*This order is corrected pursuant to Court order dated 28.03.2025*



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

**FIRST APPEAL NO. 2073 OF 2023**

Malanbai Narsing Hallale And Ors
*VERSUS*
Bharat Madhavrao Hallale And Anr

...

Mr. S. S. Manale, Advocate for Appellants
Mr. A. G. Choudhari, Advocate for Respondent No.2

.....

**CORAM : ROHIT W. JOSHI, J.**

**DATED : 17TH MARCH, 2025**

**PER COURT :-**

. The present appeal is filed under Section 173 of the Motor Vehicles Act, 1988 by the original petitioners who are seeking further enhancement in the amount of compensation awarded by the learned Member, Motor Accident Claims Tribunal at Udgir in Motor Accident Claim Petition No.23 of 2020.

2. The son of the appellant No.1 and father of appellant Nos.2 and 3 met with a road accident on 26.05.2020. He suffered injuries in the road accident and he died on the spot of the accident on 26.05.2020. Offending vehicle was owned and driven at the relevant time by the respondent No.1. The offending vehicle was insured with the respondent No.2.

3. The appellants filed Motor Accident Claim Petition No.23 of 2020 under Section 166 of the Motor Vehicles Act seeking compensation on account of death of late Keshav Hallale in the road accident. It is the case of the appellants that deceased Keshav was serving with a private construction company named M/S SB Engineers and he was drawing salary of Rs.22,000/- per month on the date of his demise. In support of this contention, the mother in law of the deceased and one Ajay Ganpatappa Kabade, who was working as Senior Supervisor with the employer / 'M/S SB Engineers, Civil Engineers and Government Contractor' were examined as witnesses.

4. The said witnesses proved the salary certificate of the deceased vide Exhibit 39, statement of salary details vide exhibit 40. Apart from this, bank account statement of the deceased was proved by the claimant and was marked as exhibit 34. This account statement contains entries of payment of salary that was received in the bank account of the deceased. As against this, the respondents did not lead any evidence.

5. The learned Tribunal has taken into consideration notional income of the deceased at Rs.10,000/-. The evidence brought on record with respect to employment and salary of the deceased was discarded on the ground that appointment order was not filed on record, there was no agreement of employment between the deceased and his employer, official record regarding payment of salary was not filed, provident fund number or employee code was not allotted to the deceased and the salary slip of deceased did not bear income tax PAN.

5. The learned Counsel for the appellant contends that when persons are employed in informal sector or even with private entities, at times, the documents of employment are not in order as in the case of persons working with government establishment. He contends that in the present case, cogent evidence is brought on record in the form of salary certificate, statement of salary and most importantly the bank account statement which shows periodical payment of Rs.22,000/- in the account of the deceased towards salary. He further contends that a person from the establishment of the

employer was also examined as a witness in the present case and therefore fact of employment and the amount of salary was duly proved.

6. As against this, the learned Advocate for the respondent no.2/Insurance Company justifies the findings and the conclusion derived by the learned Tribunal on the ground that in the absence of cogent evidence regarding employment and quantum of salary, the learned Tribunal was justified in computing the compensation based on notional income.

6. Having heard the rival submissions as aforesaid, following points arise for my consideration.

i. Do the appellants prove that the deceased Keshav was in employment of M/S SB Engineers and was drawing salary of Rs.22,000/- per month at the time of his demise ?

ii. What should be the amount of compensation payable to the appellants on account of demise of deceased Keshav in road accident ?

7. I have perused the judgment delivered by the learned Tribunal, respective pleadings and evidence that is brought on

record, including the bank account statement at exhibit 34. Perusal of pleadings will indicate that it was the positive case of the appellants that the deceased was in employment of M/S SB Engineers. During the course of evidence, the appellant’s witness No.1 has reiterated the said fact. Senior Supervisor from the establishment of M/S SB Engineers is also examined as witness no.2 by the appellants. In addition to this, the appellants have also filed bank account statement of the deceased at exhibit 34 in which there is an entry regarding payment of salary from M/S SB Engineers to the deceased starting from 10.06.2019 up to 08.04.2020. Perusal of the cross examination of the witness of the employer shows that there is nothing to disbelieve his testimony.

8. Having regard to the nature of evidence that has come on record, I am of the opinion that the appellants have satisfactorily proved that deceased Keshav was in employment of M/S SB Engineers at the time of his demise and was drawing salary as is stated in the salary certificate at exhibit 39. The learned Tribunal has erred in discarding the evidence that has come on record with respect to employment of the

deceased and his monthly salary. In that view of the matter, I am of the considered opinion that the gross salary of the deceased should be taken at Rs.22,000/- per month for the purpose of computation of compensation and accordingly his gross annual salary comes to Rs.2,64,000/-. The deceased had four dependents namely; his mother/appellant no.1, two children/appellant Nos.2 and 3 and wife, who was unfortunately died in the same road accident alongwith the deceased. However, since the wife has also expired, the number of dependents are treated as 3 and 1/3 deduction is made towards personal expenses of the deceased. The loss of financial dependence therefore comes to Rs.1,76,000/- per year. Since the deceased was 42 years old on the date of his demise and was not in permanent employment, further addition of 25% is required to be made towards future prospects. This amount towards component of future prospects comes to Rs.44,000/- Thus, loss of financial dependence for one year comes to Rs.2,20,000/-. Since, the deceased was 42 years old, multiplier of 14 will have to be applied and accordingly compensation against loss of financial dependence comes to Rs.30,80,000/-. In addition to this, the appellants are entitled to receive compensation against conventional heads, Rs.40,000/- per person towards loss of consortium, 15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses. The total amount of compensation payable is Rs.32,30,000/- as against Rs.15,15,000/- awarded by the learned Tribunal. In view of the above findings, the appeal is partly allowed in the following terms.

**ORDER**

a. The judgment, operative order and award dated 17.11.2022 passed by the learned Ex-officio Member, Motor Accident Claims Tribunal and District Judge-1, Udgir in Motor Accident Claim Petition No.23 of 2020 is modified directing the respondent Nos.1 and 2 to jointly and severally pay compensation of Rs.32,30,000/- (Rupees Thirty two lakh thirty thousand) to the appellants inclusive of the no fault liablity alongwith interest @ 7.5% per annum from 16.07.2020 i.e. date of filing of claim petition till the date of realisation of the appeal.

**( ROHIT W. JOSHI, J )**

*Rushikesh/2025*