

Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.132 OF 2024

Smt. Maya Himlal Khanal and ors.

...Appellants

Versus

Mr. Lalit Madhu Sharma and anr.

...Respondents

Mr. T. J. Mendon, for the Appellants.

Ms. Poonam Mital, for the Respondents.

CORAM: R. M. JOSHI, J.

DATED: 12th JANUARY, 2026.

PC:-

1. By consent of both the sides, heard finally at the stage of admission.
2. This appeal is filed by the original Claimants for enhancement of compensation granted by the Tribunal by judgment and award dated 29th January, 2018 passed in M.A.C.P. No. 2583 of 2012.
3. There is no dispute between the parties with regard to the fact that on 30th July, 2012 an accident occurred involving of vehicle motor-car bearing MH-02/BJ-537, in which the deceased sustained serious injuries and succumbed thereto. Claimants contended that the deceased was working as a cook with Uncle

Chinese Corner at Andheri (East) and earning Rs.25,000/- per month.

4. Claimants examined Puran B. Thapa who owns the said business. These witnesses have placed before the Tribunal the documentary evidence indicating that Gumasta License so as Food Certificate was issued to him by Health Department of the Corporation. The Tribunal has accepted the contention of the Claimants with regard to the employment of the deceased. However, he did not accept that deceased was earning Rs.25,000/- per month. In this appeal, the question is raised by the Appellants/ original Claimants about computation of the compensation done by the Tribunal on the basis of notional income of the deceased at the rate of Rs.5,000/- per month. Learned counsel for the Appellants submits that once the Claimants have proved that the deceased was working as a cook, he would definitely get at least Rs. 15,000/- per month considering the number of dependents on him, the said notional income would be justified.

5. Learned counsel for the Insurer vehemently opposed the appeal in contending that the Claimants have failed to prove the income of the deceased and therefore, no interference is required in the impugned judgment and award.

6. Perusal of evidence on record indicates that the Claimants have succeeded in proving employment of the deceased as a cook with establishment "Uncle Chinese Corner". The owner of the said business entered in the witness box and deposed on oath with regard to the employment of the deceased with him. His contention of running the said business is supported by the Food

Certificate so also Gumasta Lincese and Certificate issued by the Health Department of the Corporation. The Claimants, therefore, were successful in proving the employment of the deceased as a cook. Needless to say that with such skilled job being done, deceased must be earning reasonable amount of income.

7. The learned Tribunal has refused to accept the contention of the Claimants with regard to the income of the deceased and accept notional income at Rs.5,000/-. It is pertinent to note that whereas the Claimants proved that the deceased was doing a skilled work as a cook, he would be entitled to receive the minimum wages of a skilled worker. There were almost six dependents on the deceased and in such circumstances, the Tribunal ought to have accepted the notional income of the deceased at the rate of Rs.15,000/- per month. In view of the same, the judgment and award passed by the Tribunal deserves modification.

8. Over and above the aforestated calculation of compensation, since the Tribunal has failed to grant consortium, they are entitled at the rate of Rs.48,000/-.

9. The Claimants, therefore, would be entitled to receive the following compensation:-

Sr. No.	Particulars	Amount
1	Loss of Future income (Rs.14625/- x 12 x 13)	Rs.22,81,500/-
2.	Consortium to six dependents	Rs.2,88,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss to estate	Rs.15,000/-
	Total	Rs.25,99,500/-

10. The First Appeal, therefore, stands partly allowed.
11. The compensation be deposited within a period of six weeks from today.
12. Rest of the judgment of Tribunal to remain unchanged.

(R. M. JOSHI, J.)