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

FIRST APPEAL NO. 2837 OF 2024

- 1] The Divisional Manager,
New India Assurance Company Ltd.,
1st Floor, Shop No. 202, Kasliwal
Commercial, Bhagya Nagar,
Anand Nagar Road, Tilak Nagar,
Nanded, Tq. Dist. Nanded.
Through its Authorized Signatory of
Divisional Office No.1,
Adalat Road, Aurangabad.

.. Appellant.

VERSUS

- 1] Karuna w/o. Kapil Dawne,
Age 34 years, Occ. Household,
R/o. Sakhra, Tq. Umarkhed,
Dist. Yeotmal.
- 2] Anupama d/o. Kapil Dawne,
Age 08 years, Occ. Minor
U/g. Real mother R.No.1,
R/o. As above.
- 3] Gauri d/o. Kapil Dawne,
Age 08 years, Occ. Minor,
U/g. Real mother R.No.1,
R/o. As above.
- 4] Abhinav s/o. Kapil Dawne,
Age 03 years, minor.
U/g. Real mother R.No.1,
R/o. As above.

- 5] Ramabai w/o. Pandurang Dawne,
Age 68 years, Occ. Nil.
All R/o. Sakhra Tq. Umarkhed,
Dist. Yaotmal.
- 6] Vitthal s/o. Kaluram Dhere,
Age 53 years, Occ. Business,
R/o. Bendri Tq. Bhokar,
Dist. Nanded.

.. Respondents.

Mr. Ajit B. Kadethankar, Advocate for appellants.
Mr. V.D. Patnurkar, Advocate for respondent Nos. 1 to 4.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 6th March, 2025.

JUDGMENT :-

1. The appellant/insurer impugns the judgment and award dated 27.7.2023 passed by Motor Accident Claims Tribunal, Bhokar in MACP No. 25 of 2021.

2. Respondent Nos. 1 to 5 are original claimants. They instituted claim under Section 166 of the Motor Vehicles Act claiming compensation towards accidental death of late Kapil Davne. It is contention of the appellant that on 20.2.2021, while Kapil was proceeding on the motorcycle bearing registration No. MH-29/BS-2299, the insured Mahendra Maximo bearing registration NO. MH-26 AF 6028 gave dash to his motorcycle from rear side. Consequently, Kapil suffered fatal injuries. According to claimants, late Kapil was serving with Bharat Finance as Trainee Manager and getting monthly salary of Rs. 20,000/-

p.m.

3. The claim was contested by appellant insurer on multiple grounds. The tribunal, after evaluation of evidence, allowed the claim petition and directed respondent Nos. 1 and 2 to jointly and severally pay Rs. 50,86,000/- alongwith interest @ 7% p.a from the date of filing claim petition.

4. Aggrieved insurer filed present appeal on various grounds, however, it is submitted during the course of arguments that the Tribunal erroneously considered income of deceased to the tune of Rs. 20,000/- p.m. which is inconsistent with the oral and documentary evidence on record.

5. Mr. Kadethankar, learned advocate for the appellant invited attention of this court to the oral evidence viz. Evidence of CW-2 Vijay Mane, so also, appointment letter dated 15.9.2019 and pay slip of late Kapil for the month of December 2020, January and February, 2021. He submits that fix salary of deceased was much less than Rs. 12,000/-, however, three pay slips show that he was getting fluctuating incentive.

6. Learned advocate for respondents/claimants admits incentive being given, dependent upon performance of deceased. He submits that the learned Tribunal has rightly considered highest incentive granted to him for the month of December, 2020.

7. Having considered submissions advanced, it is apparent to that total earning of the deceased varied in range of Rs. 17,050/- to Rs.

20038/- p.m. during the last 3 months before his death. Learned advocates for respective parties submit that if the average of last 3 months pay slips is considered, they have no objection to modify the award. Accordingly, in view of their submissions, average monthly income of deceased is quantified to Rs. 18,200/- p.m., which is agreeable to both the sides. Eventually, learned advocates for respective parties suggested for passing award as per the following calculations :-

Monthly Income	Rs. 18,200.00
Annual Income	Rs. 2,18,400.00
Future Prospects @ 50%	Rs. 1,09,200.00
Total Annual Income	Rs. 3,27,600.00
(-) Less 1/4th Portion towards personal expenses	Rs. 81,900.00
Annual loss of dependency	Rs. 2,45,700.00
Multiplier	17
Total loss of dependency	Rs. 41,76,900.00
Spousal consortium	40,000.00
Parental consortium	80,000.00
Filial consortium (instead of love and affection)	Rs. 40,000.00
Funeral Expenses	Rs. 15,000.00
Loss of Estate	Rs. 15,000.00
Funeral Expenses	Rs. 43,66,900.00

8. In view of the aforesaid calculations, the award needs to be modified as under :

- [i] “Claimants are held entitled for total compensation of Rs. 43,66,900/- instead of Rs. 47,80,000/- as awarded by the Tribunal.
- [ii] In view of reduction of amount of compensation, the Tribunal shall pass further orders as to apportionment and

Fixed Deposits of the amount, in the name of respective claimants.

- [iii] Rest of the directions stipulated in the order of the Tribunal shall mutatis-mutandis apply to the modified award.
- [iv] The amount deposited with the Registry of this Court be transmitted to the Tribunal for disbursement in aforesaid terms.
- [v] Excess amount, if any deposited, be refunded to the Insurance Company.”

9. First appeal stands disposed of in above terms.

[S.G. CHAPALGAONKAR, J]

grt/-