IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

FIRST APPEAL NO. 1071 OF 2016

MANGALA YASHWANTRAO THOMBARE AND OTHERS
VERSUS
PANDURANG SITARAM HARANKAR AND ANOTHER

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Advocate for Appellants : Mr. Vinod Prakash Patil.
Advocate for Respondent No.1: Mr.Afzal Hussain M. Vakil, h/f Mr.Sk.Naseer.
Advocate for Respondent No.2 : Mr. S. G. Chapalgaonkar.

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CORAM : **V. K. JADHAV, J.**
DATE : 22nd February, 2017.

ORDER:

. Heard finally with consent at admission stage.

2 Being aggrieved by the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Jalgaon dated 9th April, 2013 in MACP No.364 of 2008, the original Claimants have preferred this appeal to the extent of quantum.

3 The learned counsel for the Applicants / original Claimants submits that deceased Yeshwant was having Homeopathic registration certificate Exhibit – 43 and as per the said certificate he was practicing Homeopathic since 1980. The Appellants / Claimants have produced on record the income tax returns for the year 2007-08 at Exhibit – 39. The said income tax returns are submitted after the death of deceased

Yeshwant by the legal heirs of deceased Yeshwant and learned Member of the Tribunal has discarded the same only on that ground. The learned counsel submits that Pan card of deceased Yeshwant was also submitted before the Tribunal and the said income tax returns were submitted by showing his earnings from the medical profession. The learned Member of the Tribunal should have considered the same while working out the compensation. The learned counsel submits that the Tribunal has erroneously considered the notional income of deceased Yeshwant at Rs.4,000/- and further considered Rs.10,000/- per annum as a loss in the agricultural income under the supervising charges and awarded the compensation. The learned counsel submits that the Tribunal ought to have considered the income of deceased Yeshwant from his medical profession as well as from the agricultural source. The Tribunal has not awarded the compensation under the non-pecuniary heads such as loss of consortium, loss of love and affection and loss of estate.

4 The learned counsel for the Respondent / Insurer submits that Claimant No.1, who has examined herself before the Tribunal was not able to tell the place where her deceased husband was practicing, when subjected to cross-examination at length so far as the medical profession of his deceased husband is concerned. The learned

counsel submits that deceased Yeshwant was 52 years of age at the time of his accidental death. It is difficult to believe that during his lifetime deceased Yeshwant had not submitted any income tax returns though he was earning from medical profession and only after his death the Claimants could realize about submission of income tax returns. The learned counsel submits that the Tribunal has therefore, rightly considered the notional income of deceased Yeshwant by giving weightage to his homeopathic registration certificate. The learned Member of the Tribunal has also rightly considered the loss in the agricultural income in the form of supervisory charges and accordingly, awarded the just and reasonable compensation.

5 The learned counsel appearing for the Respondent / Insurer fairly admitted that the Tribunal has not awarded any compensation under the non-pecuniary heads.

6 On careful perusal of the pleadings, the evidence adduced by the parties and the impugned judgment and award passed by the Tribunal, it appears that after the death of deceased Yeshwant, the Appellants / Claimants have submitted the income tax returns on the basis of professional earnings of deceased Yeshwant. During the lifetime decease Yeshwant had not submitted any income tax returns.

It is also pertinent that Claimant No.1, who happened to be widow, is not knowing the place where deceased Yeshwant was carrying his medical practice. The learned Member of the Tribunal has therefore, rightly discarded the copies of the income tax returns and further considered the notional income of deceased Yeshwant at Rs.4,000/- and some more amount. So far as the income from agricultural source is concerned, after the death of deceased Yeshwant the corpus of the land remained as it is and the Appellants / Claimants as per the entries in the 7/12 extract, are cultivating the land. The learned Member of the Tribunal has therefore, rightly considered Rs.10,000/- per annum as as loss in the agricultural income on account of lack of skilled supervision.

7 So far as the compensation under the non-pecuniary heads are concerned, the Tribunal has taken recourse to Schedule II of Section 163 of the Motor Vehicles Act and awarded Rs.9,500/- as general charges. The learned Member of the Tribunal ought to have added compensation under the non-pecuniary heads such as loss of consortium, loss of love and affection and loss of estate. The Appellant No.1 / Claimant No.1 is the widow and she was at the age of 40 years when her husband met with an accidental death. Further Claimant Nos.2 and 3 are the young children, who were taking eduction at the time of death of their father. In view of the above,

Appellant No.1 / Claimant No.1 is entitled for an amount of Rs.1,00,000/- for loss of consortium and Appellant Nos.2 and 3 / Claimants Nos.2 and 3 are entitled for an amount Rs.25,000/- each towards the loss of love and affection. The Appellants / Claimants are also entitled for an amount of Rs.15,000/- as a loss of estate.

8 In view of the above discussion, the judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Jalgaon dated 9th April, 2013, requires modification. Thus, the break up of compensation under the heads as discussed above can be broadly categorized as under:

categorized is as under:

Sr. No.	**Particulars of the head**	**Amount in Rupees**
1)	Towards Loss of future income / dependency (as awarded by the Tribunal)	Rs.4,40,000/-
2)	Towards damage to the property (as awarded by the Tribunal)	Rs.10,000/-
3)	Loss of consortium	Rs.1,00,000/-
4)	Loss of love and affection (to Claimant Nos.2 and 3 Rs.25,000/- each)	Rs.50,000/-
5)	Loss of estate	Rs.15,000/-
	Total =	**Rs.6,15,500/-**

9 The Appellants / Claimants are entitled for the total amount of compensation as worked out hereinbefore. The

impugned judgment and award requires modification to that effect. Hence, the following order:

<u>O R D E R</u>

I. The appeal is hereby partly allowed with proportionate costs.

II. The judgment and award passed by the learned Member of the Motor Accident Claims Tribunal, Jalgaon dated 9th April, 2013 in MACP No.364 of 2008, is hereby modified in the following manner:

> “Respondent Nos.1 and 2 do pay jointly and severally an amount of compensation of Rs.6,15,000/- (Rupees Six Lacs and Fifteen Thousand only) inclusive of no fault liability alongwith interest @7.5% per annum form the date of petition till realization of the amount.”

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up as per the above modification.

V. Needless to say that if the Respondent / Insurer has paid or deposited the amount as per the award passed by the Tribunal, the same shall be adjusted in the modified award as above.

VI. Appeal is accordingly disposed of.

[V. K. JADHAV, J.]

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