

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

FIRST APPEAL NO. 110 OF 2020

The New India Assurance Co. Ltd., }
 Though Its Divisional Manager, }
 Having Their Office At Hutatma Smruti }
 Mandir Compex, Park Chowk, }
 Solapur-413001. } **...Appellant**

**NILAM
SANTOSH
KAMBLE**

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NILAM SANTOSH
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Date: 2024.04.16
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Versus

1. Smt.Laxmi Mallappa Alias Mallinath }
Sontakke }
 Age-25 years, Occ : Labour, }
 R/at A/P Valsang, Taluka-South Solapur, }
 District-Solapur. }

2. Shri.Khandu Mahadev Sontakke }
 Age-57 years, Occ : Nil } (Org.
 R/at A/P Valsang, Taluka-South Solapur, } Applicants)
 District-Solapur. }

3. Mr.Jabir Sadik Qureshi } (Org. Opp.
 Age-52 years, Occ : Transport } Party)
 R/at Valsang, Taluka-South Solapur, }
 District-Solapur. } **....Respondents**

Ms.Shalini Shankar, for the Appellant.
 None for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 3rd APRIL 2024

ORAL JUDGMENT :-

. The issue involved in this Appeal is income of the deceased is considered on higher side.

2. It is contention of the learned counsel for the Appellant-Insurance Company that the deceased was doing work of centering. He was labour, but the Tribunal has considered his monthly income at Rs.10,000/- per month, which is on higher side. The learned counsel further submitted that father of the deceased cannot be considered as dependent of the deceased. The Tribunal should have deducted $\frac{1}{2}$ amount for personal expenses, but the Tribunal has deducted $\frac{1}{3}$ rd amount for personal expenses, which is erroneous. Hence, requested to allow the Appeal.

3. Through the Respondents are served, none present for the Respondent's. Sufficient chances given to the Respondent to argue the matter, but Respondent is absent. The Appeal is of the year 2020. Hence, I am deciding this Appeal on merit.

4. I have heard learned counsel for the Appellant. Perused judgment and order passed by the Motor Accident

Claims Tribunal ('The Tribunal' for short), Solapur.

5. It is Claimant's case that, the deceased was doing business of centering and he was earning Rs.500/- per day. To prove the income of the deceased the Claimant's have examined Claimant No.1-Widow of the deceased. She has stated that deceased was doing business of centering and he was earning Rs.500/- per day. In cross-examination she has admitted that she has no documents to show that deceased was doing work of centering and was earning Rs.15,000/- per month.

6. While dealing with the issue of income of the deceased, the Tribunal has observed that a person doing self-employment like a centering labourer cannot possess document of centering work or of income, a daily labourer cannot produce a documentary evidence like nature of his work or daily earning. A person doing work of centering is a skilled labour. The Tribunal has further observed that as per the chart of Minimum Wages Act, for the period January 2015 to June 2015 issued by the State of Maharashtra showing the Minimum Wages of skilled worker was about Rs.10,112/-. In the present case the

deceased is skilled labourer. Accident took place on 21st March 2015, hence, his monthly income is taken at Rs.10,000/- per month. I do not find infirmity in it.

7. In my view, the Tribunal has considered monthly income of the deceased on the basis of the Minimum Wages Act as deceased was skilled labourer. Hence, I do not see merit in the contention that income of the deceased is considered on the higher side. It has come on record that, the deceased was maintaining Claimant No.2 i.e. father, he is old age person, he was dependent on the income of the deceased. Hence, the Tribunal has rightly deducted 1/3rd amount for personal expenses. I do not find infirmity in it.

8. In view of above, the Appeal is of devoid of merit and I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The Claimant's are permitted to withdraw deposited amount along with accrued interest thereon, if not withdrawn.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)