

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

FIRST APPEAL NO. 2684 OF 2016

THE RELIANCE GENERAL INSURANCE COMPANY,
THROUGH BRANCH MANAGER
VERSUS
SUNITA JAYRAM KAKDE AND OTHERS

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Advocate for Appellant : Mr. S. G. Chapalgaonkar.

Advocate for Respondent Nos.1 to 5 : Mr. Mukul S. Kulkarni.

Advocate for Respondent No.7 : Mr. R. R. Imale.

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CORAM : **V. K. JADHAV, J.**

DATE : 13th 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, Beed dated 18th April, 2014 in MACP No.101 of 2011, the original Respondent / Insurer preferred this appeal to the extent of quantum.

3 Since the Respondent / Insurer has challenged the judgment and award passed by the Tribunal only to the extent of quantum, there need no discussion, whether the death occurred on account of rash and negligent driving of the driver of the truck involved in the accident.

4 The learned counsel for the Appellant / Insurer submits that in para 16 of the judgment, the Tribunal has observed that the Respondents / Claimants have failed to prove the income of deceased Jayram. The learned counsel submits that in absence of any satisfactory evidence, the Tribunal has considered the notional income of deceased Jayram at Rs.4,000/- per month. However, in absence of any evidence about the future prospects, the learned Member of the Tribunal has added 50% of the amount in the income of deceased Jayram towards his future prospects and erroneously worked out the quantum of compensation. The learned counsel submits that deceased Jayram was not getting any fixed income. He was not in private service nor he was self employed person.

5 The learned counsel for Respondents / Claimants submits that the Claimants have examined Witness No.2 Kantilal Todkar, who happened to be an office bearer of Vithal Milk Society, Khanapur, Taluka Ashti, District Beed. He has deposed that deceased Jayram was supplying milk to the dairy and he was getting income as per the bills Exhibits – 44 to 50 respectively. The learned counsel submits that the Tribunal though has not discussed

the said evidence in the judgment, added 50% in the income of deceased Jayram towards his future prospects and accordingly determined the compensation. There is no substance in the appeal. The appeal is liable to be dismissed.

6 On perusal of the evidence adduced by the parties to the claim petition and the impugned judgment and award, it appears that the learned Member of the Tribunal has not discussed the income from the milk business of deceased Jayram. Respondents / Claimants have examined Witness No.2 Kantilal Todkar and the bills about the amount paid to deceased Jayram are produced on record and the same are marked as Exhibit – 44 to Exhibit – 50. On perusal of the said bills, it appears that deceased Jayram was regularly supplying milk to the said society and he was getting income. It is true that after the death of deceased Jayram, the milch animals would remain as it is and the Respondents / Claimants are likely to face loss in the income from the milk business on account of lack of skilled experience / supervision of deceased Jayram. It thus, appears that the learned Member of the Tribunal has rightly added 50% of amount towards future prospects in the income of deceased Jayram and considered his income in all at Rs.6,000/- per

month. So far as other heads are concerned, the learned Member of the Tribunal has awarded the just and reasonable compensation. No interference is required. I do not find any substance in the appeal. Hence, the following order:

ORDER

- I. The appeal is hereby dismissed with costs.
- II. The Respondents / Claimants are permitted to withdraw the amount, if deposited before this Court by the Appellant / Insurer.
- III. The appeal is accordingly disposed of.

[V. K. JADHAV, J.]

ndm