(This judgment is corrected as per order dated 25th April, 2025 for speaking to minutes)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 97 OF 2024

1. Smt. Kirti w/o. Shivaji Kothule,
Agd 37 years, Occ. Household,

2. Master Rohan S/o. Shivaji Kothule,
Age 14 years, Occ. Education.

3. Ku. Aradhya d/o. Shivaji Kothule,
Age 9 years, Occ. Education
(Appellant Nos. 2 and 3 are minor
through through Appellant No.1
Natural guardian mother).

4. Smt. Narmada w/o. Eknath Kothule,
Age 76 years, Occ. Nil
All R/o. Khadaki, Tq. Nagar, Dist. Ahmednagar.

.. APPELLANTS
(Orig. claimants)

VERSUS

1. Shri Suresh s/o. Lahanu Ghyamukte,
Age 58 years, Occ. Service,
R/o. Visapur, Near Jagdamba Mandir,
Visapur, Tq. Shrigonda, Dist. Ahmednagar.

2. Shri Yogesh s/o. Babasaheb Nagargoje,
Age 41 years, Occ. Driver,
R/o. Plot No.1, Survey No. 65/2,
Suryanagar, Near Aurangabad Road,
Savedi, Ahmednagar, Tq. & Dist. Ahmednagar.

3. The Branch Manager,
New India Assurance Company Ltd.,
Near Ashoka Hotel, Abat Building,
Zendigate, Ahmednagar, Tq. & Dist. Ahmednagar.

.. RESPONDENTS.

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Mr. D.S. Bhapkar, Advocate for appellants,
Mr. R.S. Kasar, Advocate for respondent Nos. 1 and 2
Mr. S.R. Bagal, Advocate for respondent No.3.

CORAM :S.G. CHAPALGAONKAR, J.

DATE : 27th MARCH, 2025.

JUDGMENT :-

1. Appellants/ original claimants impugn the judgment dated 25.10.2023 passed by Motor Accidents Claim Tribunal, Ahmednagar, in Motor Accident Claim Petition No. 365 of 2021 and seeks enhancement of compensation. (Parties are referred by their original status before the Tribunal, for sake of convenience)

2. The appellants/claimants instituted M.A.C.P. No. 365 of 2021 under Section 166 of the Motor Vehicles Act, 1988 raising a claim for compensation towards accidental death of late Shivaji Kothule. It is contention of the claimants that while late Shivaji was proceeding on his two wheeler, offending car bearing registration No. MH-16/BH 5807 gave forcible dash to him resulting into his death.

3. According to claimants, late Shivaji was aged about 38 years. He was owner of a truck and pocklane machine and used to earn Rs. 50,000/- p.m. out of said business. He was also dealing with Asphalt and crushed sand; so also cultivating his own land. The claimants were dependent on his income. The respondents being owner, driver and insurer of offending car are liable to pay compensation.

4. The claim was contested by respondents by filing written statement. They denied all material averments in the claim petition. The Tribunal, on evaluation of evidence, partly allowed the claim petition and directed respondents jointly and severally pay compensation of Rs. 14,21,000/- alongwith interest @ 8 % p.a.

5. Aggrieved claimants filed present appeal assailing the assessment of compensation being grossly inadequate. Mr. Bhapkar, learned advocate for the appellants vehemently submits that although there is voluminous evidence for assessing the income of the deceased, Tribunal erroneously worked out compensation taking notional income @ 8,000/- p.m. He submits that compensation under non pecuniary heads is improperly worked out.

6. Per contra, Mr. S.R. Bagal learned advocate for respondent No.3 justifies the award contending that claimants could not bring on record evidence as to actual earning of deceased at the time of his death.

7. Having considered submissions advanced, it can be observed that the claimants in their endeavour to bring on record income of deceased, relied on his income-tax returns for the year 2015-16, R.C. Book of tipper standing in the his name and 7 x 12 extract depicting the lands standing in the name of his joint family. The claimants examined Mr. Vivek Bhandari, Joint Auditor, from M/s. K.D. Bhandari and Associates, to prove income returns, wherein, his income is shown from truck business @ Rs. 4,47,220/-.

8. The Tribunal discarded income tax returns being five year old and declined to consider agricultural income in absence of concrete

material, so also in absence of bills or evidence as to transport business. Tribunal considered notional income of deceased @ Rs.8,000/- p.m. for assessment of compensation.

9. It can be observed that the accident took place in year 2021. The evidence on record indicate that the Tipper bearing registration No. MH-16/ AE 9205 was standing in the name of deceased at the time of his death and lateron transferred in the name of claimant No.1. The aforesaid evidence definitely depicts engagement of deceased in the transport business. Unfortunately, claimants could not bring on record evidence regarding transactions of such business or actual earning therefrom. However, fact remains that his income from transport business was available till his death.

10. The income Tax Returns for the year 2016-17 may not be relevant to consider his income at the time of his death, however, fact remains that for Assessment Year 2015-16, he assessed his income at Rs. 2,69,500/- out of which Rs. 2 Lakhs was shown from agricultural. From the evidence of CW-2 Vijay Mukar, the expenditure and income from transport business as shown in return is brought on record. However, perusal of balance sheet shows that expenditure and income shown therein and actual return submitted does not match. The only fact discernible from the aforesaid documents is that, late Shivaji was in business of transport atleast from 2011 onwards when the truck was purchased by him.

10. In the aforesaid background, assessment of income of deceased at the time of his death will have to be made on the basis of guess work and on notional basis. As rightly observed by the Tribunal,

evidence as to actual income of deceased before his death is not available. But, considering the fact that he was in business of transport and also holding small piece of agricultural land jointly alongwith his family, his income cannot be considered equal to Labour. In facts and circumstances of the case, it would be appropriate to consider his income @ 12,000/- p.m. Since deceased was aged about 41 years, the multiplier of 14 would be applicable. Addition of 25% will have to be made towards future prospects. The Tribunal appears to have rightly made addition of 25% on this count. Since there are 4 dependents, ¼ th amount is required to be deducted towards personal and living expenses. Applying the principle of law espoused in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi reported in AIR 2017 SC 5157,*** the claimants are also entitled for compensation towards non pecuniary damages.

11. In the result, the compensation needs to be worked out as shown below in tabular form.

Sr. No.	Particulars	Amount
1.	Annual Income Rs. 12,000 x 12 = 1,44,000/- Add 25% towards loss of future prospects Rs. 1,44,000 + 36000 = 1,80,000/- Deduct 1/4th amount towards personal expenses : 1,80,000 – 45,000 = 1,35,000/- Apply Multiplier of 14 : 1,35,000 x 14 Add Rs. 1,60,000 towards consortium Add Rs. 15,000 towards Funeral Expenses Add Rs. 15,000 towards Loss of Estate	1,44,000/- Rs. 1,80,000/- 1,80,000/- - 45,000/- Rs.1,35,000/- Rs.18,90,000/- + Rs. 1,60,000/- + Rs. 15,000/- + Rs. 15,000/-
	Total	Rs. 20,80,000/-

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12. In the result, the following order :-

ORDER

[a] “Claimants are held entitled for total compensation of Rs. 20,80,000/-(Twenty Lakhs eighty thousand only) instead of Rs. 14,21,000/- (Fourteen Lakhs Twenty one Thousand) as awarded by the Tribunal, alongwith interest @ 8% p.a. (from the date of filing of the petition, till realization of entire compensation amount).

[b] The apportionment of amount shall be decided by the tribunal by suitably modifying para.3 of operative order.

[c] Rest of the directions under the award of the Tribunal shall mutatis mutandis apply to the modified award.”

[d] The amount deposited by the appellant/insurer be disbursed to the claimants in tune with the directions as incorporated in the order of the Tribunal.

[e] First appeal stands disposed of.

[S.G. CHAPALGAONKAR, J]

grt/-