IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1333 OF 2008
WITH
CIVIL APPLICATION NO.5332 OF 2006

The New India Assurance Co.Ltd.]
Branch 231 001, 2nd floor, Dan Commercial]
Complex, Tokar Khada, Silvassa- 396 230]
UT of Dadra Nagar Haveli]
Policy No.231001/31/04/02767]
Valid from 25/11/2004 to 24/11/2005]..Appellant/Org. Opponent No.2

Vs.

1. Smt. Prashanti Mahendra Aherkar]
aged 36 years, wife of the deceased]

2. Ms. Rutuja Mahendra Aherkar,]
Aged 10 years, daughter of the deceased]

3. Mast. Tanmay Mahendra Aherkar,]
Aged 3 years, son of the deceased.]
Applicants No.2 and 3 are minors through]
Mother and next friend applicant No.1.]
Both are residing at EC 53/A/303, Mangal]
Murti Mangal Geer Co-op. Society,]
Evershine City, Vasai (E), Dist-Thane]...Respondents/ Orig. Applicants

4. Mr. Manojkumar Ramavatar Vishwakarma]
C/o Balaji Forms & Stationery,]
11/12, Amli Industrial Estate 66 KVA Rd.,]
Silvassa U. T. of Dadra & Nagar Haveli,]...Respondent/
Pin Code 396 230] Org.Opponent No.1

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Ms. Poonam Mittal	Advocate for the Appellant.
Ms. Ketki Gokhale i/b. Mr. Avinash Gokhale	Advocate for Respondent No.1.
Mr. Graham Francis i/b Mr. V. S. Talkute	Advocate for Respondent No.4.

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CORAM : S. M. MODAK, J.

DATE : 7th OCTOBER 2026

ORAL JUDGMENT. :-

1. Heard Ms. Poonam Mittal, learned advocate for the Appellant, Ms. Ketki Gokhale, learned advocate for Respondent No.1 and Mr. Graham Francis, learned advocate for Respondent No.4.

2. The only issue which is canvassed in this appeal is about the quantum of compensation granted by the Tribunal as per judgment dated 28 April 2006.

3. The main focus is on the income of the deceased considered by the Tribunal. Even though there is proof about the salary earned by the deceased, the Tribunal has considered income from salary as Rs.16,000/- per month.

4. Ms. Mittal has made following submission:

a) There is variance in the income from salary mentioned at various places they are as follows:

i. In the claim application the income from salary mentioned is Rs.11,188/-.

ii. In the claim affidavit filed by widow the salary mentioned is Rs.13,851/-.

iii. In the salary certificate salary mentioned is Rs.13,851/- (whitener is applied).

iv. In the certificate annexed by employees representative Shashikant Joshi, dated 19th April 2026, the total salary is Rs.13,857/- (of which basic salary is Rs.7,505/-) whereas in two salary slips first for the month of April 2005 gross salary is mentioned as Rs.8,988/- and second payslip is only for increment purpose.

b) According to her, the Tribunal has committed a wrong in considering the notional income of Rs.16,000/- and hence he prayed for reduction in the quantum of compensation.

5. Learned advocate for the claimant submitted that salary certificate at Exhibit 23 is not challenged during cross-examination.

According to her the salary slip showing gross salary plus provident fund plus interest plus charges has to be considered.

6. Learned advocate for the Respondent owner also reiterated stand taken by Ms. Mittal.

7. It is settled law that notional income cannot be considered when there is evidence available about the salary of the deceased. The Tribunal has also referred to the evidence of Mr. Shrikant Joshi who says the monthly income of the deceased was Rs.13,857/-. The Tribunal has also referred to the salary certificate at Exhibit 23 and employment certificate at Exhibit 24. The Tribunal has not given any reasons why he has considered the notional income of Rs.16,000/- per month.

8. I am not inclined to consider the two salary slips which are part of the record at page 35 and 37 because they were not tendered in the evidence and even not admitted by any of the parties.

9. So I have to only consider the salary certificate at Exhibit23 dated 19 April 2006. Learned Advocate Ms. Mittal submitted about variance in the salary mentioned in the claim application and in the affidavit. She is right. These two documents were offered by Prashanta,

who is the wife of the deceased. Rather than the reference in these two documents the salary certificate given by the employers witness has to be given more priority.

10. It is true that it bears date of 19th April 2006 whereas the date of accident is 7th June 2005. It is also true this certificate does not mention the month for which salary of the deceased is paid. However, when cross-examination is perused it was not pointed out to him what is the lacuna in the salary certificate. If it is not challenged on that ground now in appeal it cannot be challenged. So I am inclined to consider the salary of the deceased as Rs.13,857/- All the details are mentioned in the certificate. It is true that the is no deduction of professional tax in that certificate. As per the submission of Ms. Mittal at that time the deduction of professional tax per month was Rs.175/-. It is concurred by learned advocate Ms. Gokhale. So income from the salary of the deceased is to be considered as 13,682/- (Rs.13857/- Minus Rs.175/-). It is as follows:

Particulars	Amount
Annual Income (Rs.13,682 X 12)	Rs.1,64,184/-
Add: 50% future prospects Rs.	Rs.82,092/-
Total	Rs.2,46,276/-

Deduction towards personal expenses 1/3rd	Rs.82,009/-
Dependency	**Rs.1,64,267/-**
Multiplier Applicable 15	Rs.24,64,005/-
Loss of Consortium	Rs.1,44,000/-
Funeral Expenses	Rs.18,000/-
Loss of Estate	Rs.18,000/-
Total Compensation	Rs.26,44,005/-
Compensation entitled (80%)	**21,15,204/-**
(Less) Compensation Awarded by Tribunal	Rs.16,00,000/-
(Less) Amount for loss of love	Rs.5,000/-
Enhanced Compensation	**Rs.5,10,204/-**

11. It is very well true that the Tribunal has not considered the future prospects. It has to be considered. So also the compensation on account of loss of consortium, loss of estate and funeral expenses has to be considered. At the same time there cannot be compensation on account of loss of love and affection. In view of that the compensation has to be re-determined. The Appellate Court can certainly redetermine the amount because just compensation has to be arrived at.

12. It is very well true that the Tribunal has held the deceased also responsible for the accident and his liability is quantified to 20%. It is

referred by the Tribunal in paragraph 8 of the judgment. The tempo driver was held responsible to the extent of 80%.

13. Hence, the following order:

ORDER

1. Appellant and Respondent No.4/Original opponent No.1 are jointly and severally directed to pay Rs.5,10,204/- @ 6% p.a. from the date of application i.e. 20th July 2005 to the Respondent Nos.1 to 3 within 8 weeks from the date of uploading of this order.

2. Respondent Nos.1 to 3 to pay Court fees on above said amount.

3. On deposit, Tribunal to disburse the amount to Respondent Nos.1 to 3.

14. In the light of the above observation, the Appeal is disposed of.

15. Pending Application, if any, also stands disposed of.

[S. M. MODAK, J.]