



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Misc. Appeal No. 3011/2018

1. Smt. Imrati Devi W/o Late Shri Dhala Ram, Aged About 46 Years, B/c Mali Sankhla, R/o Village Kui Inda, Khadiya Bera, Balesar, Tehsil Shergarh, District Jodhpur (Rajasthan)
2. Smt. Bidami W/o Binja Ram, Aged About 28 Years, D/o Late Shri Dhala Ram, R/o Village Belwa, Khatriyo Ka Bas Balesar, Tehsil Shergarh, District Jodhpur.
3. Mohan Ram S/o Late Shri Dhala Ram, Aged About 26 Years, B/c Mali Sankhla, R/o Village Kui Inda, Khadiya Bera, Balesar, Tehsil Shergarh, District Jodhpur (Rajasthan)
4. Kumari Sita D/o Late Shri Dhala Ram, Aged About 21 Years, B/c Mali Sankhla, R/o Village Kui Inda, Khadiya Bera, Balesar, Tehsil Shergarh, District Jodhpur (Rajasthan)
5. Kumari Mamta D/o Late Shri Dhala Ram, Aged About 11 Years, Minor Through Her Natural Guardian Mother Smt. Imrati Devi W/o Late Shri Dhala Ram. B/c Mali Sankhla, R/o Village Kui Inda, Khadiya Bera, Balesar, Tehsil Shergarh, District Jodhpur (Rajasthan)
6. Smt. Jhamku Devi W/o Shri Jiya Ram, Aged About 84 Years, B/c Mali Sankhla, R/o Village Kui Inda, Khadiya Bera, Balesar, Tehsil Shergarh, District Jodhpur (Rajasthan)

-----Appellants

Versus

1. Nattha Ram S/o Shri Mohan Ram, B/c Damami, R/o Village Hapasara, Tehsil Shergarh, District Jodhpur(Rajasthan) (Driver Bolero Car No. Rj34 Ua 0794)
2. Barkat Khan S/o Akhe Mohammed, B/c Musalman, R/o Balesar Satta, Tehsil Shergarh, District Jodhpur (Rajasthan) (Purchaser - Owner Bolero Car No. Rj34 Ua 0794)
3. Parbat Singh S/o Panney Singh, B/c Rajput, R/o Village Jaitisar, Tehsil Shergarh, District Jodhpur(Rajasthan) (Regiestered Owner Bolero Car No. Rj34 Ua 0794)
4. United India Insurance Company Limited, Divisional Manager, Divisional Office, Residency Road, Jodhpur. At Present 1St Floor, 74-A, Bhati N Plaza, Main Pal Road, Jodhpur. (Insurer Bolero Car No. Rj34 Ua 0794)

-----Respondents



For Appellant(s) : Mr. S.K. Sankhla
For Respondent(s) : Mr. Sunil A Vyas

HON'BLE MS. JUSTICE REKHA BORANA**Judgment****Portable****23/09/2025**

1. The present misc. appeal has been preferred by the appellants-claimants seeking enhancement of the compensation amount awarded vide Judgment and Award dated 23.07.2018 passed by Motor Accident Claims Tribunal First, Jodhpur (for brevity 'learned Tribunal') in MAC Case No. 149/2014 (N.C.V. No. 1922/14).

2. The learned Tribunal quantified the compensation at Rs.7,88,692/- in favour of the claimants, together with interest at the rate of 9% per annum from the date of filing of the claim petition. The appellants, being dissatisfied with the quantum so determined, have approached this Court.

3. Brief facts as pleaded in the claim petition are that on 09.01.2014, one *Dhalaram* was travelling from Balesar towards his native village on his motorcycle bearing registration No. RJ-19-SP-4130. At about 1:00 P.M., near Shaheed Bhanwar Singh Choraha, a Bolero vehicle bearing registration No. RJ-34-UA-0794, driven in a rash and negligent manner, rammed into the motorcycle from behind. Dhalaram sustained grievous injuries and despite best efforts, succumbed to the injuries. FIR No. 5/2014 came to be registered at Police Station, Balesar. The offending vehicle, on the



date of accident, was duly insured with respondent No. 4 Insurance Company.

4. The appellants-claimants are the dependents of deceased Dhalaram. The learned Tribunal after framing the issues, evaluating the evidence available on record, and after hearing counsels for the parties, while assessing the monthly income of the deceased to be Rs.4,914/-, awarded total compensation of Rs.7,88,692/- (including interim compensation of Rs.50,000) in favour of the appellants-claimants, the breakup of which is as under:

1.	Income per month (after addition of future prospects (25%) and deduction for personal and living expenses (1/4 th) in the monthly income of Rs.4,914/-)	Rs.4,607/-
2.	Loss of Income (as per the age of the deceased i.e. 49 years, a multiplier of 13)	4,607 x 12 x 13 = Rs.7,18,692/-
3.	Under the head of 'Consortium'	Rs.40,000/-
4.	Under the head of 'Funeral Expenses'	Rs.15,000/-
5.	Under the head of 'Loss of Estate	Rs.15,000/-
6.	Total amount of compensation	Rs.7,88,692/-

5. Learned Tribunal also awarded interest @9% per annum from the date of filing of the claim petition i.e. 19.06.2014.

6. The appellants-claimants have assailed the impugned award primarily on two grounds:

(i) That the learned Tribunal erred in treating the deceased to be an unskilled labour drawing Rs.4,914/- per month, whereas material on record unmistakably disclosed that the deceased was engaged in mining operations, held requisite



statutory consents, owned heavy machinery such as a crane and tractor, was paying Rs.35,170/- per month as EMI towards crane loan, and was also engaged in agricultural activities yielding not less than Rs.10,000/- per month. It is thus contended that his monthly earnings were not less than Rs.1,10,000/- and certainly not less than Rs.50,000/-.

(ii) That the learned Tribunal committed a significant error in its adjudication by providing insufficient compensation qua the conventional head of 'Consortium'.

7. Learned counsel appearing on behalf of the respondent-Insurance Company, while supporting the impugned award in so far as it pertained to the computation of income of the deceased, contended that there was no cogent documentary evidence, such as income-tax returns or other reliable financial records, available on record to substantiate the assertion of a higher income of the deceased. However, he could not refute the position of law regarding the award of insufficient compensation qua conventional head of 'Consortium'.

8. Heard learned counsel for the parties. Perused the record.

9. Smt. Imarti Devi (AW-2), widow of the deceased, deposed that her husband was actively engaged in mining operations; that he owned a mine and had also taken another (owned by Smt. Sushila Meethalal) on lease; that he was in possession of a crane and tractor used for the said activities; and that he was discharging substantial EMI of Rs.35,170/- per month towards a crane loan. The statements of the said claimant stand corroborated by documentary evidence- namely, the certificate of





registration of crane (Exh.22A), loan statement issued by HDFC Bank (Exh.23) and the bank passbook (Exh.24A). The statutory consent orders (Exhs.17 & 19) issued by the Rajasthan State Pollution Control Board further corroborate the fact that the deceased was lawfully engaged in mining activities.

10. A perusal of Exhibits 17 and 19 reveals that the Rajasthan State Pollution Control Board, Jodhpur had in the years 2011 and 2014 respectively, granted extensions of consent in favour of deceased Dhalaram, thereby authorising him to lawfully carry on mining operations. Such statutory consents definitely presuppose not only the existence of mining rights but also requisite infrastructure to operate the said mine.

11. True it is that the claimants have not placed on record the Income Tax Returns or the audited financial statements to conclusively establish the quantum of earnings from any mining activity; or any formal lease deed or revenue document to substantiate the assertion that one of the mines was taken on lease from Smt. Sushila, however, the absence of such documentation does not *ipso facto* negate the fact of the deceased's engagement in mining activities. On the contrary, the official consent orders issued by the statutory authority constitute unimpeachable evidence that the deceased was actively carrying on mining operations prior to the unfortunate accident. Equally compelling is the evidence relating to the ownership and financing of heavy machinery by the deceased. Exhibit 22A, the Certificate of Registration of a crane (Hydra Mob Crane) stood in the name of the deceased. Exhibit 23, the Vehicle Loan Statement issued by



HDFC Bank Ltd., and Exhibit 24A, the Bank Passbook of the deceased collectively reflect a repayment of Rs.35,170/- every month as EMI for the crane. The bank record further reflects that such payments were made right up till 21.12.2013, that is, till the month before the fateful accident on 09.01.2014.

12. In view of the above documentary evidence, this Court is of the considered opinion that the ability of an individual to repay heavy loan instalments on a regular basis, presupposes the existence of an income substantially higher than the liability discharged. In the given facts, it would be wholly unrealistic to assume that a person paying EMI exceeding Rs.35,000/- could have been subsisting on a meagre income of Rs.4,914/- per month. The financial outgo evidenced by the bank transactions constitutes strong circumstantial proof of the deceased's earning capacity. Consequently, this Court deems it proper to hold that the deceased's monthly earnings were definitely higher than the EMI payments, and the said fact ought to have been taken into consideration while assessing the quantum of compensation.

13. In ***Gurpreet Kaur v. United India Insurance Co. Ltd.; 2022 SCC OnLine SC 1778***, Hon'ble the Apex Court held that where a deceased was regularly servicing a substantial loan instalment, such fact constitutes reliable evidence of earning capacity and the Courts ought not to resort blindly to minimum wage notifications. The same ratio applies herein too. A man discharging monthly EMI exceeding Rs.35,000/- while maintaining a family of six could not possibly be earning a paltry Rs.4,914/-



per month. In **Gurpreet Kaur** (supra), the Hon'ble Apex Court observed as under:

"8. Though, there is no evidence on record regarding the income of deceased Pyara Singh, however, from the testimony of P.W.4 - Amar Kumar, Assistant Manager, Kotak Mahindra Bank Limited, it is clear that the deceased - Pyara Singh was regularly making the payment of Rs.11,550/- as instalment to discharge his loan liability towards the tractor. At this rate, the entire loan was paid back within a year or so. That clearly establishes the earning capacity of the deceased. It is also the case of the appellants-claimants that the deceased was working as a contractor and was earning Rs.50,000/- per month. The Tribunal adopted a balanced approach and keeping in view factors like : (i) the payment of monthly instalment of Rs.11,550/- towards loan of the tractor; (ii) Maintaining a family comprising of wife, two minor children and parents; (iii) Affording tractor and motorcycle; (iv) that the deceased was working as a contractor; assessed his income at Rs.25,000/- per month.

9. In our considered view, the Tribunal's approach is quite justified in law as well as on facts. In the summary proceedings where the approach of the Tribunal's determination must be in conformity with the object of the welfare legislation, it was rightly held that the monthly income of the deceased could not be less than Rs.25,000/-. The reason assigned by the High Court to reduce the monthly income of the deceased is totally cryptic and has no rationale. **The Notification of Minimum Wages Act can be a guiding factor only in a case where there is no clue available to evaluate monthly income of the deceased. Where positive evidence has been led,**





no reliance on the Notification could be placed, particularly when it was nobody's case that the deceased was a labourer as presumed by the High Court."

14. With regard to agricultural income, AW-2 deposed that apart from mining activities, her husband was also engaged in agricultural activities and earned an additional income of Rs.10,000/- per month. In corroboration, Jamabandi of an agricultural land (Exhibit 26A) had been exhibited which clearly reflects that the deceased owned 0.08 bighas of agricultural land in joint ownership. As per the statements of AW-2, the land also comprised of a tube well that was used for agriculture and irrigation facilities.

15. The Allahabad High Court in the case of ***Shrikrishna vs Surendra Singh and Ors.; First Appeal from Order No.83 of 2012*** (decided on 25.03.2014) while determining the income of an agriculturist observed as under:

*"10. Much emphasis has been given by learned counsel for the respondents that an agriculturalist cannot be equated with a skilled labour. The argument advanced by learned counsel for the respondents seems to be misconceived. **The profession of an agriculturalist itself requires scientific knowledge in view of recent development in the field. Knowledge, ability and experience collectively requires for a better production or outcome in the agriculture work.** Hence, an agriculturist cannot be equated with unskilled labour.*

16. In view of the dictionary meaning as well as the interpretation given by Hon'ble Supreme Court keeping



*in view some statutory provisions, **an agriculturist cannot be treated as an unskilled labour.** A reasonable skill is required from him to discharge his/her obligation for better output. Although the work of an agriculturist may not have become highly technical keeping in view every day scientific development in the field, yet, in this scientific era, it requires scientific decision for sowing and reaping the crops and managing affairs upto the stage of sale of food-grains in the markets. Hence, in the absence of any proof of income from an agriculturist, his notional income for the purpose of payment of compensation may be treated at par with the income of a skilled person."*

16. Further, in the case of **Rajinder Kaur vs. Ram Dass & Ors.; FAO No. 4266 of 2012 (O&M)** (decided on 18.03.2019), the Punjab and Haryana High Court, while determining the income of the deceased who was an agriculturist and also carried on the business of transporter and milk dairy observed as under:

*7. The next question, which arises for consideration is with regard to income of the deceased. Rajinder Singh, eyewitness of the accident, who appeared as PW1, has stated that the deceased was in transport business and also running a dairy farm besides being an agriculturist. Rajinder Kaur wife of the deceased, who appeared as PW2, had also deposed on the same terms. To corroborate oral testimony, claimant has placed on file, copy of the mutation Ex.P5, which shows that 1/5th share of deceased in land measuring 130 kanals 12 marlas situated in village Uklana. However, no evidence except the oral testimony regarding transport business of the deceased, has come on record. **A land owner can be put in the category of skilled worker as he***



has not only to cultivate the land, but also to take care of the other agricultural process like irrigation, fertilisers, pesticides, crop cycle, quality of seeds, nature of soil, type of crops to be sown etc. In the year, 2008, the minimum wages for skilled worker (upper) were Rs.3545/- per month, as such, income of the deceased has been rightly assessed by the tribunal as Rs.3,600/- per month and I find no reason to interfere with the same."

17. The above judicial precedents consistently recognize that an agriculturist cannot be treated at par with an unskilled labour as his vocation entails application of knowledge and skill.

18. Having regard to the totality of circumstances, this Court is of the considered and unambiguous opinion that the deceased's monthly income must be assessed by synthesising several streams of his livelihood. The record demonstrates that the deceased had obtained consent letters from the statutory authority for carrying out mining activities; that he was the registered owner of a Hydra Mob Crane for which he was punctually discharging monthly instalment of Rs.35,170/-; and that he simultaneously held agricultural land capable of yielding regular income. This Court, on taking all these factors cumulatively, concludes that the deceased was earning no less than an amount of Rs.45,000/- per month from his mining and agricultural ventures. This conclusion stands reinforced by the evidence of consistent payment of licence fees for the mines as well as repayment of the EMI for the crane loan. Accordingly, this Court deems it proper to assess the monthly income of the



deceased at Rs.45,000/- for the purposes of computation of just compensation.

19. With regard to the amount to be awarded under the conventional head of 'Consortium', the Hon'ble Apex Court, in the case of **National Insurance Company Limiteds. Pranay Sethi and Ors,; (2017) 16 SCC 680** has fixed the amount payable under the conventional head of loss of consortium to be Rs.40,000/-. Further, the Hon'ble Apex Court, in the case of **Magma General Insurance Co. Ltd. vs Nanu Ram Alias Chuhru Ram;(2018) 18 SCC 130** interpreted 'consortium' to be a compendious term, which encompasses spousal consortium, parental consortium as well as filial consortium.

20. Therefore, this Court is of the opinion that the said amount ought to be awarded to each of the appellants claimants. Thus, appellant Nos. 2 to 6 being the children and mother of the deceased, are also entitled for an amount of Rs.40,000/- each under the head of 'Consortium'. So far as compensation awarded to appellant No.1 under the head of 'Consortium' is concerned, the same has been rightly awarded and does not deserve any interference.

21. Consequently, the present appeal is **partly allowed** and the impugned judgment/award dated 23.07.2018 passed by Motor Accident Claims Tribunal First, Jodhpur in MAC Case No. 149/2014 (N.C.V. No. 1922/2014) is modified to the extent that the appellants-claimants shall be entitled to the following compensation:





1.	Income per month (after addition of future prospects (25%) and deduction for personal and living expenses (1/4 th) in the monthly income of Rs.45,000/-)	Rs.42,188/-
2.	Loss of Income (as per the age of the deceased i.e. 49 years, a multiplier of 13)	42,188 x 12 x 13 = Rs.65,81,328/-
3.	Under the head of 'Consortium'	40,000 x 6 = Rs.2,40,000/-
4.	Under the head of 'Funeral Expenses'	Rs.15,000/-
5.	Under the head of 'Loss of Estate	Rs.15,000/-
6.	Total amount of compensation	Rs.68,51,328/-
7.	Amount awarded by Tribunal	Rs.7,88,692/-
8.	Enhanced amount of compensation	Rs.68,51,328/- - Rs.7,88,692/- ----- Rs.60,62,636/-

22. The enhanced amount shall carry interest @6% per annum from the date of filing of the claim petition till the actual payment is made. The respondent Insurance Company is directed to deposit the award amount (if not deposited yet) and the enhanced amount of compensation with the Tribunal within a period of two months from the date of receipt of the copy of this order, failing which, the same shall carry interest @7.5% per annum from the date of this order till actual realization. Upon deposition, the learned Tribunal is directed to disburse the same to the claimants in terms of the award.

23. Pending applications, if any, stand **disposed of**.

(REKHA BORANA),J