IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 4308 OF 2023

1. Laxmibai w/o Babarao Jadhav
Age – 50 Years, Occu. – Household

2. Babarao s/o Irbhanji Jadhav
Age – 62 Years, Occu. – Labour

Both R/o. Hadasani, Tq.Mahur, Dist.Nanded,
at present, Plot No.7, Sai Complex, Fakirwadi,
Dalalwadi, Aurangabad, Dist. Aurangabad

... APPELLANTS
[Orig. claimants]

VERSUS

1. Jaihind s/o Apparao Mundhe,
Age – 50 Years, Occu. – Owner of Truck No. MH-24-AB-8757,
R/o. Kingaon, Tq.Ahmedpur, Dist.Latur.

2. Cholamandalam MS General Insurance Co.Ltd.,
Through it's Branch Office, Adalat Road,
Aurangabad, Dist. Aurangabad.

3. Hariba s/o Ramrao Dahiphale,
Age – 45 Years, Occu. – Driver, R/o. Kolwadi,
Post – Kingaon, Tq. Ahmedpur, Dist. Latur

... RESPONDENTS
[Orig. respondents]

Adv. Amol Pandurang Khedkar and Adv. P. B. Khedkar, Advocate for appellants
Adv. S. S. Rathi, Advocate for Respondent No. 2
Adv. M. G. Kedar, Advocate for Respondent Nos. 1 and 3

CORUM : ROHIT W. JOSHI, J.

DATE : 21st MARCH, 2025

JUDGMENT:

1. The claim petitioners have filed the present appeal under Section 173 of the Motor Vehicles Act seeking enhancement in the amount of compensation awarded by the learned Motor Accident Claims Tribunal on account of demise of son of the petitioner Late. Pramod Jadhav in a road accident dated 25.06.2017. The claim petitioners had filed Motor Accident Claims Petition No. 11 of 2018 (for the sake of brevity, hereinafter referred to as '**M.A.C.P.**'), which was partly allowed vide judgment and award dated 28.04.2023 passed by the learned Chairman, Motor Accident Claims Tribunal, Aurangabad granting compensation of Rs. 9,77,800/- including amount of Rs. 50,000/- paid towards no fault liability under Section 140 of Motor Vehicles Act. The appellants claim that their deceased son was employed as a driver and was drawing salary of Rs. 20,000/- per month. It is claimed that the deceased son was working as driver with another son of the appellants. The learned Tribunal has disbelieved case of employment set up by the appellants and has computed the compensation taking notional income of the deceased at Rs. 6000/- per month.

2. The learned advocate for the appellant contends that although the employer was real brother of the deceased, he has entered the witness-

box and deposed about the fact of employment and therefore, the learned Tribunal should have accepted the deposition of the employer and should have computed compensation on the basis of income of the deceased as Rs. 20,000/- per month. As against this, the learned advocate for respondent No. 2/Insurance Company justifies the findings by the learned Tribunal contending that the evidence of the brother is most unreliable. He points out that registration certificate of motor cycle was produced on record and merely fitness certificate of a truck was filed on record. He then contends that there is no evidence to demonstrate payment of salary to the deceased. He therefore, justifies the reasons recorded by the learned Tribunal in computing compensation taking the income of the deceased at Rs. 6000/- per month.

3. The learned advocate for the appellant has filed extract of notifications under the Minimum Wages Act, 1948 published by the Government of Maharashtra, which show that minimum wages for a driver in the year 2017 were determined at Rs. 196.15 basic wage per day with Rs. 151.04/- as special allowance per day. The total wages payable per day are Rs. 347.19/. He contends that the notional income should be computed on the basis of the said minimum wage notifications since the deceased was holding a valid license for transport vehicle.

4. Having heard respective submissions following point arises for my consideration:

> "What should be the amount of compensation to be awarded to the appellant under the head of loss of financial dependence?"

5. Having heard the rival submissions as aforesaid and on perusal of the oral and documentary evidence on record, I find myself in agreement with the reasons recorded by the learned Tribunal in discarding the evidence of CW2/the brother of the deceased, who is the alleged employer of the deceased. The evidence does not inspire confidence. It has come on record that the truck on which the deceased was allegedly employed was purchased only fifteen days before the accident. It is also an admitted position on record that the deceased was plying a motor cycle at the time of his demise. Apart from the word of the real brother there is no evidence worth mentioning in order to establish alleged employment of deceased with his real brother.

6. In that view of the matter, no fault can be found with learned Tribunal in discarding the evidence of CW2 and computing compensation payable under the head of loss of financial dependence on the basis of minimum wages.

7. Going by the record of the case no fault can be found with the notional income of Rs. 6000/- per month determined by the learned Tribunal. However, the learned counsel for the appellant has produced before this Court, notifications issued by the Government of Maharashtra under Minimum Wages Act according to which minimum wages for a driver of a transport vehicle are determined at Rs. 347.19/- per day. The learned advocate for the respondent No. 2/Insurance Company was not in a position to dispute these minimum wage notifications. In that view of the matter, it will be appropriate in the interest of justice to compute the compensation placing reliance on the said minimum wage notifications. It needs to be mentioned that it is duty of the Tribunal as also of the Appellate Court to award fair and just compensation to dependants of deceased in view of the statutory mandate of Section 166 of the Motor Vehicles Act. It is also necessary to mention here that admittedly the deceased was holding a valid transport license since the year 2014 i.e. four years prior to his sad demise. The deceased was 23 years of age and as such having regard to his economic background, it can be fairly assumed that he was working as a driver prior to his demise.

8. The learned counsel for the appellant states that this amount of minimum wage should be multiplied by 365 days, in order to compute

the annual income of the deceased. As against this, the learned advocate for the respondent No. 2/Insurance Company contends that five days should deducted towards weekly off while computing monthly wages of the deceased on the basis of minimum wage notification of daily wage/rate. He therefore, contends that in order to make a fair assessment of monthly wages twenty-five days each one should be taken into consideration. I find that the suggestion is fair enough.

9. In order to facilitate the calculations, amount of Rs. 347.19/- per day is rounded off to Rs. 350/- per day and for computation of monthly income 25 days are taken into consideration as rightly suggested by the learned advocate for respondent No.2/Insurance Company. With this, the notional monthly income of the deceased comes to 8750/-. Since the deceased was 23 years old on the date of his sad demise, a further addition of 40% will have to be made towards future prospects and accordingly, his monthly pay inclusive of future prospects component comes to Rs.12,250/-. Since the deceased was a bachelor, 50% deduction is required to be made towards personal expenses and therefore, net loss of financial dependence per month comes to Rs. 6125/-. The annual loss of financial dependence thus works out to Rs. 73,500/-. Since the deceased was 23 year old multiplier of 18 will have to be applied and accordingly loss of financial dependence comes to Rs. 13,23,000/-.

10. There is no dispute that the compensation towards conventional head is correctly granted.

11. In that view of the matter, total compensation payable works out to Rs. 14,44,000 as against Rs. 9,77,800/- which is awarded by the learned Tribunal. Having regard to the aforesaid the appeal will have to be partly allowed by granting enhancement in the amount of compensation by Rs. 4,66,200/- In view of the aforesaid, the appeal is partly allowed.

12. Hence, the following order:

ORDER

i) Clause (2) and Clause (3) of the operative order and the award dated 28.04.2023 passed by the learned Chairman, Motor Accident Claims Tribunal, Aurangabad in M.A.C.P. No. 11 of 2018 be deleted and substituted with the following:

> "2) The respondent Nos. 1, 2 and 3 are directed jointly and severally to pay total compensation amount Rs. 14,44,000/- (Rupees Fourteen Lakh Forty-Four Thousand only) to the claimants along with interest @ 6% p.a. from the date of petition till actual payment after deducting the proportionate NFL amount, if paid.

3) The amount of compensation is apportioned as under :-

Claimant No. 1 - 7,44,000/- with interest

Claimant No. 2 - 7,00,000/- with interest”

ii) Parties to bear their own cost.

[ROHIT W. JOSHI]
JUDGE

komal_kamble/