

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1411 OF 2014

- 1 Smt. Archana Sukumar Kshirsagar
Age 29 Years, Occ : Household
- 2 Kumar Sudarshan Sukumar Kshirsagar
Age 9 Years, Occ : Education
- 3 Kum. Omkar Sukumar Kshirsagar
Age 7 Years, Occ : Education
- 4 Sou. Rukmini Sadashiv Kshirsagar
Age 54 Years, Occ : Household
- 5 Shri. Sadashiv Mahadeo Kshirsagar
Age 59 Years, Occ : Agriculture
All the Applicants are residing at Danoli, Tal. Shirol,
Dist. Kolhapur
(The Applicant Nos. 2 and 3 are Minors hence
through their natural Guardian Mother i.e.
Applicant No.1)

... Appellants

Versus

- 1 Shri. Gauspasha
S/o. T.P.Pyarejan, Khazi Mohalla,
Age: Major, Occ : Business,
R/o. Kazi Bidi, M.G.Road, Tarikere (T),
Dist . Chikmangalure, State Karnataka
(The Owner & Driver of Truck bearing No. KA-14-
8511)
- 2 The General Manager
Reliance General Insurance Company No. 1 & 2
1st Floor, Maganur Commercial Complex,
B.D.Road, Chitradurg – 577501,
State : Karnataka
Policy No. 1411372329100022
Period : 02/08/2007 to 01/08/2008
(Insurance Company of Truck bearing No. KA-14-
8511)

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| <p>3 Shri. Sharad Haridas Jadhav
Age : Major, Occ : Business
R/o. S. No. 120, Pune- Satara Road,
NH-4, Santosh Nagar, Behind Vitthal Mandir,
Katraj, Pune- 400 046
(The Owner of Tempo Bearing No. MH-04-CG-9584)</p> <p>4 Shri. Santosh Maruti Kshirsagar
Age : 30 year, Occ : Driver
R/o. Vadgaon, Dadari, Tal. Parli Vajjanath
Dist. Beed, at present R/o. Magadewadi, Satara
Road, Katraj, Pune
(The Owner of Tempo Bearing No. MH-04-CG-9584)</p> <p>5 The Manager
ICICI Lombard Gen. Insurance Co. Ltd.
Pune Cover Note No. 446949102
Period : 03/04/2008 – 02/04/2009
(the Insurance Co-of Tempo bearing No. MH-04-CG-9584)</p> | <p>Respondents</p> <p>...</p> |
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Mr. S.G.Thorat, Advocate for the Appellants.

Mr. Nikhil Mehta i/b. KMC Legal Venture, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATED : 26th JUNE, 2025.

ORAL JUDGMENT:

1. This appeal is preferred by the appellants/claimants seeking enhancement of the compensation.

2. It is contention of learned counsel for the appellants that deceased was the sole earning member of the appellants family and he was earning Rs.8,000/- to 10,000/- per month. To prove the income of the deceased, the claimants have examined six witnesses but the Tribunal has

considered monthly income of the deceased at 3,000/- per month, which is on lower side. The deceased was maintaining family of five persons. Learned counsel further submitted that the Tribunal has not awarded consortium amount and future prospects is not awarded, hence, requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2 / Insurance Company that deceased was labourer and was working in the field of other person. Though, the appellants have examined six witnesses to prove the income of the deceased, but from their evidence it does not prove that deceased was earning Rs.8,000/- to 10,000/- per month. The Tribunal has passed well-reasoned order, no interference is required in it and requested to dismiss the appeal.

4. I have heard both the learned counsel, perused Judgment and Order passed by the Motor Accident Claims Tribunal, Jaysingpur (for short, **“the Tribunal”**).

5. To prove the income of the deceased, the claimants have examined claimant No.1 Archana, wife of the deceased. She has stated that the deceased was cultivating his own land and he was working in the land of Mr. Satish Mangave on crop sharing basis. She further submitted that deceased was selling flower and vegetables and he was earning Rs.1 lakh per year. Nothing elicited in the cross examination of this witness to disbelieve her evidence.

6. To prove the income of the deceased, the claimants have examined PW-2 Mansurali Kudehikar, at Exhibit-53. He was running an Adat shop which deals with the business of vegetables. He has stated that the deceased used to supply vegetables to his shop. After the vegetables were brought to him by the cultivators, he used to weigh and issue receipt to the cultivators of the vegetable supply. He further stated that the deceased used to bring vegetables from Mr. Satish Mangave. On 13-07-2007, Mr. Satish Mangave had brought raw potatoes weighing about 41 Kgs worth Rs. 225/- to his shop. Accordingly, he had issued receipt for the same. In cross examination, he admitted that he used to issue the receipts in the name of person who had brought the vegetables to their shop. He also stated that, no separate receipts are issued for payments made to the supplier.

7. PW-3 Sadique Gothad, a vegetable Adat shop owner, at Exhibit-54, has stated that Mr. Satish Mangave used to supply vegetables to his shop. He has shown the receipt of the vegetables supplied by Mr. Satish Mangave to their shop. In cross examination, he has admitted that he does not maintain the counter foils of the receipts issued by to the parties and Mr. Satish Mangave supplied vegetables to him only once and the receipt of the same is issued.

8. PW-4 Mahadeo Shahapure, a clerk (Cane Account Section) at Desh Bhakt Ratnappanna Kumbhar Panchganga Sahakari Karkhana,

Ichalkaranj, has stated that he knew the deceased as he used to supply sugarcane to their sugar factory. This witness admitted the payment of Rs.25,603/- for the sugarcane supplied upon showing bills and receipts, which are at Exhibits 58-67. In Cross examination, he has stated that he was not aware whether the deceased had supplied sugarcane prior to and after this payment.

9. PW-5 Dattatraya Walkude was working at Harale Tupe Company, has stated at Exhibit 74 that since past 15 years, the deceased was supplying vegetables on commission basis to their Company. Bills at Exhibit 39 (Sr. 12 to 100) are issued by their Company. He has further stated that the deceased used to bring the goods of one Mr. Satish Mangave and he used to supply vegetables to them. Nothing elicited in his cross examination.

10. The Claimants have examined Mr. Satish Mangave at Exhibit 169. He has stated that the deceased was cultivating his land on crop sharing basis. They collectively used to earn around 2 to 2½ lakh rupees per year by selling the Cauliflower and around 1 to 1½ lakh rupees per year by selling Tomatoes from the said land. He has further stated that the deceased was getting around 1½ to 2 lakh rupees per year as his share from the said amount. In cross examination, he has admitted that there is no written agreement between the deceased and him nor he has any documentary evidence showing that the deceased was getting 4 anna share

of income.

11. Considering evidence on record, the Tribunal has considered monthly income of the deceased at Rs. 3000/- per month. In my view, it is on lower side. The evidence produced on record shows that deceased was cultivating agricultural land and was doing vegetable business. There is no reason to disbelieve the evidence of witnesses, who have stated that the deceased had a regular and reliable source of income from selling vegetables. The Tribunal has not considered these facts, hence, I am considering monthly income of the deceased at Rs.6000/- per month.

12. While awarding compensation, the Tribunal has not awarded future prospects. As per the view of Apex Court in the case of ***National Insurance Co. Ltd. v/s Pranay Sethi 2017 ACJ 2700 (SC)***, Claimants are entitled for 40% future prospects. Further, the Tribunal has not applied proper multiplier. At the time of accident, deceased was 31 years old, hence the proper multiplier is 17. The Tribunal has not awarded consortium. As per the case of ***Magma General Insurance Co. Ltd. v/s 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. Considering the above calculations, the Claimants are entitled for following compensation.

Particulars	Rs.	Amount
Monthly Income	Rs.	6000.00
40% future prospects	Rs.	2400.00
Total	Rs.	8400.00
1/4 deduction towards personal expenses	Rs.	6300.00
Rs.6,300 x 12 x 17(multiplier)	Rs.	12,85,200.00
Consortium (Rs.48,000/- x 5 (claimants)	Rs.	2,40,000.00
Funeral Expenses	Rs.	18,000.00
Loss of Estate	Rs.	18,000.00
Total	Rs.	15,61,200.00
Compensation awarded by Tribunal (Less)	Rs.	4,99,000.00
Enhanced Amount	Rs.	10,62,200.00

13. The claimants are entitled for enhanced compensation of Rs. 10,62,200/-.

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

ORDER

- (1) The appeal is allowed.
- (2) The claimants are entitled for enhanced compensation of Rs. 10,62,200/- @ 7.5% interest per annum from the date of filing claim petition till realisation of the amount. Out of this amount, Rs.2,76,000/- is consortium amount, the claimants are entitled @ 7.5% interest per annum on this amount from 1st November 2017 till realisation of the amount.
- (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.

15. The appeal is disposed of. All pending applications, if any, disposed of.

(SHIVKUMAR DIGE, J.)

SONALI
SATISH
KILAJE

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