

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 166 OF 2012

- 1 Smt. Ashabai Sadashiv Mahajan, Aged 56 years, Occupation Household, **Appellant**
- 2 Rahul Sadashiv Mahajan, Aged 34 years, Occupation Nil,
- 3 Nitin Sadashiv Mahajan, Aged 37 years, Occupation Nil,
- Appellant nos. 1 to 3 are resident of Bhudhawara Darwaja, Erandol, District Jalgaon
- 4 Sau. Sangita Deepali Patil, Aged 46 years, Occupation Nil, Resident of Bhadgaon Road, Pachora, District Jalgaon
- 5 Sau. Shadhana Pralhad Mahajan, Aged 34 years, Occupation Nil, Resident of Ring Road, Near Deaf and Dumb School, District Nashik [through G.P.A.] Shri Nitin Sadashiv Mahajan for appellant nos.1 to 5

V E R S U S

- 1 Kantilal Fakira Kshatriya, Aged 64 years, Occupation Service, Resident of Pimprud, Taluka Yawal, District Jalgaon **Respondent**
- [First Appeal is dismissed as against Respondent no.1 is dismissed as per order dated 11.10.2013]
- 2 Maharashtra State Road Transport Corporation, Through its Divisional Controller, Jalgaon

Mr. P.C. Mayure, Advocate, holding for
Mr. Shailesh S. Chapalgaonkar, Advocate for the appellant
Mr. Mukesh K. Goyanka, Advocate for respondent no.2

CORAM : A. V. NIRGUDE, J.

DATE : 27th JULY, 2015

ORAL JUDGMENT :

1. This appeal challenges the quantum of compensation awarded by the learned Member, M.A.C. Tribunal, Jalgaon to the appellants, who were claimants in the lower Court.

2. The facts leading to the litigation are as under:-

On 4th August, 2001, Sadashiv, the appellant no.1's husband and father of rest of the appellants, died in an motor accident. Respondent No.2's driver was held responsible for rash and negligent driving. After the accident, Sadashiv was taken to a hospital and the treatment till his death caused expenditure of Rs.1,15,000/- approximately.

3. The appellants pleaded that Sadashiv's monthly income was Rs.15,000/- from his agricultural land and other sources.

4. The learned Member, after trial came to a conclusion that Sadashiv's monthly income was Rs.1,500/- [Rupees Fifteen Hundred]. He held that 1/3rd of this amount would have been spent on his personal necessities. He applied multiplier of 8. He

held that loss of dependency was Rs.90,000/-. The learned counsel for the appellant challenged the correctness of the judgment of the Tribunal.

5. The questions is required to be decided in this appeal is as to what would have been monthly income of Sadashiv and what pecuniary loss per month was caused to the family members due to his untimely death.

6. As stated above, the appellants came with a clear case that the income of deceased Sadashiv was about Rs.15,000/- per month. In order to justify this fact, appellant no.1 entered in witness-box and stated very clearly that Sadashiv had about 32 acres land in Jalgaon district, and part of which was irrigated one. Sadashiv maintained two pairs of bullocks and also maintained a tractor, a trolley and certain agricultural implements. She also stated very clearly that Sadashiv alone was taking care of the agricultural operations. She further asserted that Sadashiv was lending his tractor trolley and machine to others for earning additional income. She said very clearly that the income from all these sources was about Rs.1,80,000/- per year. In addition to this, she also placed on record various documents indicating income from agriculture. Despite cross-examination, nothing could be brought on record to indicate that Sadashiv's management was not solely

responsible for income from agriculture. Appellant no.1 also stated in her deposition that after death of Sadashiv, there is no family member for managing the agriculture work. She said that, she is now managing the agricultural work with the help of employees. Despite employing people, she said, the income from agriculture is reduced to Rs.70,000/- to Rs.80,000/- per year. Despite there being this substantive evidence on record, the learned Member opined as follows:-

“However, in my view, source of income i.e., agricultural land and the tractor are still available with applicants. Having regard to the nature of work of the deceased, in my view, notional income of Rs.1500/- per month can be taken into account to determine the compensation.”

The learned Member clearly lost sight of fact that it was Sadashiv's management that was responsible for getting higher income. During the life time, Sadashiv did not require employees, save and accept daily wage workers occasionally, and yet the income per annum was to the tune of Rs.1,80,000/-.

7. The learned counsel for the respondent tried to suggest that in absence of documentary evidence, this could be an exaggeration. I do not agree with this suggestion. There is ample evidence on record in

support of appellants claim. Sadashiv cultivated 32 acres land. He had bullocks and tractor and other implements. Income of Rs.1,80,000/- per annum is not an exaggeration at all. The appellants could have, if they wanted, exaggerated this amount. Having regard to this factual evidence, the learned Member had no reason to bring in concept of notional income. In this case, the deceased had actual income. The duty of the Tribunal was to draw a conclusion on facts as to what was monthly income of Sadashiv. The income of Rs.15,000/- per month of a farmer who managed and cultivated 32 acres land is not an exaggeration at all. The learned Member not only insulted the work of the deceased, but even caused injury to his next of kin. The pecuniary loss of dependency of the dependant should be calculated on the basis of income of Rs.15,000/- per month. $\frac{1}{3}^{\text{rd}}$ of this income could have been spent on his personal necessities. The multiplier of 8 [eight] applied to be more or less correct, though I am not quite happy about the conclusion drawn by the learned Judge about age of Sadashiv on the day of accident.

8. From the School record, the age of Sadashiv, on the day of accident, was 54 years. Whereas, the Doctor, who conducted autopsy, opined empirically that Sadashiv could have been 60 years old. The learned Member had no reason to discard documentary evidence showing the date of birth of Sadashiv. Even here, the

learned Member showed his callous approach.

9. The amount of compensation payable to the appellants thus would come as follows:-

1] Monthly Income : Rs.15,000/-
 Less : 1/3rd : Rs. 5,000/-

Rs.10,000/-

Rs.10,000/-X12 months X8 [multiplier]	= Rs.9,60,000/-
Plus Medical Expenses	= Rs. 63,287/-
Plus Funeral Expenses	= Rs. 10,000/-
Plus Loss of Consortium	= Rs. 10,000/-
Plus loss of love & affection	= Rs. 10,000/-
Total	Rs.10,53,287/-

The Appeal succeeds to this extent.

10. The respondent has already paid sum of Rs.1,45,000/- so far. Thus, the appellants are entitled for the total compensation of Rs.9,08,287/-. The respondent is directed to pay Rs.9,08,287/- to the appellants.

11. The respondent shall also pay 6% per annum interest on the amount due from the date of application till the amount is actually paid.

12. Copy of this Judgment be sent to the learned Member Shri P.D. Ambekar, alongwith copy of Judgment delivered by him in Motor Accident Claim Petition No.41 of 2002, only if he is still working as a Judge anywhere in Maharashtra.

(**A.V. NIRGUDE, J.**)