IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.736 OF 2025

1] Shri Appaso Bhimrao Koli]
Age: 57 Years, Occupation Nil,]
R/o. Khochi, Tal. Hatkanangle,]
Dist. Kolhapur.]

2] Sou. Bharati Appaso Koli]
Age: 52 years, Occ. Household,]
R/o. As above.]

3] Bhimrao Dadu Koli,]
Deceased]
R/o. As above.]

4] Indubai Bhimrao Koli,]
Age: 72 years, Occ. Nil,]
R/o. As above.] …Appellants
(Orig. Applicant/Claimant)

-:VERSUS:-

1] Shri Dilip Dinkarrao Dalavi,]
Age: Major, Occupation: Business,]
R/o. 2792 "C" Juna Budhwar Peth,]
Kolhapur.]

2] The New India Assurance Co. Ltd.]
Near Parwati Talkies, Rajaram Road,]
In front of M.J. Market, Kolhapur.]

3] Shri. Namdev Bapu Jadhav,]
Age:53 years, Occu. Driver,]
R/o. Shiroli Pulachi, Tal. Hatkanangale,]
Dist. Kolhapur.] …Respondents
(Orig. Opponents)

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Mr. Aditya Ghadge a/w Mr. Akshay Kulkarni and Mr. Avesh Ghadge, for the Appellants.

Mr. Siddharth Shitole a/w Mr. Rajdeep Shitole, for Respondent No.1.

Ms. N.D. Joshi, for Respondent No.2.

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CORAM : M. W. CHANDWANI, J.

DATE : 23rd APRIL, 2026.

JUDGMENT:

1. The appeal challenges the Judgment and Award dated 11th November, 2022 passed by the Member, Motor Accident Claims Tribunal, Kolhapur in M.A.C.P No.401 of 2014 whereby, compensation of Rs.10,21,300/- with interest came to be awarded to the dependents of deceased Kuldeep Koli, who died in an accident dated 11th May, 2014 wherein, Hero Honda Motorcycle bearing No. MH-09-CR-3118 was involved.

2. The appeal has been preferred by the original claimants on the ground that the learned Tribunal has erred in not considering the gross total income of the deceased as reflected in the Income Tax Returns. It is submitted by the learned counsel for the appellants that the Income Tax Return for the financial year 2013–2014 discloses the annual income of the deceased as

Rs.1,67,700/-. However, the Tribunal has failed to take into account the business income component amounting to Rs.1,02,500/- as shown in the said return. It is therefore contended that the income declared in the Income Tax Return ought to have been duly considered for the purpose of determining compensation. To buttress his submission, he relied upon the decision in the case of **United India Insurance Co. Ltd. versus Indiro Devi and others**, [1] and **Vijayalaxmi and another versus National Insurance Co. Ltd. and others.**[2]

3. The present appeal is opposed by the Respondent–Insurance Company. It is contended that although the Income Tax Returns of the deceased for the assessment year 2013–2014 reflect a gross total income of Rs.1,67,700/-, no evidence has been adduced by the appellants before the learned Tribunal to substantiate any source of income other than the salary. It is further submitted that in the absence of such evidence, the learned Tribunal has rightly assessed the income of the deceased at Rs.65,200/-, being the salary received from his employer, namely “D-Mart”. The said finding is under challenge in the present appeal.

4. Learned counsel for the respondents further submits that appellant No.1 who examined himself before the Tribunal has deposed that the

1 2018 (7) SCC 715
2 2025 SCC OnLine SC 286

deceased was earning a monthly salary of Rs. 8,000/- from his employment with “D” Mart. It is pertinent to note that in his entire testimony, he has not stated that the deceased was engaged in any other business, nor has he deposed that the deceased was earning any additional income or profit apart from the said employment. Hence, there is no material on record to establish any source of income of the deceased other than his salary from “D” Mart.

5. Perused the impugned Judgment and Award, along with the record and proceedings of the Tribunal at Kolhapur.

6. The Income Tax Return of the deceased for the assessment year 2013–2014 filed prior to the date of the accident reflects that apart from the salary of Rs.8,000/- per month, the deceased was also deriving income from his business to the tune of Rs.1,02,500/-. However, the Tribunal failed to take into consideration the said business income as disclosed in the Income Tax Returns. It is true that Appellant No.1 did not specifically plead the said business income in the claim petition; nevertheless, it remains an admitted position that the appellants examined an official from the Income Tax Department to prove the Income Tax Returns on record. It is to be noted that strict rules of pleadings do not apply to claim petitions. Even though, an application seeking amendment of the claim petition for incorporation of the

said business income was moved, which was kept for consideration at the time of final arguments, but the same was erroneously not considered.

7. Considering the fact that the income tax return for the assessment year 2013–2014 was duly proved by the appellants which constitutes relevant evidence with regard to the income of the deceased proximate to his death, income from business should not have been ignored by the Tribunal merely on the ground that the same was not proved during deposition. In this regard, a reference may be made to the decision in ***IFFCO Tokio General Insurance Co. Ltd., Mumbai v. Manisha Tanaji Bhoir and others***[3] wherein, in paragraph 23 it has been observed as follows:

> *"23. I am also in agreement with the submissions of Mr. Mendon, made on behalf of the claimants, that a Claim Application is not a plaint governed by the Code of Civil Procedure, 1908, nor is it a Civil Suit but it is a special proceeding under the Special Act viz. the M.V. Act, and therefore, the law, of which strict compliance is required while filing Civil Suit cannot be applied while dealing with the proceedings under the M. V. Act. It is true that in the Claim Application preferred by the claimants, the deceased's monthly income was shown as Rs.33,750/-, however the income tax return for the assessment year 2008-2009 reflects a figure of Rs.4,77,580/- but the Motor Vehicles Act being a special legislation, the Code of Civil Procedure is not to be strictly applied as the Claim Application is not plaint in a Civil Suit, and therefore, the evidence of the return has been correctly considered for the purposes of arriving at the compensation*

3 2023 SCC Online Bom.1583

payable to the claimants. The following extract of paragraph 8 of the decision in the case of Oriental Insurance Co. Ltd. vs. Pritam Rajiv Shetty and Another (2006) 3 Mah LJ 237 is useful :-

> "*.......Moreover, we may also notice that the claim application is not a plaint governed by the Code of Civil Procedure or it is not a civil suit but it is the special proceedings under the Special Act and, therefore, the law which strict compliance is required while filing the civil suit cannot be applied while dealing with the proceedings under the special act......".*

8. The decision in the case of **United India Insurance Co. Ltd. versus Indiro Devi and others (supra)** supports the argument of the learned counsel for the appellant, wherein it has been observed in paragraph 9 as under :

> *"9. We have given our anxious consideration to this contention. There is no doubt that if the salary certificate is taken into account the salary of the deceased should be taken as Rs. 1,06,176/- per annum since the gross salary was Rs.8,848 per month. That, however, in our view does not mean that the income of the deceased as stated in the Income Tax returns should be totally ignored. It is not possible to agree with the observation of the Tribunal that it was necessary for the claimants to "explain the said contradiction" between two figures of income. The claimants had led reliable evidence that the deceased had returned an income of Rs. 2,42,606/- for the assessment year 2004-05. This piece of evidence has not been discredited. Indeed, it was possible that the deceased had income from other sources also. There is nothing in the law which requires the Tribunal to assess the income of the deceased only on the basis of a salary certificate for arriving at a just and fair compensation to be paid to the claimants for the loss of life".*

9. Having heard the learned counsel for the parties and upon perusal of the material on record, this Court is of the view that the Tribunal has erred in not taking into consideration the business income of the deceased while assessing the loss of dependency of the appellants. The Tribunal ought to have considered the gross total income of the deceased, including income derived from his business for the purpose of determining the appropriate compensation under the head of loss of dependency. Non-consideration of the same has resulted in an incorrect assessment of compensation.

10. In view of the above, the impugned award calls for interference and modification to the following extent:

	Monthly Income	**Amount**
1.	Monthly income	Rs.13,975/-
2.	Annual income	Rs.1,67,700/-
3.	50% future prospects as per the judgment of **National Insurance Co. Ltd. vs. Pranay Sethi, (2017) 16 SCC 680**.	Rs.1,67,700/- +83,850/- =2,51,550/-
4.	Deduction ½ as per the judgment of **Sarla Verma vs. Delhi Transport Corporation, 2009 (6) SCC 121**	Rs.2,51,550/2 = 1,25,775/-
5	Multiplier of 17 as per judgment of **Sarla Verma Vs. Delhi Transport Corporation** applicable to the age group of 25 to 30 years	Rs.1,25,775 x 17 =21,38,175/-

6.	Loss of consortium as per judgment of **Magma General Insurance Co. Ltd. versus Nanu Ram, 2018 (18) SCC 130** followed in **United India Insurance Co. Ltd. versus Satinder Kaur, 2021 (11) SCC 780** (10% increase as per **Pranay Sethi'**s judgment.	Rs.21,38,175+1,60,000=22,98,175/-
7.	Loss of estate and funeral expenses	Rs.22,98,175+30,000 = 23,28,175/-
8.	**Total Compensation payable to the claimants**	**Rs.23,28,175/-**
9.	**Compensation granted by the Tribunal**	**Rs.10,21,300/-**
10.	**Enhanced compensation to be paid to the claimants**	**Rs.13,06,875/-**

:<u>O R D E R</u>:

(i) The appeal is partly allowed.

(ii) The impugned award is modified to the extent indicated above. The appellants are entitled to the enhanced compensation of Rs.13,06,875/-.

(iv) The enhanced compensation of Rs.13,06,875/- shall carry interest as awarded by the Tribunal.

(v) Rest of the award shall remain as it is.

11. With this, the appeal stands disposed of.

[M. W. CHANDWANI, J.]