

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

FIRST APPEAL NO. 2965 OF 2019

1. Babruwan s/o Mahadev Hembade
Age 50 years, Occu. Agril.,

2. Rajabai w/o Babruwan Hembade
Age 48 years, Occu. Household,
Both R/o Jawali, Tq. Ausa,
Dist. Latur

... Appellants
Orig. Claimants

Versus

1. Mallikarjun s/o Dhanraj Birajdar
Age Major, Occu. Driver,
At present R/o S. T. Depot, Nilanga,
Original residence Wadgaon, tq. Nilanga,
Dist. Latur

2. Depot Manager,
Maharashtra State Road Transport Corporation,
Nilanga, Tq. Nilanga, Dist. Latur

3. Divisional Controller,
Maharashtra State Road Transport Corporation,
Nilanga, Tq. Nilanga, Dist. Latur

... Respondents
Orig. Respondents

....

Mr. Satish S. Manale, Advocate for appellants

Mr. A. B. Dhongade, Advocate for respondent Nos. 2 and 3

....

CORAM : R. G. AVACHAT, J.

DATED : 17th NOVEMBER, 2021

PER COURT :-

. This is an appeal for enhancement of compensation granted by the Motor Accident Claims Tribunal, Latur in Motor Accident Claim Petition No.70 of 2017, on account of death in vehicular accident.

2. Admittedly, the deceased – Nitin died in an accident involving motor vehicle. The deceased died bachelor. His parents therefore preferred the petition for compensation. The deceased held licence to drive transport vehicle. It is the case of appellants that the deceased was serving as a Driver in Mumbai at a monthly pay of Rs.15,500/- plus Rs.100/- per day as Bhatta. The Tribunal, however, considered his income notionally at Rs.5,000/- per month and granted compensation.

3. The learned Advocate for the appellants would submit that the deceased was serving with a transport company. The evidence was adduced in proof of monthly salary of the deceased. The Tribunal, therefore, ought to have relied on the said evidence. He would, alternatively submit that as per the Maharashtra

Minimum Wages effective for the period January - 2017 to June - 2017, the minimum wages for the skilled labourer in transport business was Rs.9,427/-. He, therefore, urged for taking into consideration at least that much amount as notional pay of the deceased. He would also submit that no compensation has been awarded on account of loss of love and affection. He, therefore, urged for enhancement of compensation.

4. The learned Advocate for the M.S.R.T.C. would, on the other hand, submit that the Tribunal, for want of concrete evidence of the income of the deceased has rightly considered the notional income at Rs.5,000/- per month. According to him, the amount of compensation awarded, is just and reasonable. He, therefore, urged for dismissal of the appeal.

5. The deceased was admittedly a Driver by profession. He held licence to drive transport vehicle. The Tribunal has, however, discarded the evidence adduced in proof of salary of the deceased. The reasons given for discarding such evidence are found in para 26 of the impugned judgment. This Court has no reason to take different view. It, however, appears that the deceased was serving in Mumbai. Consideration of his income notionally at Rs.5,000/- per

month is on lower side. A copy of Maharashtra Minimum Wages, for the period January-2017 to June-2017 has been placed on record. For a skilled labourer in transport business, minimum wages prescribed are Rs.9,427/- per month. This figure is therefore required to be taken into consideration as notional income of the deceased for working out the amount of compensation. Annual income of the deceased would come to Rs.1,13,124/-. 40% is therefore added thereto towards future prospects. It comes to Rs.1,58,374/- (Rs.1,13,124 + 40% i.e. 45,250). Since the deceased died bachelor, half of the amount is deducted towards his personal and living expenses. It comes to Rs.79,187/-. As the deceased was 25 years of age, multiplier of 18 is applied. As such, the amount of compensation on account of loss of dependency comes to Rs.14,25,366/-. A sum of Rs.80,000/- is also awarded towards loss of love and affection in view of Apex Court's judgment in ***Magma General Insurance Company Limited vs. Nanu Ram Alias Chuhru Ram and others – (2018) 18 SCC 130***. Plus, a sum of Rs.30,000/- is awarded towards funeral expenses and loss of estate. The total amount of compensation comes to Rs.15,35,366/-.

6. In the result, the appeal is partly allowed.

7. The amount of compensation awarded by the Tribunal is enhanced from Rs.7,86,000/- to Rs.15,35,366.
8. The enhanced amount of compensation shall carry interest @ 5% per annum.
9. The amount already paid, be given due adjustment.

[R. G. AVACHAT, J.]

SMS