

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

FIRST APPEAL NO. 4208 OF 2016

1. Vasantao s/o Kisan Thorat
Age : 56 years, Occu. : Nil
R/o. : Walwane, Tq. Parner
Dist. Ahmednagar.
 2. Sindhubai w/o Vasantao Thorat
Age : 51 years, Occu. : household
R/o. : Walwane, Tq. Parner
Dist. Ahmednagar.
 3. Sangeeta d/o Vasantao Thorat
Age : 29 years, Occu. : Education
R/o. : Walwane, Tq. Parner
Dist. Ahmednagar.
- .. Appellants
(orig. applicants)

Versus

1. Shaikh Samadali Shaikh Chand
Age : Major, Occu. : Business
R/o. : Pandharpur, (Nagar-Aurangabad
Road), Tq. And Dist. Aurangabad.
 2. The Oriental Insurance Co. Ltd.,
Ahmednagar.
Divisional Office, Ujjawal
Complex, Opp. S. T. Stand
Station Road, Ahmednagar.
- .. Respondents

Mr. N. K. Kakade, Advocate for the Appellants.
Mr. Rameshwar F. Totala, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 10th OCTOBER, 2023.

ORAL JUDGMENT :-

. The appeal is filed by the original claimants to the extent of inadequate compensation granted to them by the Motor Accident Claim Tribunal (MACT), Ahmednagar. The learned Member, MACT has awarded an amount of Rs. 5,93,035/- including compensation under Section 140 of the Motor Vehicles Act with interest at the rate of 9% per annum from the date of petition till realization of the amount. The compensation is to be distributed as per the proportion given in the order.

2. The facts in short are that the appellants – original claimants are the legal heirs of deceased Kailas who met with an accident on 28.11.2007 and died on 04.12.2007 while under treatment in the hospital. The deceased was travelling on a motorcycle bearing registration No. MH-16-V-5941. One TATA Tempo bearing registration No. MH-15-AG-742 coming in opposite direction on Supa-Ahmednagar road gave a dash to the motorcycle of the deceased. Because of the accident deceased sustained grievous injury to his head and on other parts of the body and therefore was admitted to the hospital. Since the claimants lost earning member of the family claimed compensation. It is stated in the appeal that, Rs. 2,00,000/- required for medical treatment and Rs. 20,000/- towards Ambulance charges. The deceased

was only 25 years of age and was earning Rs. 30,000/- per month from his business and Rs. 1,50,000/- per year from his agricultural land.

3. The respondent – original opponent No. 2 appeared before the Tribunal and denied the liability on the ground that driver of the Tempo was not holding valid and effective driving license and resisted the claim.

4. The learned Member, MACT considering the evidence and considering the age of the deceased awarded compensation. It is held that the deceased was doing business of transportation of sugarcane on contract basis. He had a contract with the sugar factory for the same. He was also having a Tractor bearing registration No. MH-16-F-1326. The claimants examined PW-2 – Pramod Pawar who was working as Clerk in the Accounts Department of Kukadi Co-operative Sugar Factory. Though this witness deposed that, earning of the deceased was Rs. 30,000/- per month, the Court did not believe the same. The Court did not believe that the deceased was having a Tractor and Tractor since no documentary evidence was produced. The learned Member therefore notionally assessed the income of the deceased at the rate of Rs. 4,000/- per month. Since deceased was not married the deduction was taken to be 50% for own expenses. Thus, the dependency of the

appellants was taken to be Rs. 24,000/- per annum. Considering the age, the multiplier of 18 was applied and the compensation was awarded of Rs. 4,32,000/- towards loss of income. Towards love and affection Rs. 50,000/- was granted. Towards funeral expenses Rs. 25,000/- was granted. About the medical expenses Rs. 86,035/- was granted on the basis of medical bills. The claimants case is also that no future prospects are considered at the rate of 40%.

5. The present appeal is filed only to the extent of taking notional income of Rs. 4,000/- instead of Rs. 6,000/- stating that since the deceased was having driving license he was a skilled worker and the income ought to have been considered at the rate of Rs. 6,000/- per month.

6. For the purpose of notional income the learned advocate for the appellants - original claimants has relied upon the judgment of the Hon'ble Apex Court in the case of Kirti and others Vs. Oriental Insurance Co. Ltd. reported in (2021) 2 SCC 166. In that case the minimum wage was taken to be Rs. 6,197/- applicable to the skilled workers at the relevant time in State of Haryana. In that case the accident had taken place on 12.04.2014. It was considered that, the minimum wage considering the conditions in that State was Rs. 6,197/-

7. Learned advocate for respondent No. 2 opposed the appeal contending that, the Court has rightly passed an award. There is no pleading that the deceased was a skilled driver. About the contractorship also there is no pleading. The claimants have not filed on record the income tax returns. So far as agricultural land is concerned, it stands in the name of father of the deceased. The age of father and mother both is below 50 years and therefore it is father who cultivates the agricultural land.

8. This Court has considered all the aspects. This Court finds that, learned Member, MACT ought to have granted 40% towards future prospects. As regards monthly income in absence of material on record, it is rightly considered to be Rs. 4,000/- per month. About the multiplier, this Court finds that, the multiplier was rightly applied.

9. Only thing noticed is that the learned Tribunal has not granted amount of 40% towards future prospects. The amount of loss of income needs to be as Rs. 4,32,000/- plus 40% future prospects i.e. Rs. 1,72,800/-. Thus, the claimants would be entitled to Rs. 1,72,800/- towards future prospects. Hence, the following order is passed.

ORDER

I. The first appeal is thus allowed partly directing respondents to pay to claimants additional amount of

Rs. 1,72,800/- (Rs. One Lakh Seventy Two Thousand Eight Hundred Only) within two months from today with interest at the rate of 9% per annum, from the date of filing of M.A.C.P till realization.

II. Rest of the award is maintained as it is.

III. First appeal stands disposed off. Civil application, pending if any, stands disposed off.

(KISHORE C. SANT, J.)

PS.B.