

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 746 OF 2024

The Oriental Insurance Co. Ltd.,
2nd Floor, Sivram Sadan, Line Ali
Shivaji Road, Panvel,
Taluka-Panvel, Dist- Raigad

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... Appellant
(Original
Insurer)

Versus

1. Varsha Navnath Shukla
Age: 28 Years, Occ: Housewife,

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2. Vaishnavi Navnath Shukla
Age: 9 Years, Occ: Student,

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3. Sai Navnath Shukla
Age: 7 Years, Occ: Student,

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4. Divyanka Navnath Shukla
Age: 5 Years, Occ: Student,

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5. Hanumant Ramdin Shukla
Age: 50 Years,

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6. Sheelabai Hanumant Shukla
Age: 50 Years,

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All Respondent Nos.1 to 6, Resident of
Shivneri Chawl No.2, Annabhau Sathe Nagar,
Near Patel Hospital, Govandi – Mankhurd Link
Road, Mankhurd West Mumbai – 400 043.

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7. Shaila Kakasaheb Shinde

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Room No. 205, Survey No.211,
Bhekari Nagar, Post – Fursungi,
Taluka – Haveli Dist: Pune.
Maharashtra – 412308.

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... Respondents
(Respondent
Nos.1 to 6
Original
Applicants &
Respondent
No.7 Opp.
Party.

Mr. Sudhakar Pandaram i/b Mr. Alok Bhatt, for the Appellant.
Mr. T. J. Mendon, for Respondent Nos.1 to 4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th JANUARY, 2025.

ORAL JUDGMENT. :

1. The issues involved in this appeal are income of the deceased has been considered on higher side, and future prospects have also been awarded on higher side.

2. It is contention of learned counsel for the Appellant/Insurance Company that the deceased was a working as a cleaner, but no evidence is produced on record to prove the income of the deceased. However, the Tribunal has considered monthly

income of the deceased at Rs.10,000/- per month without any evidence on record, which is on higher side. Learned counsel further submitted that the Tribunal has awarded 50% future prospects, it should be 40%. Hence, requested to allow the appeal.

3. It is contention of learned counsel for Respondents/Claimants that the deceased was earning more than Rs.20,000/- per month, as he was cleaner. The employer of the deceased was examined to prove the income of the deceased, and he has stated that he was paying Rs.12,000/- per month to the deceased. The Tribunal has rightly considered monthly income of the deceased at Rs.10,000/- per month. Learned counsel further submitted that Tribunal has passed a well-reasoned order, and no interference is required in it. Hence, requested to dismiss the appeal.

4. I have heard both learned counsel. Perused the judgment and order passed by the Motor Accident Claims Tribunal, Raigad-Alibaug (for short “the Tribunal”).

5. It is Claimants’ case that the deceased was working as a cleaner, and he was getting Rs.24,931/- per month as a salary. To prove the income of the deceased, the Claimants have examined PW-2/Dnyaneshwar Jagtap, the employer of the deceased. He deposed

that he was paying Rs.12,000/- per month as salary to the deceased. While dealing with the issue of income, the Tribunal has observed that Exhibit-32, pay slip of the deceased for the month of February shows salary of the deceased more than earlier salaried.

6. Learned Tribunal further observed that the deceased was admittedly working as a cleaner on truck. Considering the daily wages in the year 2021, and his age 31 years, and his experience, the Tribunal has considered the monthly income of the deceased at Rs.10,000/- per month. I do not find infirmity in it. In my view, the deceased was maintaining a family of seven persons, including himself, he was cleaner on truck. The employer has stated about his monthly salary therefore the income considered by the Tribunal is proper.

7. While awarding compensation, the Tribunal has awarded 50% future prospects. It is settled law that the correct future prospects in the case of notional income should be 40%. If we reduce the future prospects by 10%, the excess amount comes to Rs.1,44,000/-. The Appellant is entitled for this amount.

8. In view of above, I pass following order:-

ORDER

- i. The appeal is partly allowed.
 - ii. The Appellant is entitled to withdraw the excess amount Rs.1,44,000/- along with 9% interest, as fixed by the Tribunal out of the deposited amount.
 - iii. The Claimants are permitted to withdraw remaining deposited amount along with accrued interest thereon.
 - iv. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
 - v. Record and Proceedings be sent back to the Tribunal.
9. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)