



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

CIVIL APPLICATION NO. 11285 OF 2023 IN FA/679/2023
DAMODHAR S/O PUNJARAM VAIDYA THROUGH RAHUL GANPATRAO
SATPUTE AND ANOTHER
VERSUS
SHANKAR S/O NATHU SANGLE, LEGAL HUB OF THE NEW INDIA
ASSURANCE CO. LTD AND OTHERS

...
Advocate for Applicant : Mr. Babasaheb V. Dhage
Advocate for Respondent No.1 : Mr. A. S. Usmanpurkar

...
CORAM : S. G. MEHARE, J.
DATE : 02-02-2024

PER COURT :-

1. Heard the learned counsel for the applicants and the learned counsel for respondent No.1/appellant.
2. The applicants were the parents of the deceased who was 26 years old and unmarried. It was the case of the claimants that on the day of accident, the deceased was working in one Nisa Service Private Limited as a Supervisor. The applicants did not examine the employer; however, to prove the income of the deceased, they have produced the bank account in which his salary was deposited.
3. The learned Tribunal observed that his last salary drawn was Rs.7,396/-, but surprisingly the learned Tribunal went on observing that the deceased might have earning of Rs.14,000/- p.m. This is an apparent and contrary findings to the evidence and record of the Court. The claimants had proved the fixed income of the deceased and the burden was on the claimants to prove the salary.

Where the evidence of fixed income is available, the theory of notional income is not applied. At one hand, learned Tribunal held his last drawn salary Rs.7396/- and on the other hand held that he might have earning of Rs.14,000/- towards salary, that too without evidence. Therefore, there is substance in the submissions of the learned counsel for the appellant/insurer that the award impugned is exorbitant and against the evidence.

4. The learned counsel for appellant/insurer conceded that the multiplier is correctly applied. The total compensation would not be more than Rs.11 Lakh. Hence, the applicants are not entitled to withdraw money more than Rs.11 Lakh.

5. Learned counsel for the applicants states that there is no dispute between the applicants / husband and wife about apportionment. Hence, apportionment order is not passed. Since there is a substance in the application, the following order is passed;

- i) The application is partly allowed.
- ii) The applicants are permitted to withdraw Rs.11,00,000/- (Rs. Eleven Lakhs Only) from the amount deposited with this Court with accrued interest, if any, on furnishing undertaking that they will deposit money, if the impugned award is reversed.

(S. G. MEHARE, J.)