# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CIVIL APPELLATE JURISDICTION

## FIRST APPEAL NO. 91 OF 2016

| | | |
|---|---|---|
| **1. Swapna Ajit Shah**<br>Age-47 years, Occ:Household | } | |
| **2. Phulchand Lalchand Shah**<br>Age-75 years, Occ: Household | } | (Deleted as per order dated 31/01/2025) |
| **3. Nikhil Ajit Shah**<br>Age-26 years, Occ: Education | } | |
| **4. Nital Ajit Shah**<br>Age-24 years, Occ: Education<br>All R/o Kadegaon, Taluka-Kadegaon,<br>District-Sangli | } | **...Appellants**<br>(Org. Claimants) |

*Versus*

| | | |
|---|---|---|
| **1. The New India Assurance Co. Ltd.**<br>451, Mata Building, Ambedkar Road, Sangli | } | |
| **2. B.G. Chitale Dairy Pvt. Ltd.**<br>At Post Bhilwadi, Taluka-Palus,<br>District-Sangli,<br>Thr. Parashuram Bhaskar Chitale,<br>Age-Major, Occ: Diary,<br>R/o Bhwandi, Taluka-Tasgaon,<br>District-Sangli | } | **...Respondents** |
| **3. Vikram Vishrant Yadav**<br>Age-43 years, Occ: Driver,<br>R/o. 299, Shinde Galli, Tasgaon,<br>District-Sangli. | } | **....Respondents**<br>(Org. Opponents |

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Mr.Bhushan Walimbe, for the Appellant.
Ms.Shalini Shankar, for Respondent No.1.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 08th APRIL 2025**

**ORAL JUDGMENT :-**

. By this Appeal, the Appellants-Claimants are seeking enhancement of the compensation.

2. It is contention of the learned counsel for the Appellant's that, the deceased has died due to accidental injuries. At the time of the accident deceased was 48 years old, he was earning Rs.6,60,000/- per annum from various business such as agriculture, milk and cloth business, he was also working in cloth shop of his father. The deceased was looking after his family. The Appellants have examined the witnesses to prove the income of the deceased, but the Tribunal has considered the monthly income of the deceased on lower side i.e. notional income at Rs.3,000/- per month, it is on lower side and on that basis compensation is awarded. The learned counsel further submitted that, the Tribunal has awarded consortium on lower side, it be

awarded. The Tribunal has not awarded future prospects and deduction for personal expenses, should be 1/4th and the Tribunal has deducted 1/3rd and requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Insurance company that, the Appellants failed to prove the income of the deceased. The milk business and agricultural business is continued after death of the deceased. The license of cloth shop was in the name of father of the deceased. The Tribunal has considered monthly income of the deceased correctly, no interference is required in it. The Tribunal has passed well reasoned order and requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Sangli.

5. To prove the income of deceased, the Claimants have examined the Claimant No.2 Anil Shah-brother of the deceased at Exhibit-61. He has stated that, the deceased was cultivating agricultural land of their family and was taking crops from it. He

was also doing milk business and he was getting Rs.1,20,000/- income yearly from the said business. He has further stated that, the deceased was doing cloth business and was working in ready made store of their family and his father was paying him Rs.2,40,000/- per year.

6. In cross-examination he admitted that, the agricultural land is standing in their father's name and his father was paying income tax. He admits that, he does not know how much agricultural land is standing in his name and his brothers name. He has the pass-book showing the detail's of milk provided to dairy, but he has not produced the said pass-book before the Tribunal. He further admitted that, the deceased was not paying Income Tax. He further admitted that, after death of his brother he is doing agricultural work.

7. The Claimants have examined PW-3 Laxman Thorat, Secretary of Jyotirling Dudh Utpadak Sanstha Ltd., Kadegaon. He has stated that, the deceased was member of their Sanstha and he was giving milk to their dairy and he would get Rs.10,000/- per month. In cross-examination he has admitted

that, he has not brought register of maintaining the milk delivery to their Sanstha. He further admitted that, he has not brought any documents about the payment to the deceased.

8. The Claimant's have examined PW-4 Vivekanand Deshmukh owner of the Vivekanand Trading Company, he has stated that, he used to purchase the crops and grains from the deceased and the deceased was also working in readymade shop of his father. In cross-examination he admitted that, he does not know in who's land said crops or grains were cultivated.

9. The Claimant's have examined PW-5 Phulchand Shah, father of the deceased. He has stated that, the deceased was working in their agricultural land and he was taking crops in it and he was also working in the cloth shop of their family. In cross-examination he admitted that, the license of the shop is in his name and he has no document to show that, the agricultural land was partitioned. The Claimants have examined PW-6 Sampat Patil, the employee of Sahyadri Sugar Factory. He has stated that, the deceased used to send sugarcane to their factory. Considering the evidence on record the Tribunal has considered

monthly income of the deceased at Rs.3,000/- per month. In my view, it is on lower side. At the time of the accident the deceased was 48 years old. He was maintaining family of five person's. He was doing agricultural work as well as milk business and he was working in his father's shop. Considering these facts, though it is case of the Claimants that, deceased was earning Rs.6,60,000/- per year but no evidence produced on record, to prove the said fact. Considering the evidence on record I am considering notional income of the deceased at Rs.15,000/- per month.

10. The Tribunal has not awarded future prospects. As per view of the Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi*[1]*,*** the Claimant's are entitled for 25% future prospects. The Tribunal has deducted 1/3rd amount for personal expenses. There are four Claimants, it should be 1/4th amount. Hence, I am considering 1/4th amount towards personal expenses.

11. The Tribunal has awarded consortium amount on lower side. As per view of Hon'ble Apex Court in case of

1 2017 ACJ 2700 (SC)

***Magma General Insurance Co. Ltd. V/s. Nanu Ram*[2],** 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 above calculation's the Claimants are entitled for following compensation.

| **Particulars** | **Amount** |
|---|---|
| Monthly Income | Rs.15,000/- |
| Annual Income (Notional Income X 12 months) | Rs.1,80,000/- |
| (+) Future Prospects (25% - Age 48 Yrs) | Rs.45,000/- |
| Annual Income After Future Prospects | **Rs.2,25,000/-** |
| (-) Personal Expenses (1/4th amount) | Rs.56,250/- |
| Net Annual Loss of Income | **Rs.1,68,750/-** |
| Multiplier 13 | |
| Total Loss of Income | **Rs.21,93,750/-** |
| Consortium (Rs.48,000 x 4) | Rs.1,92,000/- |
| Loss of Estate | Rs.18,000/- |
| Funeral Expenses | Rs.18,000/- |
| **Total Just Compensation Payable** | **Rs.24,21,750/-** |
| Tribunal Awarded | **Rs.3,32,000/-** |
| **Enhanced Compensation** | **Rs.20,89,750/-** |

12. In view of above, I pass following order.

2 2018 ACJ 2782 (SC)

## ORDER

(i) The Appeal is allowed.

(ii) The Claimants are entitled for enhanced compensation of Rs.20,89,750/- @ 7.5% per annum from the date of the filing of Claim Petition till realization of the amount. Out of this amount Rs.2,28,000/- is consortium amount, the Claimant's are entitled @ 7.5% interest on it from 1st November 2017, till realization of the amount.

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

(iv) The Claimants are permitted to withdraw the deposited amount alongwith interest.

(v) The Claimant's shall pay deficit Court Fees on enhanced amount, if any, as per Rule.

(vi) All pending Civil and Interim Applications are disposed of.

**(SHIVKUMAR DIGE, J.)**