HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Miscellaneous Appeal No. 2166/2019

1. Sajna Alias Sanni Bai W/o Shri Membar, Aged About 46 Years, R/o- Rasadpura Aaroli, Tehsil Bijoliya, Presently, Village- Naya Gaon Dabi, Tehsil Talera, Distt. Bundi. (Raj.)
2. Maya W/o Karan Singh, Aged About 20 Years, R/o- Rasadpura Aaroli, Tehsil Bijoliya, Presently, Village- Naya Gaon Dabi, Tehsil Talera, Distt. Bundi. (Raj.)
3. Teena Kumari D/o Shri Membar, Aged About 16 Years, Minor Through Her Natural Guardian / Mother Sajna Alias Sanni, R/o- Rasadpura Aaroli, Tehsil Bijoliya, Presently, Village- Naya Gaon Dabi, Tehsil Talera, Distt. Bundi. (Raj.)
4. Anil S/o Shri Membar, Aged About 13 Years, Minor Through His Natural Guardian / Mother Sajna Alias Sanni, R/o- Rasadpura Aaroli, Tehsil Bijoliya, Presently, Village- Naya Gaon Dabi, Tehsil Talera, Distt. Bundi. (Raj.)

----Appellants/Claimants

Versus

1. Mohan Lal S/o Shri Rampal, Aged About 47 Years, R/o- Meghpura, Thana Kachhola Distt. Bhilwara (Raj.) (Driver Tankar No. RJ-27-GA-8110).
2. Sanyam Choudhary S/o Shri Rajan Choudhay, R/o- M. No.130-B, Shakti Nagar, Road, No.2, Udaipura Thana Bhopalpura Distt. Udaipur (Raj.) (Owner Tankar No. RJ-27-GA-8110).
3. The New India Insurance Company Limited, Through Divisional Manager, Branch Office, Jhalawar Road, Kota. (Raj.) (Insurer Of Tankar No. RJ-27-GA-8110)
4. Mukesh S/o Shri Membar, aged about 23 years,
5. Santa Kumari D/o Shri Membar, aged about 19 years, R/o- Rasadpura Aaroli, Tehsil Bijoliya, Presently, Village- Naya Gaon Dabi, Tehsil Talera, Distt. Bundi. (Raj.)

----Respondents

For Appellant(s)	:	Mr. Ram Sharan Sharma, Adv.
For Respondent(s)	:	Mr. Lokesh Parihar, Adv. for Insurance Company

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JUSTICE ANOOP KUMAR DHAND

<u>Order</u>

<u>19/02/2026</u>

1. By way of filing the instant civil misc. appeal, a challenge has been made to the impugned judgment and award dated 31.01.2019 passed by the Motor Accident Claims Tribunal No.2, Bundi (Raj.) (for short "Tribunal") in MAC Case No. 202/2017, by which the claim petition submitted by the appellants-claimants (for short "claimants") has been partly allowed and the respondents have been directed to pay compensation amount of Rs.6,10,000/- to the claimants along with interest @ 6% per annum from the date of judgment till payment is made.

2. Being dissatisfied by the aforesaid award, the claimants have approached this Court by way of filing the instant Civil Misc. appeal seeking enhancement of the amount of compensation awarded by the Tribunal vide impugned judgment and award dated 31.01.2019.

3. Learned counsel for the claimants submits that the son of the claimant No.1 met with an accident on 27.09.2016 and the same was caused by the driver of the offending vehicle i.e. Tankar bearing registration No. RJ 27 GA 8110 and he died on the spot. Hence, under these circumstances, the claimants have approached the Tribunal for suitable amount of compensation, but they have been granted inadequate amount of compensation. Hence, they have approached this Court by way of filing the instant Civil Misc. appeal.

4. Learned counsel submits that at the time of accident, the age of the deceased was 16 years and 7 months and he was

engaged as a workman in mines. Learned counsel submits that a lump sum amount of Rs.15,000/- has been determined as his yearly income in the light of the judgment passed by the Hon’ble Apex Court in case of **Kishan Gopal & Anr. Vs. Lala & Ors.,** reported in **2014 (1) SCC 244**. Learned counsel submits that recently the Hon’ble Apex Court in case of **Hitesh Nagjibhai Patel Vs. Bababhai Nagjibhai Rabari & Anr.** while deciding Civil Appeal No. 10278/2025, has treated the child above the age of 16 years as skilled workman and, accordingly, the minimum wages have been counted for determination of the income of the deceased minor. Hence, under these circumstances, the income of the deceased should have been treated as per daily wage of a skilled workman.

5. *Per contra*, learned counsel appearing on behalf of the respondent-Insurance Company opposed the arguments raised by learned counsel for the claimants and submitted that the deceased was a minor i.e., below the age of 18 years, hence, under these circumstances, the Tribunal has not committed any error in assessing his income as Rs.15,000/- per year in the light of the judgment passed by the Hon’ble Apex Court in case of **Kishan Gopal** (supra). Hence, under these circumstances, interference of this Court is not warranted and the instant appeal submitted by the claimants is liable to be rejected.

6. Heard and considered the submissions made at the Bar and perused the material available on the record.

7. This fact is not in dispute that the deceased was of the age of 16 years and 7 months at the time of the accident. This fact is also not in dispute that he died in a road accident caused by the

respondent No.1. Now, the only question remains for consideration of this Court is whether the earning of a minor below the age of 18 years and above the age of 16 years can be treated to be earning as a daily wager. Recently, the Hon'ble Apex Court in the case of **Hitesh Nagjibhai Patel** (supra) has held that for the purpose of assessing the amount of compensation in case of child death when such child is not engaged in willful appointment at the time of accident, the computation of compensation under the head of income ought to be made by adopting, at the very least, the minimum wages payable to a skilled labour. It has been held in Para 9 & 10, which reads as under:-

> "9. On the aspect of monthly income of the minor appellant, we are inclined to interfere with the judgment and order of the Courts below. In the present case, it is evident that the Courts below have failed to take into account the monthly income of the appellant while determining the quantum of compensation. It is now a well-entrenched and consistently reiterated principle of law that a minor child who suffers death or permanent disability in a motor vehicle accident, cannot be placed in the same category as a non-earning individual for the purposes of assessing the amount of compensation because the child was not engaged in gainful employment at the time of the accident. In such a case, the computation of compensation under the head of loss of income ought to be made by adopting, at the very least, the minimum wages payable to a skilled workman as notified for the relevant period in the

respective State where the cause of action arises. The said observation was rendered by this Court, in Kajal v. Jagdish Chand and Ors., and Baby Sakshi Greola v. Manzoor Ahmad Simon and Anr.

10. Adverting to the facts at hand, the appellant was an 8- year-old child at the time of the accident. In view of the above exposition of law, we must advert to the prevailing minimum wages, which for the skilled ones, as in the year of accident, i.e., 2012, in Gujarat would be Rs.227.85p. per day, therefore, in the interest of justice, we deem it appropriate to determine the income of the appellant as Rs.6,835.5p. per month, rounding off to Rs.6,836/- per month."

8. Following the preposition of law as propounded by the Hon'ble Apex Court in case of **Hitesh Nagjibhai Patel** (supra), this Court has no option to take a different view, but looking to the fact that as per the evidence of the mother of the deceased, which was recorded before the Tribunal, the deceased was working at mines hence, he could not be treated as skilled workman rather, he can be treated as an unskilled workman and at the relevant time of the accident which occurred in the year 2016, the monthly wages of unskilled workman was Rs.201/- per day furthermore, after applying the preposition of law as propounded in the case of **Nandu Devi & Anr. Vs. Sohan Lal & Ors.** while deciding S.B. Civil Misc. Appeal No. 769/2017 on 23.02.2022 that such daily wagers are entitled to get monthly wages for 30 days instead for 26 days.

9. Since, the deceased was married, hence, under these circumstances, the multiplier of 18 would apply. Looking to the no. of dependents i.e. mother and wife of the deceased, the multiplier of 1/3rd would apply for the purpose of deduction towards personal and living expenses of the deceased. Further, looking to the fact that the mother and wife of the deceased are also entitled to get a sum of Rs.40,000/- each separately under the head of loss of consortium in the light of the judgment passed by the Hon'ble Apex Court in the case of **National Insurance Company Limited Vs. Pranay Sethi & Ors.** reported in **(2017) 16 SCC 860.** They are also entitled to get 40% additional amount under the head of future prospects in the light of the aformentioned judgment passed by the Hon'ble Apex Court in case of **Pranay Sethi** (supra).

10. Considering the overall facts and circumstances of the case, the impugned judgment and award is enhanced in the following terms:-

Monthly income (along with 40% future prospects)	201 X 30 =Rs. 6,030/- Rs.6,030 + 2,412/- = Rs. 8,442/-
Annual Income	Rs. 8,442 X 12 = Rs. 1,01,304/-
Multiplier to be applied	18 Rs. 1,01,304 X 18 = Rs. 18,23,472/-
Deduction towards personal and living expenses of the deceased (1/3rd)	Rs. 18,23,472 X 2/3 = Rs. 12,15,648/-
Loss of consortium	Rs. 40,000 X 2 = Rs. 80,000/-
Funeral Expense	15,000/-
Loss of estate	15,000/-
Total compensation awardable	Rs. 13,25,648/-
Less amount awarded by the tribunal	Rs. 6,10,000/-

Enhanced compensation amount	Rs. 7,15,648/-

11. With the aforesaid observations and directions, the instant civil misc. appeal stands disposed of and the impugned award passed by the Tribunal stands modified to the extent that the claimant is entitled to get a sum of Rs. 7,15,648/- by way of enhanced compensation and the remaining terms and conditions of the impugned award shall remain intact.

12. It is further ordered that out of the enhanced compensation amount, a sum of Rs.50,000/- be deposited in the Savings Bank Account of the Claimant No.1 and the remaining amount be deposited in a fixed deposit with any Nationalized Bank initially for a period of three years and the interest accrued on the said amount shall be paid to the claimant on monthly basis.

13. The respondents are directed to deposit the enhanced amount within a period of four weeks from today with interest @6% per annum from the date of filing of the claim petition.

14. Pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J

Mohita /30