

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1166 OF 2022**

National Insurance Company Limited

Sterling Cinema Building, 5th Floor, 65,
Murzban Street Fort, Mumbai 400 001

....Appellant

Versus

1. Smt. Shaba Salim Shaikh

2. Master Shaizad Salim Shaikh

Through His next friend and mother i.e.
Smt. Shaba Salim Shaikh

3. Shri Shaukat Usman Shaikh

Father of the deceased

4. Smt. Mahirun Shaukat Shaikh

Mother of the deceased
All residing at : D.M.G – 4 Approach Road,
Tulsiwadi, Zhopadpatti, Tardeo, Mumbai –
400 034

5. Gurpreet Singh Bains

Prem Nagar, Madan Mahal, Jabalpur,
Dist. Jabalpur, Madhya Pradesh 482 001

....Respondents

Mr. Rahul Mehta i/b KMC Legal Venture, Advocate for the Appellant.

Mr. Baliram Kamble, Advocate for the Respondent Nos. 1 to 4

CORAM : S. G. DIGE, J.

DATE : 2nd March, 2023

JUDGMENT :

1. The issue involved in this appeal is income of deceased considered on higher side.

2. It is contention of the learned Counsel for the Appellant that deceased was taxi driver and vegetable vendor. The Tribunal has considered the monthly income of a deceased at Rs.12,000/- per month, which is on higher side and on that basis compensation is awarded, which is exorbitant and excessive. Learned Counsel further submits that at the time of accident offending vehicle had no permit but this fact is not considered by the Tribunal.

3. Learned Counsel for the Respondent/Claimants submits that it was the case of Claimant, that monthly income of deceased was more than Rs.20,000/- per month and he was only 36 years old at the time of the accident. But, the Tribunal has considered monthly income at Rs.12,000/- of deceased. The deceased was vegetable vendor as well as he was taxi driver. He had a cab ID Card and driving license, which proves the deceased was earning monthly income of Rs.20,000/-. Moreover, the Tribunal has not awarded future prospects on the monthly income, the deceased was less than 40 years old, he is entitled 40% amount as future prospects. Hence it be considered.

4. I have heard both learned Counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short, **“the Tribunal”**).

5. It is contention of learned Counsel for the Appellant that there was no permit to the insured vehicle on the date of accident. But no evidence was led before the Tribunal, in respect of this defence. Hence, I do not see merit in it.

6. In respect of income of deceased, the Claimants have examined Applicant No. 1 Smt. Shaba (AW1), widow of deceased to prove the income of deceased. She has stated that deceased was working as vegetable vendor and a taxi driver from both sources his monthly income was at Rs.20,000/-.

7. The Tribunal has observed that the deceased was holding cab ID Card and driving license and deceased was earning some amount to meet his family expenses. Therefore, considering the facts and circumstances, the Tribunal considered Rs.12,000/- as monthly income of the deceased. I do not find any infirmity in it. Moreover, it is contention of learned Counsel for Claimant that, as the future prospects are not awarded and this amount be considered including future prospects. I accept the statement of learned Counsel for Claimant's. In my view it is just compensation.

8. In view of above, I pass following order.

ORDER

- i. Appeal is dismissed. No order as to cost.
- ii. The Claimants are permitted to withdraw the amount along with accrued interest thereon.
- iii. The statutory amount along with accrued interest be transmitted to the Tribunal. Parties are at liberty to withdraw it as per rule.
- iv. All pending Civil Applications, if any, are disposed of.

(S. G. DIGE, J.)