

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.193 OF 2014
WITH
CIVIL APPLICATION NO.3162 OF 2013

National Insurance Company Limited ... Appellant
vs.
Meenakshi Rajendra Sathe and Others ... Respondents

Mr. Sanjay Krishnan i/b. Ms. Harshada Rane, for the Appellant.
Mr. R.S. Alange, for the Respondent Nos. 1 to 4.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **23rd OCTOBER, 2015**

P.C.:

. This Appeal is directed against the judgment and award dated 17th October, 2012 passed by the Chairman, Motor Accident Claims Tribunal, Solapur thereby awarding the compensation of Rs. 11,15,000/- to the Respondents/original Applicants along with the interest at the rate of 7.5% p.a.

2. The Respondents/claimants are the family members of the deceased. Respondent No. 1 is the wife and Respondent Nos. 2 and 3

are the minor children, aged four and two years respectively and Respondent No. 4 is the mother of the deceased Rajendra.

3. Rajendra died in an accident on national highway on 8th October, 2006, when he was driving a motor-cycle. A tempo dashed to the motor-cycle of Rajendra from the opposite side due to rash and negligent driving of the driver of the tempo. At the relevant time, his friend Rohidas Sarvgod was a pillion rider.

4. The applicants filed a claim for compensation. The Insurance Company appeared and contested the claim by taking various defences. The applicant i.e. widow of Rajendra gave her evidence along with Rohidas Sarvgod. After considering the documentary as well as the oral evidence adduced by the parties, the Chairman allowed the claim and granted compensation as mentioned above. Being aggrieved by the said judgment and award, the Appellant filed the present Appeal.

5. The learned counsel for the Appellant submits that the main challenge is in respect of the quantum of the amount of

compensation. He submitted that the Tribunal has erred in considering the monthly income of the deceased as Rs. 9,000/-. He submitted that no documentary evidence was produced to show the income of the deceased. It was claimed that the deceased was having agricultural land and was also doing milk business. He submitted that under such circumstances, it was necessary for the Tribunal to fix income of the deceased notionally i.e. Rs. 5,000/- p.m. In support of his submissions, the Appellant relied on the judgment of the Hon'ble Supreme Court in the case of "*State of Haryana And Another vs. Jasbir Kaur and Others*".¹ He submitted that in the said case, the deceased was an agriculturist however, his income was considered in the absence of any documentary evidence notionally as Rs. 3,000/- and on that basis the compensation was awarded.

6. The learned counsel for the Respondents opposed the submissions made by the learned counsel for the Appellant. He submitted that in the judgment cited (supra), we have to consider the year of the judgment. The judgment was delivered in the year 2003. However the award passed in this case is in the year 2012.

1. Appeal (Civil) No. 5523 of 2003, SC.

7. Perused the judgment, the documents and notes of evidence produced by the Appellant Meenakshi Rajendra Sathe. She has also produced 7/12 extract of the land. After going through the 7/12 extract, it appears that 9-10 acres land stood in the name of the deceased Rajendra. He himself was cultivating the said land. The 7/12 extract discloses that the crops sugarcane and jawar were cultivated and yielded by the deceased. Thus, it can not be said that no documents were produced by the claimants to prove the income of the deceased Rajendra. The learned Chairman has rightly fixed the income as Rs. 9,000/- p.m. of the deceased Rajendra and considered $1/3^{\text{rd}}$ amount i.e. Rs. 3,000/- towards the personal expenditure considering the number of dependents i.e. original claimants. In the case of *Jasbir Kaur* (supra) there was four acres of the land. However, in the present case, land owned by the deceased Rajendra is 9-10 acres where crops like sugarcane and jawar were cultivated by the deceased. The judgment of *Jasbir Kaur* (supra) is of the year 2003 i.e. nine years earlier. So also considering the area of the agricultural land, the nature of the crops and the fertility, the income of Rs. 9,000/- p.m. fixed by Tribunal cannot be said erroneous finding. Therefore, I do not find any substance to interfere with the judgment

and award passed by the Tribunal. Hence, the First Appeal stands dismissed.

8. In view of the above, the delay application does not survive and hence disposed of.

(MRS.MRIDULA BHATKAR, J.)