**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FIRST APPEAL NO.3430 OF 2011

United India Insurance Co.Ltd.,
Through its Divisional Manager,
Seven Hills, Jalna road,
Aurangabad .. Appellant

Versus

1. Vidya wd/o Vijay Pawar,
Age 31 years, Occu. Household,
R/o C/o Devidas Motiram Rathod,
Plot No.95-B, New Shanti Niketan
Colony, Jawahar Colony road,
Aurangabad

2. Priyanka d/o Vijay Pawar,
Age 15 years, Occu. Education,
Minor u/g of his real mother
petitioner No.1

3. Kiran s/o Vijay Pawar,
Age 11 years, Occu. Education,
Minor, u/g of his real mother
petitioner No.1

4. Karan s/o Vijay Pawar,
Age 8 years, Occu. Education,
Minor, u/g of his real mother
petitioner No.1

5. Muktabai w/o Diwan Pawar,
Age 66 years, Occu. Household,
R/o Deoli, Taluka Ghansawangi,
District Jalna

6. Diwan s/o Bhoja Pawar,
Age 71 years, Occu. Nil,
R/o as above

7. Musabbar s/o Ajimulla Khan,
Age 22 years, Occu. Driver,
R/o Khaira Fatak, Jahangir Chal,
Room No.9, Boisar, Tarapur,
District Thane
(Driver of Truck No.MH-04-DD-4879)

8. Halim s/o Nazir Khan,
Age Major, Occu. Business,
R/o 11/12, Bata Compound,
Rehnal village, Taluka Bhivandi,
District Thane
(Owner of Truck No.MH-04-DD-4879) ..Respondents

Mr Mohit Deshmukh, Advocate h/f Mr S.G. Chapalgaonkar, Advocate for appellant
Mr S.S. Panale, Advocate for respondents No.1 to 6
Respondents No.7 and 8 served through paper publication

**CORAM : V.K. JADHAV, J.**

**DATE : 7th July 2016**

**PER COURT**

Heard finally with consent.

2. Being aggrieved by the judgment and award dated 29th September 2011 passed by the learned Member, Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No.381/2010, the original respondent No.3 – insurer has preferred this appeal.

3. Brief facts giving rise to the present appeal are as follows :

4. On 16.1.2010, deceased Vijay was driving a tanker from Chembur to Jalna. At about 17.30 hours, due to mechanical defect, he parked the tanker at the left side of the road near kilo meters stone No.26/150 within local area of village Madap, Taluka Panvel and while he was standing near the vehicle and repairing was going on, on 17.1.2010 at about 00.35 hours, truck bearing registration No.MH-04-DD-4879 came from backside of the above numbered tanker and gave dash to it. In consequence of which deceased Vijay got pressed between the steel side guard of the road and tanker and sustained

serious injuries. He was immediately shifted to Rural Hospital, Panvel, where he was declared as dead. According to the claimants, who are the legal representatives of deceased Vijay, deceased Vijay was 35 years of age at the time of accident and he was working as a driver on the vehicle owned by M/s V.P. Sethi Construction, Jalna. He was earning salary of Rs.5,000/- per month and Rs.300/- per day towards bhatta. Thus, the claimants preferred M.A.C.P. No.381/2010 before the Tribunal, for grant of compensation under the various heads.

5. Respondents No.1 and 2 though duly served, failed to appear before the Tribunal and, therefore, hearing of the petition was proceeded ex parte. Respondent No.3 (appellant) strongly resisted the petition by filing written statement at Exh.14. It was contended that deceased Vijay received the injuries out of the involvement of vehicle in question. He has received injuries due to dash of tanker. It was contended that the petitioners-claimants have not joined the owner and insurer of the tanker as parties to the claim petition. It is further denied that deceased Vijay was working as driver on a monthly salary of Rs.5,000/- and was getting Rs.300/- per day towards bhatta.

6. Both the parties led the oral and documentary evidence in support of their rival contentions. Learned Member of the Tribunal, after considering the evidence adduced by the parties, by impugned judgment and award dated 29.9.2011 partly allowed the claim petition and thereby directed the respondents to pay Rs.15,43,500/- to the petitioners-claimants with interest at the rate of 9% per annum. Being aggrieved by the same, original respondent No.3 – insurer has preferred this appeal.

7. The learned Counsel for the appellant – insurer submits that the Tribunal has wrongly considered the daily bhatta of deceased Vijay as a part of his salary. Learned Counsel submits that even though there are vouchers about the salary of Rs.5,000/- per month being paid to deceased Vijay, as deposed by his employer, there are no documents placed on record to show that deceased Vijay was also getting Rs.300/- per day as a bhatta, whenever he was on tour. Learned Counsel further submits that even assuming that deceased Vijay was getting daily bhatta, as deposed by the employer and even by the wife of deceased Vijay, the same was being paid to deceased Vijay for his daily expenses, while he was on tour and, therefore, the said amount cannot be taken into consideration for calculating the loss of future income. He further submits that the Tribunal has thus awarded exorbitant amount of compensation. He submits that there is no pleading or proof in respect of loss of future prospects and the Tribunal has, therefore, not considered the same. He submits that the respondents-original claimants have not preferred any appeal or cross-objection. Learned Counsel submits that at the most, the entire salary of deceased Vijay can be taken into consideration for calculation of loss of future income, without deducting anything for his personal expenses, since he was getting separate amount for his personal expenses. Learned Counsel submits that the daily bhatta is a concept under the provisions of Workmens Compensation Act and there are divergent views whether the daily bhatta should be considered as a part of wages. So far as the provisions of Motor

Vehicles Act are concerned, daily bhatta cannot be considered as a part of income of the deceased.

8. The learned Counsel for the respondents-original claimants submits that claimant No.1 - Vidya has deposed that deceased Vijay used to be on tour for 20-22 days in each month during his tenure of service as a driver. He was getting Rs.300/- per day as a bhatta. She has further deposed that by this way, he was getting Rs.6,000/- to Rs.6,500/- per month in addition to his salary. She has added that deceased Vijay was very economical in his own expenditure and near about Rs.9,000/- to Rs.10,000/- was being given to her on the household expenditure and other expenses. He submits that considering the evidence of claimant No.1 Vidya, daily bhatta (allowance) to deceased Vijay is required to be treated as his earning and the same is, therefore, rightly considered by the Tribunal while calculating the loss of future income. He submits that the salary certificate Exh.41 is duly proved by them through the employer. It is specifically mentioned in the salary certificate that deceased Vijay was getting monthly salary of Rs.5,000/- and daily bhatta of Rs.300/-. The learned Counsel submits that there is nothing in the cross-examination of claimant No.1 as well as cross-examination of the employer of deceased Vijay to disbelieve that deceased Vijay was getting daily bhatta of Rs.300/-. Though deceased Vijay was getting the said amount while he was on tour, however, the same was part of his wages. He submits that even though the amount of daily allowance is on higher side compared to the wages being paid to deceased Vijay, the same is for the reason that the employee working

as a driver should opt for assignment of the long journey. He further submits that the learned Tribunal has rightly considered the amount of daily allowance as a part of income and awarded the compensation. The learned Counsel submits that the Tribunal should have made addition in income of deceased Vijay by considering his future prospects. Even though the claimants have not preferred any appeal or cross-objection, the claimants are entitled for just and reasonable compensation.

9. The learned Counsel for the respondents-claimants, in support of his submissions placed reliance on the following judgments :

**(I) Mohd. Ameeruddin and anr. Vs. United India Insurance Co.Ltd. And anr., reported in (2011) 1 SCC 304;**

**(II) Andhra Pradesh State Road Transport Corporation represented by its General Manager and anr. Vs. M. Ramadevi and ors., reported in (2008) 3 SCC 379;**

**(III) Rajesh and ors. Vs. Rajbir Singh and ors., reported in (2013) 9 SCC 54**

**(IV) Namdeo Tulshiram Daiwate & Ors., Vs. Gurumajursingh Autarsingh Chhatwal,** reported in **2010 (Supp) Bom.C.R. 82**

**(V) Jaya Biswal and ors., Vs. Branch Manager, Iffco Tokio General Insurance Co.Ltd., and anr.,** reported in **AIR 2016 (SC) 956**.

10. In all the above cases, no principle is laid down as such, with regard to daily bhatta while calculating the loss of future income. Both the learned Counsel admit that there are divergent views under the Workmens Compensation Act, while calculating daily bhatta as a part of wages.

11. The claimant No.1 - Vidya has deposed that deceased Vijay used to be on tour for 20-22 days in a month during his entire service tenure. Witness No.2 – Vijaykumar Sethi has also deposed that with deceased Vijay, there are four drivers working in his construction work. It cannot be accepted that daily bhatta was usually given to the employee solely for his day-to-day expenses while on tour. Deceased Vijay was getting only Rs.5,000/- per month towards salary, whereas he was getting Rs.300/- per day while on tour. It is, thus, obvious that deceased Vijay was getting the said amount as an incentive whenever he opted for the tour. Furthermore, Claimant No.1 – Vidya has deposed before the Tribunal that deceased Vijay was very economical in his own expenditure and even he used to save the amount from his daily allowance. The salary certificate at Exh.41 is duly proved by the claimants. It is true that there are vouchers of salary being paid to deceased Vijay, however, there are no vouchers placed on record to show that in a similar way he was being paid the daily allowance, however, the said salary certificate Exh.41 speaks about daily bhatta being paid to deceased Vijay and further, the

claimant No.1 and the employer Vijaykumar Sethi also deposed about the same. There is nothing in the cross-examination to disbelieve the same. It cannot be ignored that deceased Vijay was in private employment and even though the record is kept about the salary being paid to the drivers, usually, the record of daily allowance being paid to them is not maintained. In any way, the evidence on record is sufficient to conclude that deceased Vijay was earning Rs.300/- per day as bhatta whenever he was on tour and the same is a part of his earning. I do not find any error in the impugned judgment and award passed by the Tribunal, while awarding the compensation under the head of loss of future income by considering the daily allowance of deceased Vijay, as a part of his earning.

12. So far as the issue of income by considering the future prospects is concerned, learned Counsel for the insurer has rightly pointed out that there is no pleading to that effect. It is true that deceased Vijay was 35 years of age at the time of his accidental death, however, there is nothing in the evidence of the claimants that he had better future prospects. I do not think that by only considering the age, the addition of the income should be made mechanically. In the case in hand, there is absolutely no evidence to show that deceased Vijay had appeared for certain examination and he was going to acquire some more qualification etc. to consider the addition in income. In absence of that the Tribunal has not considered the same.

13. In view of above discussion, I do not find any error in the impugned judgment and award. There is no substance in the appeal and the appeal is thus liable to be dismissed. Hence, the following order :

**ORDER**

The appeal is hereby dismissed with costs.

**( V.K. JADHAV, J.)**

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