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FA 1122.23 R.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
FIRST APPEAL NO. 1122 OF 2013**

1. Smt. Jyoti Vishwanath Sanyashi (Koli)
Age 28 years, Occupation houssehold,
2. Chi. Ashwin Vishwanath Sanyashi (Koli)
Age 12 years, Occupation Education,
3. Chi Chetan Vishwanath Sanyashi (Koli)
Age 11 years, Occupation Education.
4. Smt. Nadarbai Natthu Koli
Age 55 years, Occupation Household

Applicant Nos. 2 and 3 are minor and the
applicant No.1 is the mother and natural guardian

All are residing at Chinchakheda Kh. Taluka Jamner,
Dist. Jalgaon.

.. APPELLANTS.

VERSUS

1. Shri Sayyad Shafiq Sayyad Abbas
Age 30 years, Occupation Business.
Undangaon , Tal Sillod, Dist. Aurangabad.
2. The Oriental Insurance Company Ltd.,
Central Phule Market, Jalgaon.

.. RESPONDENTS.

Mr. M.M. Bhokarikar, Advocate for appellants
Mr. R.F. Totala, Advocate for respondent No.2.

**CORAM : S.G. CHAPALGAONKAR, J.
DATE : 18th APRIL, 2024.**

JUDGMENT :-

1. The appellants/original claimants assail the judgment and

award dated 11.3.2011 passed by the Motor Accident Claims Tribunal, Jalgaon, in MACP No. 3335 of 2007 and seeks enhancement of compensation.

2. Mr. M.M. Bokharikar, learned advocate for the appellant submits that the appellants were dependent on deceased Vishwanath, who died in motor vehicle accident dated 17.5.2005, on account of rash and negligent driving on the part of the driver of jeep bearing registration No. MH 22/ 5909. He submits that deceased was aged about 30 years and he was engaged in a skilled job of digging wells. As such, he was earning Rs. 6,000/- p.m. However, the tribunal, while assessing the compensation, assumed his notional income @ Rs. 3,000/- p.m.

3. Mr. Bokharikar further submits that the meager compensation is awarded towards non pecuniary heads. Consequently, he seeks enhancement of compensation.

4. Mr. R.F. Totala, learned advocate respondent No.2 supports the judgment and award. He would submit that the incident in question took place in the year 2005. The claimants have failed to bring on record evidence indicating exact nature of job of deceased and consequential income generated by him. In that view of the matter, the Tribunal is justified in fixing notional income of deceased @ Rs. 3,000/- p.m.

5, He would further submit that the tribunal has rightly relied upon the Schedule under Section 163-A of the Motor Vehicles Act, which can be taken as a guide for assessing compensation toward non pecuniary heads .

5. Having considered submissions advanced it appears that

there is no dispute about the accidental death of the deceased on account of rash and negligent driving of the jeep driver. The jeep was owned by respondent No.1 and insured with respondent No.2. The insurer has satisfied the award as passed by the tribunal. Present appeal takes exception to the quantification of award. It is true that accident in question took place in the year 2005 and there is no evidence by which the exact earning of the deceased can be worked out, however, it can not be ignored that the deceased was maintaining the family of 4 dependents. Even considering the minimum wages at the relevant time, the Tribunal ought to have considered the notional income of the deceased at Rs. 4,000/- p.m. It can be noted that the compensation awarded towards non-pecuniary heads is inadequate and deserves appropriate modification.

6. The claim petition was filed under section 166 of the Motor Vehicles Act. The Tribunal in such cases could not have solely relied upon II nd schedule under section 163A of the Motor Vehicles Act while fixing compensation towards the non-pecuniary heads.

7. Further more Tribunal has committed error while deducting 1/3rd amount towards personal and living expenses of the deceased, when, there were 4 dependents on his income. Consequently, the award passed by the Tribunal needs to be modified by making appropriate correction as regards the notional income, addition of future prospects as well as non-pecuniary losses.

8. For the purpose of brevity , the compensation can be re-assessed in tabular form as under :-

Sr. No.	Particulars	Amount
1.	Notional Annual income Rs.12 x 4000 = 48000 deduct 1/4th towards personal expenses i.e. Rs. 12,000	Rs. 48000 Less Rs. 12,000
		Rs. 36,000
	Add 40% towards future prospects i.e. 14,400 that comes to Rs. 50,400	Rs. 50,400
	Apply multiplies of 17 = 17 x 50400	Rs.8,56,800/-
	Add towards loss of consortium	Rs. 50,000/-
	Add towards loss of estate	Rs. 15,000/-
	Add towards funeral expenses	Rs. 25,000/-
	Total	Rs. 9,46,800/-

In view of above calculation, the appeal deserves to be partly allowed. Hence, the following order :-

O R D E R

[A] The first appeal is partly allowed;

[B] The judgment and award passed by the Tribunal is modified.

[c] The petitioner to recover an amount of Rs. 9,46,800/- alongwith interest @ 7.5 % from the date of petition till realization of the amount.

[d] The amount of compensation is inclusive of amount of NFL , if any.

[e] The amount paid/released under the award passed by Tribunal be appropriated. Award be drawn on payment of deficit court fees, if any.

[f] On deposit of enhanced amount, in terms of this award, it be disbursed to the claimants in equal proportion.

[g] Appeal stands disposed of in above terms.

grt/-

[S.G. CHAPALGAONKAR]
JUDGE