

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

FIRST APPEAL NO. 331 OF 2021

United India Insurance Co. Ltd.)
Pune Regional Office ,)
Through it Nashik Divisional Office,)
Sarda Sankul, M. G. Gandhi road,)
Nashik)....Appellant
(Orig. Opp. No. 2)

Versus

1. Smt. Pratibha Ambadas Gaidhani)
Age: 30 years, Occ: Household)
2. Mast. Tejas Ambadas Gaidhani)
Age: Minor, Occ: Education,)
Through his N. G. Mother, Resp. No.1)
3. Mrs. Chandrabhaga Dattu Gaidhani)
Age: 58 years, Occ: Household,)

All R/o. Palse, tal: Nashik,)
Dist: Nashik.)
4. M/s. Butthelo Travels)
Through Proprietor Herold D. Butholo)
Age: Major, Occ: Owner,)
R/o. H. No. 603, Palse,)
Tal: Nashik, Dist: Nashik.)....Respondents
(Resp. No. 1 to 3 Orig. Claimant)

Mr. Amol Gatne for the Appellant.
Mr. P. K. Bohade for the Respondent Nos.1 to 3.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd DECEMBER, 2023.

Oral Judgment. :

1. The issue involved in this appeal is income of deceased is considered on higher side.
2. It is contention of learned counsel for the Appellant that deceased was doing the business of catering without any evidence on record the Tribunal has considered his monthly income of deceased at Rs.15,000/- per month, which is on higher side. Hence, requested to allow the Appeal.
3. It is contention of learned counsel for the Respondents/Claimants that deceased was doing business of catering and he was earning Rs.25,000/- per month from his business. The Tribunal has considered the income of deceased at Rs.15,000/- per month based on Minimum Wages Act, which is proper. Hence, no interference is required in it.
4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Nashik (for short "the Tribunal").

5. To prove the income of deceased, Claimant No.1 examined herself. She has stated that deceased was doing business of catering and he was earning Rs.25,000/- per month. While considering the income of deceased, the Tribunal observed that deceased was serving as a caterer and considering the minimum wages, the monthly income of deceased considered at Rs.15,000/- per month. Learned counsel for the Appellant has pointed out that accident occurred in the year 2017 and as per the Minimum Wages Act of year 2017. The income considered by the Tribunal is on higher side.

6. In my view, the Tribunal has considered the income of the deceased as per the Minimum Wages Act as per the date of judgment, which is on higher side.

7. Considering the evidence on record, it should be Rs.10,000/- as deceased was maintaining family of four persons and he was serving as a caterer, in view of above calculation, the Claimants are entitled for following compensation.

Notional Income	Rs.10,000/-
Add 40% future prospects	Rs.4,000/-
Less 1/3 towards personal expenses	Rs.4,666/-
Total monthly income	Rs.9,334/-
Annual Income Rs.9334 X 12	Rs.16,80,120/-
Consortium Amount Rs.44,000 X 3 (Claimants)	Rs.1,32,000/-

Loss of Estate	Rs.16,500/-
Funeral Expenses	Rs.16,500/-
Total Compensation	Rs.18,45,120
Less awarded by the Tribunal	Rs.25,90,000/-
Excess Amount	Rs.7,44,880/-

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

ORDER

- i. Appeal is partly allowed.
 - ii. The Appellant/Insurance Company is permitted to withdraw the amount of Rs.7,44,880/- along with proportionate interest from the deposited amount.
 - iii. The Claimants are permitted to withdraw the balance amount along with proportionate interest.
 - iv. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.
9. Pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)