IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1238 OF 2025

1	Dipali Tatyasaheb Dhavane Age : 40 years, Occ : Household	))	
2	Shivam Tatyasaheb Dhavane Age – 17 Years, Occu - Education	))	
3	Samruddhi Tatyasaheb Dhavane Age – 14 yrs., Occu – Education No.2 and 3 being minor through their natural Guardian Applicant No.1.	))))	
4	Kamlabai Gopinath Dhavane Age- 65 yrs, Occu – Household (Deleted)	))	
5	Gopinath Dnyanoba Dhavane Age -73 yrs, Occu- Nil All R/o. Diksal, Tal – Mahol Dist – Solapur Nos. 2 and 3 being minor through her Mother Applicant No.1	))))))…	 Appellants

Versus

1	Avadhkishor Ramesh Shinde Age: 44 years, Occu : Driver / Owner R/O. S.No.4/2/16, Madhukosh, C Wing, Flat No.803, Sinhgad Road, Wadgaon (Kh), Pune and also R/o. Narkhed, Tal – Mohol, Dist - Solapur	))))))	
2	Bajaj Allianz General Insurance Co. Ltd Summons be served on its Branch Office at Sat rasta near Big Bazar, Solapur	)))	
3	Dr. Sushma Prashant Jadhav Age -41 yrs., Occu – Doctor R/o – Abhiraj Apartment, Behind Audi Automobiles, Flat No.4, S.No.46/2/1, Sus Road, Baner Pune	))))…	 Respondents

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Mr. R.S.Alange, Advocate for the Appellants.
Mr. Sarthak S. Diwan a/w. Mr. Aditya Ghadge, Advocates for Respondent No.2 – Insurance Company.

CORAM : SHIVKUMAR DIGE, J.
DATED : 10th JULY, 2025.

ORAL JUDGMENT :

1. By this appeal the appellants are seeking enhancement of compensation.

2. It is contention of learned counsel for the appellants that, the Tribunal has considered monthly income of the deceased at Rs.12,000/- per month, which is on lower side. Learned counsel further submitted that, deceased was doing agricultural work and milk business. From the said business, he used to earn Rs.5 to 7 lakh per year from agricultural land and Rs.30,000/- per month from milk business but the Tribunal has not considered this fact and considered income on lower side. Learned counsel further submitted that, the Tribunal has awarded consortium amount on lower side, it be awarded and requested to allow the appeal.

3. It is contention of learned counsel for respondent No.2/ Insurance Company that, the deceased was doing agricultural work and was getting income from the agricultural land. After the death of the deceased, the said income is continued, so there is no loss to the income. Learned counsel further submitted that, milk business is also continued after the death of the deceased, so there is no actual loss of income to the claimants. The Tribunal has passed well reasoned order, no interference is required in it. Some of the receipts produced on record shows date after the death of the deceased, hence requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused Judgment and Order passed by the Motor Accident Claims Tribunal, Solapur (for short "the Tribunal"). To prove the income of the deceased, the claimants have examined the claimant No.1, Deepali Dhavane, wife of the deceased. She has stated that, her husband was cultivating agricultural land. He was holding Bagayat land admeasuring 6 acres and was also cultivating land of his deceased brother Bhagwant admeasuring 4 acres. She has further stated that, her husband was also cultivating land in the name of his father Gopinath. As such, her husband used to cultivate 10 acres land and used to take different crops including cash crops like Onion, Soyabean, Tur, Jowar, Bhendi and other vegetables throughout the year. He was very expert and experienced in the agricultural affairs. She further stated that, her husband was one of the known agriculturists in the village and in surrounding area. He was using developed techniques in cultivation of land and he used to earn income of Rs. 5 lakh to 7 lakh from the said agricultural land. She has further stated that, besides cultivating land, her husband was doing milk business by maintaining country cows, four jersey cows and buffaloes and used to earn more than Rs.30,000/- per month out of milk business. He used to supply the milk daily to Milk Diaries at Indapur in Pune District. Learned counsel for respondent No.2 has not cross examined this witness on the point of income, only suggestion are given to this witness. To prove the income, the claimants have examined PW-2 Ramesh Shinde, the Milk Collecting Officer. He has stated that, the deceased was supplying milk of jersey cows and buffaloes to his dairy and he has record showing the payments given to the deceased. It is at Exhibit-33 and Exhibit-36 collectively. In cross examination, he has stated that, he was not aware how many cows and buffaloes were with the deceased. The claimants have examined PW-3, Pravin Miranam at Exhibit-38, he has stated that he has produced the bank statement of the deceased which shows that the milk dairy used to transfer the amount in his bank account. It is at Exhibit-39. While dealing with the issue of income of the deceased, the Tribunal has observed that, after the death of the deceased, the agricultural business and milk business continued, so it cannot be stated that there is complete loss of income due to untimely death of deceased. Considering this fact, the Tribunal has considered notional monthly income of the deceased at Rs.12,000/- per month. I am unable to understand the observations of the Tribunal. When it has come on record that the deceased was in possession of 6 acres land and he was cultivating the land of others, the PW-2 has stated that, the deceased was doing milk business and he used to supply milk to his dairy. The bank statement shows that, the dairy would deposit the amount in bank account of the deceased. It strengthens the claimants' case. At the time of accident, the deceased was 44 years old. Untimely death of the deceased called monetary loss as there were five dependents on the income of the deceased and son & daughter of the deceased were minor. Considering these facts, I am considering notional monthly income at Rs.16,000/- per month. The Tribunal has awarded consortium amount on lower side. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. 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.

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

Particulars	**Rs.**	**Amount**
Monthly Income	Rs.	16,000/-
Annual Income	Rs.	1,92,000/-
25% Future Prospects	Rs.	48,000/-
Multiplier 14	Rs.	33,60,000/-
1/4th Deduction	Rs.	8,40,000/-
Consortium (48,000 X 5)	Rs.	2,40,000/-
Funeral Expenses	Rs.	18,000/-
Loss of Estate	Rs.	18,000/-
Total	Rs.	27,96,000/-
Tribunal Awarded	Rs.	20,40,000/-
Enhanced amount	Rs.	7,56,000/-

Considering the above calculations, claimants are entitled for enhanced amount of Rs. 7,56,000/-.

7. In view of above, I pass following order:

ORDER

i. The Appeal is allowed.

ii. The appellants/ claimants are entitled for enhanced compensation of Rs.7,56,000/-, @7.5% 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 appellants /claimants are entitled for interest @7.5% on this amount from 1st November, 2017 till realisation of the amount.

iii. The respondent No.2-Insurance Company shall deposit the enhanced compensation amount along with interest within six weeks.

iv. The appellants / claimants are permitted to withdraw deposited amount along with accrued interest thereon.

v. The appellants / claimants shall deposit the deficit Court fees on compensation amount if any as per rule.

vi. R & P be sent back to the Tribunal.

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

(SHIVKUMAR DIGE, J.)

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2025.07.22 10:54:13 +0700