

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1100 OF 2012

National Insurance Co Ltd.

Though its, Mumbai Regional Office I, 5th Floor,
Sterling Cinema Bldg., 65, Murzban Road, Fort,
Mumbai – 400 020

... Appellant

Versus

- 1 Mrs. Swati Deepak Patil
Age : 24, Occ : Nil
 - 2 Miss. Sakshi Deepak Patil
Age : 8 Yrs., Occ : Education
Through his natural guardian, Resp. No.1
 - 3 Mast. Siddhant Deepak Patil
Age : 4, Occ : Nil
Respondent Nos. 2 and 3 being minor, through their
natural guardian
 - 4 Mrs. Surekha Pasgonda Patil
Age : 52, Occ : Household
 - 5 Mr. Pasgonda Jingonda Patil
Age : 59, Occ : Nil
All R/o. Kini, Tal : Hatkangale, Dist : Kolhapur
 - 6 Mr. Sanjay Digambar Verne
Age : Major, Occ : Truck Owner
R/o. Gargoti, Tal : Bhudragad, Dist : Kolhapur
 - 7 Mr. Ramesh Nyandev Patil
Age : 41, Occ : Driver
R/o. Mudal, Tal : Bhudragad, Dist : Kolhapur
- ... Respondents

WITH

CROSS OBJECTION STAMP NO. 30098 OF 2012

National Insurance Co Ltd.

Though its,
Mumbai Regional Office I, 5th Floor,
Sterling Cinema Bldg., 65, Murzban Road, Fort,
Mumbai – 400 020

... Appellant

Versus

- 1 Mrs. Swati Deepak Patil
Age : 24, Occ : Nil
- 2 Miss. Sakshi Deepak Patil
Age : 8 Yrs., Occ : Education
Through his natural guardian, Resp. No.1
- 3 Mast. Siddhant Deepak Patil
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R/o. Gargoti, Tal : Bhudragad, Dist : Kolhapur
- 7 Mr. Ramesh Nyandev Patil
Age : 41 years, Occ : Driver
R/o. Mudal, Tal : Bhudragad, Dist : Kolhapur
Respondent Nos. 6 & 7 dismissed as per RJ-II order
dated 19.01.2017. ... Respondents

.....

Mr. Amol A. Gatne, Advocate for the Appellant.

Mr. Pritesh K. Bohade, Advocate for Respondent Nos. 1 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATED : 17th JULY, 2025.

ORAL JUDGMENT :

1. This Appeal is preferred by the appellant/Insurance Company against the order passed by the Motor Accident Claims Tribunal, Kolhapur (for short “**the Tribunal**”).

2. Learned counsel for the respondent Nos. 1 to 5/claimants submits that claimants have also preferred the cross objection for enhancement of

compensation. He seeks leave to withdraw the cross objection. Considering his submission, Cross Objection (St.) No. 30098 of 2012 is allowed to be withdrawn and disposed of.

3. It is contention of learned counsel for the appellant/Insurance Company that the Tribunal has considered monthly income of the deceased at Rs.17,000/- per month, it is on higher side. Learned counsel further submitted that it is claimants' case that the deceased was working in Warna Polymer as a Manager. He was also doing milk business and also working as pigmy agent. One person cannot work at three places at once but the Tribunal has considered monthly income of the deceased at Rs.17,000/- per month which is erroneous, hence requested to allow the appeal.

4. It is contention of learned counsel for respondent Nos. 1 to 5/ claimants that the deceased was working as a Manager in Warna Polymer and was getting salary of Rs.10,000/- per month. He was also supplying milk and was working as pigmy agent. From all the sources, he was getting around Rs.30,000/- per month. Learned counsel further submitted that the Tribunal has considered his income on lower side. As the claimants do not want to proceed further, hence this Court can consider the income considered by the Tribunal. Learned counsel further submitted that the Tribunal has not awarded future prospects and consortium amount is

awarded on lower side hence requested to dismiss the appeal.

5. I have heard both the learned counsel. Perused Judgment and Order passed by the Tribunal. To prove the income of the deceased, the claimant No.1 has examined herself. She has stated that the deceased was doing business of milk and was providing milk to Balbhim Dudh Sahakari Sanstha. The claimants have examined Mr. Ashwinkumar Kore, he has stated that the deceased has provided milk to their dairy. In cross examination, he has admitted that he has not produced the Register showing that the deceased has provided the milk. PW-3 Rajgonda Nawale has stated that he was partner in Warna Polymer. The deceased was working as a operator and was getting Rs.5,000/- per month as a salary. Nothing elicited in his cross examination. PW-4 Sachin Patil has stated that the deceased was working as a pigmy agent and was getting commission of Rs.5,000/- to 7,500/- per month. In cross examination, he has stated that no account is produced on record that how much amount as pigy agent the deceased was collecting.

While dealing with the issue of income, the Tribunal has observed that as per the claimant's case the deceased was earning Rs.29,000/- per month. He was getting Rs.18,000/- from milk business, Rs.5,000/- from Warna Polymer and as pigmy agent getting Rs.6,000/- but considering the evidence on record, the Tribunal has considered Rs.6,000/- income from

milk business, Rs.5,000/- from Warna Polymer and Rs.6,000/- from pigmy agent. The Tribunal has considered total income at Rs.17,000/- per month. In my view it is on higher side. Considering the evidence on record, I am considering monthly income of the deceased at Rs.11,000/- per month. The Tribunal has not awarded future prospects and consortium amount is awarded on lower side. If excess amount of income is considered in future prospects and less consortium amount, it would come to the amount awarded by the Tribunal. Hence, I do not find merit in the appeal and I pass following order.

ORDER

- i. The appeal is partly allowed.
- ii. The Cross objection (St.) No. 30098 of 2012 is disposed of.
- iii. The respondent Nos. 1 to 5/claimants are permitted to withdraw the amount deposited by the appellant-Insurance Company along with accrued interest thereon.
- iv. The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it as per rule.
- v. R & P be sent back to the Tribunal.
- vi. All pending applications are disposed off.

(SHIVKUMAR DIGE, J.)