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

FIRST APPEAL NO. 1089 OF 2018

1] Sushilabai w/o. Gangadhar Shinde,
Age 50 years , Occ Household.

2] Vijay S/o. Gangadhar Shinde,
Age 33 years, Occ. Education.

3] Kishor S/o. Gangadhar Shinde,
Age 32 years, occ. Education.

4] Jyoti D/o. Gangadhar shinde,
Age 31 years, Occ. Education.

All R/o. Narharnagar, Nanded,
Tq. & Dist. Nanded. **... APPELLANTS.**

VERSUS

1] Basappa S/o. Piraji Kandurke,
Age Major, occ. Business,
R/o sagroli, Tq. Biloli, Dist. Nanded.
2] The New India Assurance Co. Ltd.,
through its Manager, Vazirabad,
Tq. And Dist. Nanded. **.. RESPONDENTS.**

Mr. A.D. Hande, Advocate for appellant
Mr. M.M. Ambhore, Advocate for respondent No.2.

CORAM : S.G. CHAPALGAONKAR, J.

**RESERVED ON : 26th JULY, 2023
PRONOUNCED ON : 18th AUGUST, 2023.**

<u>JUDGMENT :-</u>

The appellants/original claimants impugn judgment and award dated 9.10.2017 passed by the Motor Accidents Claim Tribunal at

Nanded in M.A.C.P. No. 175 of 2005, by invoking the provisions of Section 173 of the Motor Vehicles Act. (For sake of convenience, the parties are referred to, as per their original status before the Tribunal)

2. The claimants had approached the Tribunal at Nanaded under Section 166 of the Motor Vehicles Act raising claim for compensation towards the accidental death of Gangadhar Shinde. On 10.5.2004, he was travelling in the auto-rickshaw bearing registration No. MH-26/0780 from village Shimpla towards Nanded. It turned turtle due to rash and negligent driving of its driver. Gangadhar had sustained multiple injures causing his death. The claimants contend that deceased Gangadhar was earning Rs. 30,000/- p.m. as he was running a stone crushing plant so also has income from agriculture land.

3. The claim was contested by the Insurance Company. The Tribunal, after considering the rival submission, and evidence on record partly allowed the claim under its award dated 9.1.2017 and directed respondents i.e. owner and insurer of offending rikshaw to pay compensation of Rs. 15,00,000/ (Rupees fifteen lakhs) alongwith interest @7 % p.a. to the claimants.

4. Mr. Hande, learned advocate for the appellant submits that the Tribunal was under obligation to pass just and proper award. However, inadequate compensation has been awarded to the claimants. He submits that ample evidence was tendered by claimants to prove income of the deceased. The Assistant Engineer in the Irrigation Department has been examined to prove that M/s. Vijay Construction company of the deceased was awarded the tender for execution of the work worth Rs. 12,52,46/-. Form No. 16 is filed on record depicting deduction of Rs. 28,656/- towards income-tax for the period from 1.4.2000 to 31.3.2001. That indicates income of the deceased. Mr.

Hande, would further submit that the deceased was aged 42 years. The Tribunal ought to have considered the future prospects. However, the Tribunal ignored well settled norms for assessment of compensation.

5. Mr. Ambhore, learned counsel for the respondent, however, opposes the submissions on the ground that the pleading in the claim petition regarding the income of the deceased is inconsistent with the evidence on record. He would further submit that although the claimants have pleaded about ownership of the stone crushing plant, no evidence is adduced to that effect. He would further submit that Form No.16 produced on record is not evidence of actual income. The claimants have failed to produce on record the account entries regarding the receipt of amount or balance sheet to show the business income of the deceased. He would, therefore, submit that the Tribunal has passed just and proper award.

6. Having considered the submissions advanced and perusal of record and proceeding, it can be gathered that the deceased was a Certified Contractor with PWD and had executed some works. Form No.16-A shows that deductions were made towards the payments released by the Irrigation Department. Unfortunately, the claimants could not bring on record the evidence regarding actual income of the deceased. Apparently, Exh.36 shows that some agricultural land was owned by the deceased. However, the assessment of the income of the deceased can be made only on the basis of evidence that is tendered into service before the Tribunal. The Tribunal in absence of evidence depicting actual income of the deceased, notionally estimated his income @ Rs. 10,000/- p.m. No fault can be found in the approach of the Tribunal, when the income is assessed on notional basis. The claimants in their endeavour to establish claim regarding income of the deceased relied upon the evidence CW -2 Sumit Chamalia, who deposed that an

amount of Rs. 28,656/- was deducted by his company towards income tax as per Form No. 16A towards payment made to Vijay Construction Company. The said work has been executed successfully by them. However, no further evidence is brought on record to show receipt of final bill by the deceased or income-tax returns submitted by him for concern accounting year. The statement of income placed on record by claimants, although not proved shows income of the deceased to be Rs. 1,01,000/- for the Assessment Year 2001-02. Therefore, the Tribunal is justified in estimating the notional income of the deceased to the tune of Rs. 10,000/- p.m. However, some addition needs to be made towards the loss of income from the agricultural land. That can be quantified at Rs. 2,000/- p.m. looking to the agricultural land standing in the name of the deceased. Consequently, this court quantifies income of the deceased from all sources to the tune of Rs. 12,000/- p.m. It appears that no addition is considered towards future prospects. The age of the deceased at the time of his death was 42 years. In that view of the matter, 25% of the established income of deceased is required to added by way of future prospects.

7. After adding the amount towards future prospects, the monthly income can be estimated to the tune of Rs. 15,000/- p.m. The Tribunal has rightly applied the multiplier of 14. Thus, the future loss of income would be 15,000 x 12 x 14 = 2520000/-. Since there are 4 dependents of the deceased 1/4th amount needs to be deducted towards personal and living expenses. After deducting the 1/4th amount i.e. Rs. 6,30,000/- towards personal expenses, from Rs. 25,20,000/-, the amount comes to Rs. 18,90,000/-. The compensation of Rs. 1,60,000/- can be awarded by way of loss of consortium to 4 dependents. Rs. 15,000/- can be awarded towards loss of estate and Rs. 15,000/- can be awarded towards funeral expenses. Once compensation is assessed towards loss of consortium, separate compensation towards love and affection is not

admissible. In that view of the matter, the award passed by the Tribunal needs to be modified as per the calculation shown in the following following table:-

Sr.No.	Description	Amount
1.	Loss of future income of deceased	18,90,000/-
2,	Loss of consortium	1,60,000/-
3.	Loss of Estate	15,000/-
4.	Funeral Expenses	15,000/-
	TOTAL	20,80,000/-

8. Thus, the appellants are entitled for total compensation of Rs. 20,80,000/- from the respondent Nos. 1 and 2 jointly and severally with interest thereon @ 7 % p.a. from the date of petition till its realization.

Hence, the following order; -

O R D E R

1. The appeal is partly allowed with proportionate costs.

2. The claimants are held entitled for total compensation of Rs. 20,80,000/- (rupees twenty-one lacs eighty thousand only) including NFL from the respondent Nos. 1 and 2 jointly and severally together with interest thereon @ 7% p.a. from the date of petition till its realization.

3. The amount paid /deposited as per award of tribunal shall be appropriated.

4. Award be drawn accordingly on payment of deficit court fees, if any.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-