

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1220 OF 2023

The Divisional Manager, MSRTC) ... Appellant
 Having Office at N.D.Patel Road, Shingada Talav,)
 Nashik- 422001)

Versus

1. Beauty Baby Mijanoor Molla)
 Age-23 years, Occupation : Household,)
 R/o.: House No. 1340, Khadkali, Nashik-422001)
 2. Majibar Rakmala Molla)
 Age-53 years, Occupation : Labour)
 3. Mumtaz Bibimajibar Molla)
 Age – 50 years, Occupation : Labour)
 No.2 and 3 – R/o : A/p. Bangalzi, Chhapra,)
 Nadia, West Bengal – 741123) ... Respondents

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Mr. Ansari Faiyaz Ahmed i/b. Amit A. Gharte, Advocate for the Appellant.
 Mr. Gaurav Ugale i/b. Rajan S. Pawar, Advocate for Respondents.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 10th JANUARY, 2024.

JUDGMENT :

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

2. It is the contention of learned counsel for the appellant that the Tribunal has considered monthly income of deceased at Rs.5,000/- on that basis, compensation is awarded which is on higher side, hence requested to allow the appeal.

3. It is the contention of learned counsel for the respondents/ claimants that at the time of accident deceased was 22 years old. He was working as a Cook and earning Rs.15,000/- per month. To prove the income of deceased employer of deceased was examined and he has stated that he was paying Rs.500/- per day to the deceased. But the Tribunal has considered the monthly income of deceased on lower side. As the claimants did not want to prolong the matter, hence they have not filed appeal and requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Nashik (for short "**the Tribunal**"). To prove the income of deceased, PW-2 Aminoor Mujibar Mulla, Manager of restaurant where deceased was working has been examined. He has stated that deceased was working as a Cook in Chotemiya Restaurant and he was earning Rs.15,000/- per month. In support of evidence of PW-2, the claimants have examined PW-3 Shadad Shakik Kokani, the owner of restaurant. He has stated that deceased was working in this restaurant and he was paying Rs.15,000/- per month. Nothing elicited in the cross examination of these witnesses. Considering the evidence on record, the Tribunal has considered monthly income of deceased at Rs.5,000/- per month. I do not find infirmity in it, the appeal is devoid of merit and I pass following order:

ORDER

- (i) The appeal is dismissed. No order as to costs.
- (ii) The claimants are permitted to withdraw the compensation amount along with accrued interest thereon deposited by the appellant.
- (iii) The statutory amount be transferred to the Tribunal. The parties are at liberty to withdraw it as per the Rules.
- (iv) Pending interim applications, if any, stand disposed of.

5. The appeal is disposed of.

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(SHIVKUMAR DIGE, J.)