IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 2390 of 2005

1 Surekha Babaso @ Balasaheb Patil,
Age-32 years, Occupation-Household,
R/o. Jawahar Colony, Jawahar Sahakari,
Sakhar Karkhana, Hupari, Dist-Kolhapur.

2 Priyanka Babaso @ Balaso Patil,
Age 9 years, Occupation – Education,
R/o. As above.

3 Pritam Babaso @ Balaso Patil,
Age – 7 years, Occupation and R/o. As above.
(Petitioners Nos.2 and 3 being minor are
represented through mother petitioner No.1) ….. Appellants

Versus

1 Vilasrao Baburao Mohite,
Age-Major, Occupation-Owner and driver of
Matador,
R/o.1275, D-ward, Uttareshwar Peth,
Dist-Kolhapur.

2 United India Insurance Co. Ltd.,
City Branch No.2, 614, 1st Lane,
Shahupari, Kolhapur. ….. Respondents

with
FIRST APPEAL NO. 479 of 2007

The United India Insurance Co. Ltd.,
through its
City Branch No.2, 614, 1st Lane,
Shahupari, Kolhapur. ….. Appellants

Versus

1 Surekha Babaso @ Balasaheb Patil,
R/o. Jawahar Colony, Jawahar Sahakari,
Sakhar Karkhana, Hupari, Dist-Kolhapur.

2 Priyanka Babaso @ Balaso Patil,
R/o. As above.

3 Pritam Babaso @ Balaso Patil,
R/at. as above.
(Petitioners Nos.2 and 3 being minor are represented through mother petitioner No.1)

4 Vilasrao Baburao Mohite,
R/o.1275, D-ward, Uttareshwar Peth,
Dist-Kolhapur.

Mr. Sudhakar G. Thorat, Advocate for the Appellant/Claimants in First Appeal No.2390 of 2005 and for Respondent Nos.1 to 3/Claimants in First Appeal No.479 of 2007.
Mr. H. G. Misar, Advocate for Appellant/Insurance Company(United India Insurance Co.Ltd.) in First Appeal No.479 of 2007 and for Respondent No.2-Insurance Company in First Appeal No.2390 of 2005.

CORAM : SHIVKUMAR DIGE, J.

DATE : 24th JANUARY, 2025.

Judgment :

1. Both these appeals are preferred against the same judgment, hence, I am deciding both appeals by this common judgment.

2. First Appeal No. 2390 of 2005 is filed by the appellants/original claimants seeking enhancement of compensation. First Appeal No.479 of 2007 is filed by appellant-Insurance Company.

3. It is contention of learned counsel for the claimants that the deceased was working as Khalashi and he was getting monthly salary of Rs.5277/- per month but the Tribunal has considered his monthly income

at Rs. 1800/-, which is on lower side. Learned counsel further submitted that the Tribunal has not awarded future prospects, multiplier has not been applied and consortium amount has not been awarded. Hence, requested to allow the appeal filed by the claimants.

4. It is contention of learned counsel for the Insurance Company that at the time of the accident, the son of opponent No.1 i.e. the owner of the offending vehicle was driving the vehicle and he was not holding effective and valid driving license but this fact is not considered by the Tribunal, hence, requested to allow the appeal filed by Insurance Company and dismiss the appeal filed by the claimants.

5. I have heard both learned counsel, perused the judgment and order passed by the Motor Accident Claims Tribunal, Kolhapur (for short “the Tribunal”).

5.1. Though the Insurance Company has taken defense that at the time of the accident, the son of the original opponent No.1/owner of the offending vehicle was driving the vehicle and he was not having effective and valid license but no evidence is produced on record in that regard. As per the view of the Hon’ble Apex Court in the case of ***National Insurance Company Limited versus Chamundeswari and ors. C.A.@SLP(c) No.4705 of 2019***, if any plea is taken by any party, it is burden on the said party to prove it by substantive evidence. As no evidence is produced on record,I do not find merit in it.

5.2. To prove the income of the deceased, the claimants have examined Surekha Patil, wife of the deceased at Exhibit-23/C. She has stated that the deceased used to work at Jawahar Co-op. Sugar Factory, Hupari as Khalashi and he was getting salary of Rs.5277/- per month. Nothing elicited in cross-examination of this witness. To prove their case, the claimants have examined Shekhar Bhandare at “Exhibit-31/C”. He has stated that the deceased was working in their Sugar Factory as Khalashi and his salary was Rs.5277/- per month. The salary slip is at Exhibit-34 and appointment letter is at Exhibit-35. Nothing elicited in cross-examination of this witness. While dealing with the issue of income of the deceased, the Tribunal has observed that take home salary of the deceased was Rs.1868/-. Considering the take home salary, the Tribunal has considered his monthly income at Rs.2000/-. I am unable to understand the observations of the Tribunal as it is settled principle of law that the Tribunal has to consider last month’s salary of the deceased after deducting professional tax and income tax. Considering these facts, I am considering monthly income of the deceased at Rs.5000/- per month as he was getting Rs.5277/- and it has been proved through evidence.

5.3. The Tribunal has not awarded future prospects. The deceased was permanent employee, hence, the claimants are entitled for 50% as 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).***

5.4. 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.

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

Particulars	**Rs.**	**Amount**
Annual Income (Rs.5000/- x 12)	**Rs.**	60,000.00
50% future prospects	**Rs.**	30,000.00
Total	**Rs.**	90,000.00
1/3rd deduction towards personal expenses	**Rs.**	30,000.00
Total	**Rs.**	60,000.00
Rs.60,000/- x 15(multiplier)	**Rs.**	**9,00,000.00**
Consortium (Rs.48,000/- x3 (claimants))	**Rs.**	1,44,000.00
Funeral Expenses	**Rs.**	18,000.00
Loss of Estate	**Rs.**	18,000.00
Total Compensation	**Rs.**	**10,80,000.00**

The Tribunal has awarded Rs.3,60,000/-, if this amount is deducted from the amount of Rs.10,80,000/- considered by this Court, it comes to Rs.7,20,000/-. The claimants are entitled for this amount.

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

O R D E R

(1) First Appeal No.2390 of 2005 is allowed.

(2) First Appeal No.479 of 2007 is dismissed.

(3) The claimants are entitled for enhanced compensation of Rs.7,20,000/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.1,80,000/- is consortium amount, the claimants are entitled @ 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.

(4) The Insurance Company shall deposit the enhanced amount along with accrued interest thereon within eight weeks from the receipt of this order.

(5) The claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

(6) The claimants shall pay deficit court fees on enhanced amount in First Appeal No.2390 of 2025, if any, as per Rule.

(7) The statutory amount in First Appeal No.479 of 2007 be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

(8) Record and Proceedings be sent back to the Tribunal.

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)