IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CROSS OBJECTION NO.10 OF 2022

1. Nazmin Begum W/o Sk. Shabbir,
Age 30 years, Occu. Household,
R/o: Mominpura, Tq. Yeola, Dist. Nashik.

2. Sk. Saad S/o Sk. Shabbir,
Age: 11 years, Occu.: Student
R/o: As above.

3. Sk. Maaz S/o Sk. Shabbir,
Age: 9 years, Occu.: Student
R/o: As above.

4. Sk. Hasan S/o Sk. Shabbir,
Age: 6 years, Occu.: Student
R/o: As above.

No. 2 to No. 4 are minors U/g. of Applicant No.1.

5. Abdul Gaffar S/o Abdul Raheman,
Age: 64 years, Occu.: Nil,
R/o: As above.

6. Khaleda Begum W/o Abdul Gaffar,
Age: 59 years, Occu.: Household,
R/o: As above. ..Objection Petitioners
(Orig. Claimants)

Versus

1. Mazaruddin Shafiuddin,
Age: 9 Manjor, Occu.: Business,
R/o: H. No. 1-10-65,
Juna Bazaar, Aurangabad.

2. Moinuddin Abbas Anyulay,
Age: Major, Occu.: Driver,
R/o: Azim Shahpura, Near Bus Stand, Khultabad,
Tq. Khultabad, Dist. Aurangabad.

3. The Divisional Manager,
The United India Insurance Co. Ltd.
Station Road, Osmanpura
Aurangabad. ..Respondents

(Original Respondents)

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Mr. A. P. Khedkar, Advocate for the Objection Petitioners.
Mr. Sartaj H. Pathan, Advocate for Respondent Nos.1 and 2.
Mr. S. S. Rathi, Advocate for Respondent No.3.

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IN
FIRST APPEAL NO.1755 OF 2014
WITH
CIVIL APPLICATION NO.9102 OF 2015

United India Assurance Company Ltd.,
Through its Deputy Manager TP Cell,
Shri. Bhaurao S/o Rambhau Kankal,
Age: 57 years, Occ.: Service,
R/o. Divisional Office-I,
United India Insurance Co., Ltd.
Osmanpura, Aurangabad. ..Appellant
(Orig. Respondent No.3)

VERSUS

1. Nazmin Begum W/o Sk. Shabbir,
Age 30 years, Occu. Household,
R/o: Mominpura, Tq. Yeola, Dist. Nashik.

2. Sk. Saad S/o Sk. Shabbir,
Age: 11 years, Occu.: Student
R/o: As above.

3. Sk. Maaz S/o Sk. Shabbir,
Age: 9 years, Occu.: Student
R/o: As above.

4. Sk. Hasan S/o Sk. Shabbir,
Age: 6 years, Occu.: Student
R/o: As above.

No. 2 to No. 4 being minor through
Their natural guardian i.e. mother Respondent No.1.

5. Abdul Gaffar S/o Abdul Raheman,
Age: 64 years, Occu.: Nil,
R/o: As above.

6. Khaleda Begum W/o Abdul Gaffar,
Age: 59 years, Occu.: Household,

R/o: As above. ..Orig. Claimants

7. Mazaruddin Shafiuddin,
Age: 9 Manjor, Occu.: Business,
R/o: H. No. 1-10-65,
Juna Bazaar, Aurangabad.

8. Moinuddin Abbas Anyulay,
Age: Major, Occu.: Driver,
R/o: Azim Shahpura, Near Bus Stand, Khultabad,
Tq. Khultabad, Dist. Aurangabad. ..Respondents

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Mr. S. S. Rathi, Advocate for the Appellant.
Mr. A. P. Khedkar, Advocate for Respondent Nos.1 to 6.
Mr. Sartaj H. Pathan, Advocate for Respondent Nos.7 and 8.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 19th JULY, 2023.
PRONOUNCED ON : 26th JULY, 2023.

JUDGMENT:-

1. The appellant/original respondent no.3-Insurer impugns the judgment and award dated 26.05.2014 passed by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No.66/2010 in this appeal filed under Section 176 of the Motor Vehicle Act. The respondents 1-6/ original claimants have also filed Cross Objection in the appeal seeking enhancement of compensation.

2. The respondent nos.1 to 6 herein (original claimants) had approached the Tribunal under the Section 166 of the Motor Vehicle Act raising the claim for compensation towards accidental death of deceased Shaikh Shabbir. The contention of the claimants is that on 03.12.2009 the deceased was traveling in Taxi bearing Registration No.MH-20-W-1544, which collided against the Tractor coming from the opposite side. The deceased suffered fatal injury in the said accident. According to the claimants, the deceased was serving with one Mustaq Ahemad, who was

dealing in the business of cotton yarn, gray, colour lot and wastage material at Yeola, Dist. Nashik. The deceased was getting salary of Rs.12,000/- per month. The claimants were dependent on his income. The appellant/insurer contested the claim raising defence of driving license/breach of condition of policy so also disputed the earning of the deceased and dependency of the claimants. The Tribunal had framed the issues. The parties were permitted to lead the evidence. Finally, by order dated 26.05.2014, the Tribunal allowed the claim for compensation of Rs.17,55,000/- together with interest at the rate of 9% per annum. The Tribunal accepted defence of respondent no.3-insurer on the point of driving license with direction to deposit the compensation amount and right to recover from respondent no.1 by filing execution before the Tribunal. The appellant assailed the aforesaid Award basically on the ground of quantum so also raised the challenge to direction under award in the nature of pay and recovery.

3. Heard the learned Advocate appearing for the parties and with their able assistance perused the record and proceedings. There is no dispute that the deceased Shaikh Shabbir lost life in an accident dated 03.12.2009 arising out of use of Jeep bearing Registration No.MH-20-W-1544 owned by original respondent no.1 and insured with original respondent no.2 After considering the submissions advanced by the learned Advocates appearing for the parties, it is clear that the issue of estimating income of the deceased and consequential assessment of compensation has been raised by both the sides.

4. Mr. Rathi, learned Advocate appearing for the appellant in his endeavour to assail the Award submits that the Tribunal has erroneously relied upon the evidence of Mustaq Ahemad CW-2, who claims to be proprietor of his own firm. Mr. Rathi would submit that

except salary certificate placed at Exhibit-48 and oral version of the witness, no documentary evidence is placed into service to prove exact nature of job and income derived by the claimants. Mr. Rathi would submit that the evidence of PW-2 cannot be relied upon for the reasons that the trading account at Exhibit-50 submitted shows that Mustaq Ahemad was spending total amount of Rs.1,50,000/- towards salary of his employees. He would further submit that as per the version of PW-2, he had employed 4-5 persons. If the total salary spent on business was Rs.1,50,000/-, then it cannot be accepted that the deceased alone was receiving the salary of Rs.1,44,000/- from his employer.

5. Mr. Khedkar, learned Advocate appearing for the claimants on the other hand would submit that the claimants have specifically stated in the claim petition that the deceased was employed with Mustaq Ahemad as sales manager. The evidence of Mustaq Ahemad is recorded before the Tribunal. The salary certificate at Exhibit-48 is proved through his evidence. He would submit that, even the trading account is made part of evidence before the Tribunal. He submits that there cannot be any reason to discard such evidence. Mr. Khedkar, learned Advocate would further submit that the original vouchers by which the salary was paid to the deceased are placed at Exhibit-50/1 to 50/13, which bears signature of the deceased as well as his employer Mustaq Ahemad.

6. Mr. Rathi, learned Advocate appearing for the appellant, however attacks on the vouchers on the ground that those are written at once showing disbursement of the salary for the period from January-2009 to December-2009. He would further point out that the vouchers for the month of July and February bear very same serial number i.e.

79. Therefore, he submits that the evidence on the point of income of the deceased is unreliable.

7. Pertinently, the claimants have specifically pleaded in the claim petition that the deceased was serving as sales manager in the firm of Mustaq Ahemad. They have mentioned salary at the rate of Rs.12,000/- per month. The said Mustaq Ahemad issued salary certificate and record his evidence before the Court. He has submitted his trading account at Exhibit-50 on record of the Tribunal. From this evidence, it is clear that Mustaq Ahemad was in the business of sales and purchase of material. The trading account discloses that he has employed the workers to assist in the business. In that view of the matter, it would be difficult to discard the contentions of the claimants that the deceased was employed with Mustaq Ahemad and salary was being paid to him. However, as rightly pointed out by Mr. Rathi, learned Advocate appearing for the appellant, total salary spent by him for financial year 2009-2010 is Rs.1,50,000/-Further salary vouchers relied by claimants depicts that those are prepared at a time. The serial numbers on vouchers also mismatch, hence not worthy of acceptance. In that view of the matter, it would be difficult to accept claimants' case that Mustaq Ahemad paid monthly salary Rs.12,000/- to the deceased.

8. Considering the aforesaid aspects of the matter, it would be difficult to sustain the finding of the Tribunal that the deceased was getting monthly income of Rs.12,000/- per month. However, the fact remains that he was maintaining family of six persons. He was working as sales manager with Mustaq Ahemad. Therefore, even considering the minimum wages at the relevant time, it can be estimated that the deceased must be earning at least. Rs.8000/- per month. Apparently, the Tribunal did not add anything by way of future prospects to the

income of the deceased. Considering the age of the deceased i.e. 32 years at the time of the death, the addition at the rate of 40% of his income will have to be made by way of future prospects. There were six dependents on the income of the deceased. Therefore, the deduction of 1/4th amount will have to be made towards his personal and living expenses. Further all the claimants are entitled for the compensation at the rate of Rs.40,000/- each towards loss consortium in the light of the law espoused by Supreme Court of India in case of ***Magma General Insurance Company Versus Nanu Ram & Ors.*** reported in ***(2008) 18 SCC 130***.

9. In view of the aforesaid observations, it would be appropriate to modify the Award of the Tribunal as per the calculations given in the tabular form:

Sr. No.	Heads	Amount (Rs.)
1.	Annual loss of earning Rs.8000 x 12 =	Rs.96,000/-
2.	Addition of 40% towards future prospectus (Rs.96000 + Rs.38400/-)	Rs.1,34,400/-
3.	1/4th deduction towards personal and living expenses. Rs.1,34,400 / 4 = Rs.33,600/- 1,34,400 - 33,600	Rs.1,00,800/-
4.	Applying multiplier of '16' (Rs.1,00,800 x 16)	**Rs.16,12,800/-**
5.	Add Rs.2,40,000/- Lakhs towards loss of consortium (Rs. 40,000/- each x 6)	**Rs.2,40,000/-**
6.	Rs.30,000/- towards funeral expenses and loss of Estate (Rs.15,000 x 2)	**Rs.30,000/-**
TOTAL		**Rs.18,82,800/-**

10. In the result, the appeal sans merit and liable to be dismissed and Cross Objection deserves to be partly allowed by modifying the operative part of the order passed by the Tribunal. Hence, the order: -

ORDER

1. The Appeal is dismissed.

2. The Cross Objection is partly allowed.

3. The judgment and award dated 26.05.2014 passed by the Motor Accident Claims Tribunal, Aurangabad in Motor Accident Claim Petition No.66/2010 is modified as under:

   A. The claimants are held entitled to receive an amount of compensation of Rs.18,82,800/- (inclusive of the amount of Rs.50,000/-, under the head of 'No fault liability'), from respondent nos.1 to 3 jointly and severally together with interest @ 7% per annum from the date of the petition i.e. from 22.10.2010 till the actual deposit of the entire amount.

   B. The amount already paid by the respondents and withdrawn by the claimants in terms of the award passed by the Tribunal shall be adjusted/appropriated.

   C. Amount of compensation shall be apportioned amongst petitioner nos.1 to 6 as determined by Tribunal under its award: -

   D. On payment of deficit court fees, if any, Award be drawn up accordingly.

4. In view of disposal of appeal, pending civil application is also disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2023