

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

S.B. Civil Misc. Appeal No. 3201/2024

National Insurance Co. Ltd., Branch, Opposite Forest Department, Commercial Area, Banswada, Through Its Authorized Signatory At Sun Tower 4Th Floor, Above Passport Office, Main Pal Road, Jodhpur. (Insurer Of Motorcycle No. Rj-35-Sm-8834)

----Appellant

Versus

1. Sanjay Kumar Kalal S/o Kanhaiya Lal Ji Kalal, Aged About 48 Years, (Father Of Deceased), R/o Sadar Market, Tehsil Ghatol, District Banswara (Raj) (Claimant)
2. Smt. Jagruti Devi W/o Sanjay Kumar, Aged About 42 Years, (Mother Of Deceased), R/o Sadar Market, Tehsil Ghatol, District Banswara (Raj) (Claimant)
3. Arvind Ninama S/o Rakameshwar Ninama, R/o Ward No.-04, Pipalkhunt, Dist. Pratapgarh (Raj) (Owner Of Motorcycle No.- Rj-35-Sm-8834)
4. Kamlesh S/o Nanka, R/o Talayapada, Morvaniya, Tehsil Pipalkhunt, Dist. Pratapgarh (Raj) (Driver Of Motorcycle No.- Rj-35-Sm-8834)

----Respondents

For Appellant(s)	:	Mr. Santosh Choudhary
For Respondent(s)	:	Mr. R.S. Bhati

HON'BLE MS. JUSTICE REKHA BORANA

Order

27/03/2025

1. Admit. Issue notice.
2. At the request of learned counsel for the appellant, service on respondent Nos.3 & 4 is dispensed with at the risk of the appellant.

4. Mr. R.S. Bhati has put in appearance in caveat on behalf of respondent Nos.1 and 2-claimants.
5. Service is hence, complete.
6. Heard on stay petition.
7. Learned counsel for the appellant submits that the learned Tribunal erroneously relied upon the Income Tax Return filed after the death of the deceased, for computation of the loss of income. He submits that the said ITR could not have been considered.
8. Per contra learned counsel for the respondents submits that the last ITR depicted income of the deceased till the date of his death and hence, the same was rightly considered by the learned Tribunal. In the alternate, he submits that an average of the income reflected in all three previous ITRs as exhibited on record can be considered for the purpose of computation of income.
9. It is evident on record that the last Income Tax Return as filed by the deceased before his death reflected his annual income to be Rs.3,35,260/-. In the prima facie opinion of this Court, at this stage, the equities would be balanced if the appellant Insurance Company is directed to deposit and pay the amount to the claimants computing the same on basis of his annual income @ Rs.3,35,260/- per annum.
10. In view of the same, the effect, operation and execution of the impugned award dated 30.07.2024 passed by Motor Accident Claims Tribunal, Banswara in MAC Case No.08/2022 shall remain stayed subject to the appellant Insurance Company depositing an amount of Rs.45,00,000/-(with interest) with the learned Tribunal within a period of six weeks from now. The amount already

deposited, if any, shall be adjusted qua the amount to be deposited now.

11. The amount when deposited be disbursed to the claimants in terms of the award.

12. Stay petition stands **disposed of**.

13. Let the record be sent back to learned Tribunal forthwith and the same be returned to this Court after disbursal of the amount to the claimants.

(REKHA BORANA),J

33-manila/-