48,000 X 2)	Rs.	96,000/-
Loss of Estate	Rs.	18,000/-
Funeral Expenses	Rs.	18,000/-
Total	Rs.	8,04,000/-
Compensation awarded by the Tribunal	Rs.	2,40,000/-
Enhanced amount	Rs.	5,64,000/-

Considering the above calculations, claimants are entitled for enhanced amount of Rs. 5,64,000/-.

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

ORDER

- i. The appeal is allowed.
- ii. The appellants /claimants are entitled for enhanced amount of Rs.5,64,000/- @ 7.5% per annum from the date of filing claim petition till realisation of the amount. Out of this amount Rs.1,32,000/- is consortium amount. The claimants are entitled for interest @7.5% on this amount from 1st November,

2017 till realisation of the amount.

- iii. The respondent No.1-Insurance company shall deposit enhanced amount along with interest within six weeks.
- iv. The appellants / claimants are permitted to withdraw deposited amount along with accrued interest thereon.
- v. The claimants shall deposit the deficit Court fees on enhanced amount if any.
- vi. The statutory amount along with accrued interest thereon shall be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.
- vii. R & P be sent back to the Tribunal.

7. The appeal is disposed of. Pending applications, if any, stand disposed of.

SONALI
SATISH
KILAJE

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(SHIVKUMAR DIGE, J.)