IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.943 OF 2022

1. Smt. Anita w/o Ankush Vitkar,
age 52 yrs, Occ. Household.

2. Vinayak s/o Ankush Vitkar,
ge 36 yrs, Occ. Labour.

3. Ashok s/o Ankush Vitkar
age 31 yrs, Occ. Labour.

4. Sunil s/o Ankush Vitkar,
age 29 yrs, Occ. Labour.

5. Anil s/o Ankush Vitkar
age 27 yrs, Occ. Education.

6. Atish s/o Ankush Vitkar
Age 24 yrs, Occ. Education.

All r/o Kaludev Limbala,
Tq. Omerga, Dist. Osmanabad.

7. Kalabai w/o Dayanand Vitkar,
(died during pendency of the
proceeding) ..Appellants..
(orig. claimants)

Versus

1. Shripati s/o Manikappa Bhairnalikar,
age 46 yrs, Occ. S.T. Driver,
Badge No.211, NEKRTC
S.T. Depot Aurad (Barhali),
Tq. Aurad (Barhali), Dist. Bidar,
Karnataka State.

2. The Managing Director,
NEKRTC Divisional Officer,
Divisional Office, at Bidar
Dist. Bidar (Karnataka State)

3. The Branch Manager,
United India Insurance Co. Ltd.,
Through It's Branch at Opposite
Grakshan, near Panchvati Hotel,
Latur, Dist. Latur. .. RESPONDENTS..
(orig respondents)

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Mr. S.B. Gastgar, Advocate for appellants.
Mr.V.G. Kodale h/f Mr.V.D. Gunale, Advocate for respondent No.2.
Mr. S.R. Bagal advocate for respondent No.3.

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CORAM : S.G. CHAPALGAONKAR, J.

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RESERVED ON : 1st AUGUST, 2023.
PRONOUNCED ON : 18th AUGUST, 2023.

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<u>JUDGMENT :-</u>

1. The appellants/original claimants approached this Court under section 173 of the Motor Vehicles Act assailing the judgment and award dated 22 .3.2017 passed by the Motor Accident Claims Tribunal, Nilanga in MACP no.7of 2010.

2. The appellants/original claimants had approached the Tribunal under section 166 of the Motor Vehicles Act seeking compensation towards accidental death of Ankush Vitkar. Contention of the claimants is that deceased Ankush was proceeding on his motorcycle bearing registration No.MH-09/AM-8831. A MSRTC Bus bearing registration No.KA-38/F-596 gave dash to the motorcycle. Ankush suffered fatal injuries in the said accident. He was aged 52 years and working as a labour contractor. The claimants were dependent on his income. Accordingly, they raised the claim for compensation of Rs.34.00 Lakh from the respondents i.e. driver, owner and insurer of the bus.

3. The claim was contested by the respondents denying involvement of the bus. The insurer/respondent no.3 pleaded negligence of the deceased motorcycle rider so also breach of the policy conditions. The Tribunal, after recording evidence, partly allowed the claim and directed the respondents to pay compensation of Rs.3,14,000/- alongwith interest @ 6% p.a.

4. The aggrieved claimants are before this Court seeking enhancement of compensation.

5. Mr. Gastgar, learned advocate appearing for the appellants submit that the deceased was labour contractor. In support of his contention, the evidence of PW 3 Milind Wagh, the office Superintendent of Desai Infra Project Pvt. Limited is recorded, who testified that the deceased used to supply labour for stone crusher and he was paid monthly amount of Rs.25,000/-. Learned counsel for the appellants further submits that there is no basis to consider notional income of Rs.3,000/- p.m. He urged that there were 7 dependents on income of the deceased. Deduction of 1/3rd towards personal and living expenses is erroneous. He would further submit that nothing is granted towards future prospects.

6. Per contra, Mr. Kodale a/w Mr. Gunale and Mr. Bagal, learned advocates appearing for the respondents support the award. They submit that except bare words of claimants and PW-3 Milind Wagh, there is nothing to show income of the deceased. The deceased was aged about 55 years. Therefore, nothing can be added towards future

prospects. The Tribunal has passed just award and no interference is required.

7. Having considered the submissions advanced by the learned advocates appearing for the parties, it can be gathered that there is no dispute about accidental death of the Ankush Vitkar. Findings of the Tribunal that the respondent no.1 bus driver was responsible for the accident is not challenged by the respondents by filing an appeal or cross objection. The issue regarding assessment of the compensation has been pressed into service by the appellants/original claimants.

8. The claimants have pleaded that the deceased was earning Rs.25,000/- p.m. as he was working as labour supplier on commission basis. Reliance of the claimants is on evidence of PW-3 Milind Wagh, who claims to be the office Superintendent of Desai Infra Ltd. Although, he made submission that deceased was supplying labours to his company and generating income of Rs.25,000/- p.m., he could not produce any documentary evidence in support of such contentions. If a private Limited company was hiring the services of the labour contractor, certainly some documentary evidence could have been produced as regards to contract for labour supply, the terms of payment and consequential disbursement of the amount. In absence of any such evidence, no weightage can be given to the evidence of PW-3. The Tribunal cannot be faulted when it discarded evidence of said witness for want of supporting documents. In that view of the matter, the Tribunal had no option than to consider the notional income of the deceased.

9. Apparently, the deceased was maintaining family of 7 persons. He was aged of 55 years. In that view of the matter, even considering minimum wages in the year 2009, notional income of the deceased could have been considered @ Rs.5,000/- p.m. Considering age of deceased, Ten (10%) amount will have to be added towards future prospects. Since there were 7 dependents of deceased as on the date of the accident, 1/5th amount will have to be deducted towards personal and living expenses. The claimant nos.2 to 5 are major sons of the deceased as on the date of the accident. Therefore, loss of consortium can be considered in respect of claimant no.1-widow, claimant no.6-minor son and claimant no.7-mother. Each of them would be entitled to Rs.40,000/- towards loss of consortium. An amount of Rs.30,000/- can be awarded towards funeral expenses and loss of estate. In view of the aforesaid observations, the compensation amount can be re-assessed as per the following table:-

Sr. No.	Heads	Amount
1.	Loss of future earnings. Rs.5,000 x 12 = 60,000	Rs.60,000
2.	Addition of 10% towards future prospects 60,000 + 6,000 =	Rs.66,000/-
3.	1/5th deduction towards personal expenses Rs.66,000 / 5 = Rs.13,200/-	Rs.52,800/-
4.	Multiplier of ‘11’= 52,800 x 11 =	Rs,5,80,800/-
5.	Loss of consortium 40,000 x 3 =	Rs.1,20,000/-
6.	Loss of estate and funeral expenses	Rs.30,000/-
	TOTAL	**Rs.7,30,800/-**

10. Resultantly, following order is passed.

ORDER

i. The appeal is partly allowed.

ii. The judgment and award passed by the M.A.C.T. Nilanga dated 22.3.2017 in M.A.C.P. No.7 of 2010 is modified.

ii. The respondent nos.1 to 3 shall jointly and severally pay a sum of Rs.7,30,800/- (Rs. Seven Lakh Thirty thousand eight hundred) to the claimants (inclusive of NFL) together with interest @ 6% p.a.from the date of the claim petition.

iv. The amount paid/deposited in terms of the award passed by the Tribunal shall be appropriated.

v. On deposit of the compensation amount as per the modified award, the claimants shall be at liberty to withdraw the same subject to payment of deficit court fees, if any.

vi. Modified Award be drawn up accordingly.

vii. First appeal is disposed off. Pending civil application, if any, also stands disposed off.

[S.G. CHAPALGAONKAR]
JUDGE

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aaa/-