

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1889 OF 2015

Bajaj Allianz General Insurance
Co. Ltd. 2nd Floor, Saraswati
Bhavan, Behind Booth Hospital,
Chandani Chowk, Ahmednagar. .. Appellant

Versus

1. Padma W/o Suryabhan Dengale,
Age : 44 years, Occu. : Household,
2. Vilas Suryabhan Dengale,
Age : 29 Years, Occu. : Labourer,

Both R/o Nirmal Pimpri,
Taluka Rahata, Dist. Ahmednagar.

3. Arun Vishwanath Supekar,
Age : Major, Occu. : Business,
R/o Babhaleshwar, Taluka Rahata,
District Ahmednagar. .. Respondents

Shri S. G. Chapalgaonkar, Advocate for the Appellant.
Shri K. N. Lokhande, Advocate for Respondent Nos. 1 and 2.

**CORAM : S. V. GANGAPURWALA, J.
DATE : 14TH OCTOBER, 2015.**

ORAL JUDGMENT :-

. The claim petition filed by the present respondent seeking compensation on account of the death of deceased Suryabhan is

allowed. Aggrieved thereby the Insurance Company has filed present appeal on the point of quantum.

2. Mr. Chapalgaonkar, the learned counsel for the appellant submits that, there is no exact proof of income earned by the deceased. The same is not substantiated by any documentary evidence. The deceased was working as labourer in unorganized sector. According to the learned counsel, there is no proof of he doing milk business, still income of Rs. 4,500/- has been considered. According to the learned counsel claimant No. 2 was major son cannot be said to be dependent on the deceased. The learned counsel further submits that, as occupation is labour no amount can be awarded towards future prospectus as age of the deceased was 50 years. So also multiplier was not properly applied. No amount could have been awarded towards consortium, love and affection to the wife.

3. Mr. Lokhande, the learned counsel for the respondent Nos. 1 and 2/claimants submits that, respondents have not denied that, the claimant No. 2 was not dependent upon the deceased. The pleading and evidence of the claimants go to show that, the claimant No. 2 was also dependent upon the deceased. The learned counsel submits that, the income has been proved.

4. With the assistance of learned counsel I have gone through

the judgment and the record and proceedings. The present appeal is limited to the extent of quantum as all the other facts are not disputed.

5. The Tribunal has considered income of the deceased as Rs. 4,500/- per month based on evidence available. The same is appreciation of evidence. As far as future prospects is concerned, the deceased had crossed 50 years. In the light of that only 15% addition towards future prospectus can be made and not 30% as made by the Tribunal. As far as amount under the head of consortium, love and affection awarded to the wife is concerned, the same is rightly awarded.

6. Considering the above, the loss of dependency would come to Rs. 5,38,200/-. For loss of consortium and loss of estate I would award Rs. 1,00,000/- each under said head i. e. Rs. 2,00,000/- and on account of loss of love and affection to claimant No. 2, I would award Rs. 50,000/-. As such, the claimants would be entitled to Rs. 8,13,200/- instead of Rs. 9,03,600/- as awarded by the Tribunal.

7. In the result, the judgment and award passed by the Tribunal is modified. The original opponent Nos. 1 and 2 i. e. present appellant and respondent No. 3 are jointly and severely liable to pay an amount of Rs. 8,13,200/- to the claimants along

with interest at the rate of Rs. 8% per annum from the date of petition till realization.

8. The appellant has already deposited the amount as per the award passed by the Tribunal. Running of interest would stop as on the date amount is deposited in the Court. The claimants are allowed to withdraw the amount as per the orders passed by this Court. The excess amount be returned back to the appellant. The first appeal accordingly is partly allowed. No costs.

[S. V. GANGAPURWALA, J.]

bsb/Oct. 15