IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1226 OF 2015

The New India Assurance Co. ltd.	]	
D.O.II, Legal Cell, Nehru Memorial Hall,	]	
Camp, Pune.	]	
Through Mumbai Regional Office-I,	]	
New India Bhavan, 1st Floor, 34/38,	]	Appellant
Bank Street, Fort, Mumbai – 400 023	]	(Org.Insurer)

Versus

1	Smt. Anuja Santosh Shinde	]
	Aged 27 years, Occ.: Household	]
2	Aditya Santosh Shinde	]
	Aged 07 years, Occ.:Nil,	]
3	Shreyas Santosh Shinde	]
	Aged 03 years, Occ.:Nil,	]
	Respondent Nos.2 and 3 being	]
	minors through their mother, the	]
	Respondent No.1	]
4	Sou. Revati Somnath Shinde	]
	Aged 55 years, Occ.: Household,	]
5	Somnath Mahadeo Shinde	]
	Aged 60 years, Occ.:Labour,	]
	All r/at Gat No.232, Hawaldar Wasti,	]
	Alandi Road, Moshi,	]
	Tal.Haveli, Dist. Pune.	]
6	Lalit Kumar D. Agarwal	]
	Aged Major, Occ.Truck Owner,	]
	R/o.S. No.231, House No.103,	]

Siddhivinayak Nagar, Nigdi, Pune	]	
7 Hanumant Rambhau Yeole	]	
Aged Major, Occ.: Truck Owner,	]	...Respondents
R/o. Balleshwar Society, Rupinagar,	]	(Resp. 1-5 org.
Talwade, Pune	]	Claimants,
		Resp.6-7 org.Opp.1 & 3)

Mr. Devendranath S. Joshi, Advocate for the Appellant.
Mr. Yogesh Pande, Advocate for Respondent Nos.1 to 5.

CORAM : S. G. DIGE, J.

DATE : 13th DECEMBER, 2022.

JUDGMENT:

1. The issue involved in this appeal is, while awarding compensation, the Motor Accident Claims Tribunal, Pune, (for short "the tribunal") has not considered deduction of allowances properly. It is the contention of the appellant that the tribunal considered the salary of the deceased @ Rs.30456/-. The tribunal has deducted Rs.196/- for income tax, Rs.200/- for professional tax, Rs.5297/- for conveyance allowance and Rs.5297/- for washing allowance. Thus, the tribunal has considered monthly income @ Rs.19466/-. Learned counsel for the appellant further submits that the documents

produced on record shows that the deceased was getting overtime allowance and it varied in every month, but the said difference, is not deducted properly month wise. The tribunal has considered only the salary of one month i.e. September, 2012, which is not proper. Hence, requested to allow the appeal.

2. It is the contention of learned counsel for the respondent Nos.1 to 5 that though the overtime allowance was different every month, but in some months, it was on higher side and the tribunal has considered the salary on the average basis, so it is proper.

3. I have heard both learned counsel, perused the judgment and order passed by the tribunal. While considering the salary income of the deceased, the tribunal has observed that the salary slip (Exhibit 43) of the deceased for the month of September, 2012, shows his gross salary as Rs.30456/-. The amount of Rs.196/- for income tax, Rs.200/- for professional tax, Rs.5297/- for conveyance allowance and Rs.5297/- for washing allowance. These allowances and income tax will have to be deducted from his gross salary of Rs.30,456/- for the purpose of calculating dependency. Thus, the dependency can be worked out to Rs.19,466/- (Rs.30,456.00 -

Rs.10,990.00). The documents produced on record viz. salary slip of September, 2012 shows the total gross salary @ Rs.30,456/- but the Tribunal has considered it only @ Rs.30,000/-. In my view, the tribunal has considered the salary of the deceased on average basis. I do not find any infirmity in it. Thus, the appeal is devoid of merit. Hence, I pass the following order :

1. The appeal is dismissed. No order as to costs.
2. Respondents/original claimants are permitted to withdraw the amount along with interest accrued thereon deposited by the appellant, if not withdrawn earlier.
3. The statutory amount deposited by the appellant if any, be transmitted to the tribunal.

4. Pending civil applications, if any, will not survive and are disposed of.

(S. G. DIGE, J.)