

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

FIRST APPEAL NO.2078 OF 2015

Malanbai W/o. Pandurang Patil .. Appellants
and another

Versus

Sadanand S/o. Uttam Mansule .. Respondents
and another

Mr.Mahendra B. Kolpe, Advocate for the appellants
Mr.Sushant B. Chaudhary, Advocate for respondent No.1
Mr.S.G.Chapalgaonkar, Advocate for respondent No.2

**CORAM : A.V.NIRGUDE, J
DATE : 25.08.2016**

P.C. :-

1. This appeal is filed for enhancement of compensation awarded to the appellants by the learned Member of the Motor Accident Claim Tribunal, Osmanabad in M.A.C.P.No.199 of 2012.

2. Appellants claimed compensation on account of death of one Pandurang who died in a motor accident. Only question that is raised before me that whether the calculation of compensation is correct.

3. Learned counsel for the appellants asserted that the learned Member of the Motor Accident Tribunal,

Osmanabad erred in holding that deceased Pandurang's income was only Rs.60,000/- per annum. So the question required to be decided here is whether the appellants/claimants proved that deceased Pandurang's income was about Rs.2,00,000/- per year. This is a question of fact. Oral and documentary evidence that came on record should be examined to arrive at a conclusion.

4. I perused the evidence of appellant No.1 and her witnesses. It has come on record that deceased Pandurang owned about 11-Acres land. He was a full-time agriculturist. It is further brought on record that deceased Pandurang was cultivating various crops in his land. He used to sell sugarcane grown in his land to sugar factories. Appellant No.1 stated orally that deceased Pandurang's income was about Rs.2,00,000/- per year. Learned Member of the Motor Accident Claim Tribunal, Osmanabad did not discuss reasons as to why he came to a conclusion that Pandurang's income cannot be more than Rs.60,000/- per year. Learned Member of the Motor Accident Coaim Tribunal, Osmanabad did not discuss any evidence.

5. As against the evidence it was sought to be brought record through cross-examination that Pandurang had two grownup sons who are also agriculturists. Even

appellant No.1 widow of Pandurang is an agriculturist and was getting income from agriculture. Nonetheless it has come on record that Pandurang owned about 11-Acres land.

6. Learned counsel for the respondent-Insurance Company argued that in case of death of an agriculturist the land would remain as it is for deponents. What they lost due to death is skill, supervision for agriculture operations. He placed reliance on judgments of Supreme Court in the cases of Ponnumany @ Krishnan and another Vs V.A.Mohanan and others (2008)4 Supreme Court Cases 717, New India Assurance Co. Ltd. Vs Charlie and another (2005) 10 Supreme Court Cases 720 and Shanmughasundaram and others Vs Diravia Nadar (Dead) by Lrs. And anothers (2005) 10 Supreme Court Cases 72.

7. Importance of this factor cannot be ignored. In fact this factor would matter in every occupation. I am inclined to assume that Pandurang was an ordinary prudent agriculturist and with the help of 11 Acre land he would not earn less than Rs.75,000/- per year.

8. Learned counsel for the appellant asserted that the appellants are not entitled to comensation on account of future prospect of Pandurang. Learned Member of the Motor Accident Claim Tribunal, Osmanabad did not award

such compensation. I am also not inclined to grant it mainly because at the age of 60 years the career of Pandurang as an agriculturist was on decline.

9. I am inclined to hold that Pandurang's early income was of Rs.75,000/-. $1/3^{\text{rd}}$ income should be deducted on account of personal expenses. The multiplicand comes to Rs.50,000/- per annum. The multiplier 9 is applicable as the deceased was 60 years of the age. Thus, the total loss of income comes to Rs.4,50,000/- (Rs.50,000/- x 9). Appellants are entitled to get Rs.1,00,000/- towards consortium and Rs.25,000/- on account of loss of love and affection etc. The appellants are also entitled to get funeral expenses amounting to Rs.25,000/-. The appellants produced medical bills worth Rs.8,000/- for which the appellants are entitled. Thus, in all the appellants are entitled to get compensation of Rs.6,08,000/-.

10. The appeal stands partly allowed and disposed of accordingly.

[A.V.NIRGUDE, J.]