

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

901 FIRST APPEAL NO. 873 OF 2015

- . The New India Assurance Company
Ltd., Through its Authorized Official
and Divisional Manager, Legal Hub
Adalat Road, Aurangabad. ..Appellant

VERSUS

1. Smt.Girjabai Budha Tikhole
Age: 40 years, Occu.: Household.
2. Anna Budha Tikhole
Age: 21 years
3. Kodhabai Sambha Tikhole
Age: 75, Occu.: Nil

All R/o Gadyacha Zaap, Post.Palshi,
Tal.Parner, Dist.Ahmednagar. ..Respondents

...

Advocate for Appellant : Mr.P.P.Deshpande
Advocate for Respondent Nos.1 to 3 : Mr.R.A.Tambe

...

CORAM : M.S.SONAK, J.
DATE : 18th January, 2018

ORAL JUDGMENT:-

- 1) Heard Mr.P.P.Deshpande learned counsel for the
appellant and Mr.R.A.Tambe learned counsel for the

respondent Nos.1 to 3.

2) Learned counsel for the parties point out that there was already an order made for disposal of this appeal finally at the stage of admission, since, only an issue of quantum of compensation was involved. Accordingly, record and proceedings were called for and perused.

3) Mr.Deshpande learned counsel for the appellant submits that the Tribunal has erred in taking the monthly income of the deceased at Rs.6,000/- p.m.. He submits that no documentary evidence has been produced in support of this. He submits that since the deceased was an agriculturist and infact, agriculture activities are continued by his son, there was absolutely no justification to treat his income @ Rs.6,000/- p.m. and determine dependency on the said basis. Mr.Deshpande submits that at the highest that income on notional basis could have been taken as Rs.4,000/- p.m.

4) Mr.Deshpande further submits that medical bills to the extent of Rs.1,42,000/- is admitted. As regards rest of the medical expenses, there is no cogent evidence produced by the claimants. In these circumstances, Mr.Deshpande submits that the Tribunal erred in taking medical expenses @ Rs.3,07,778/-.

5) Mr.Deshpande submits that the challenge in the appeal is only on two grounds and by accepting the same, the compensation is required to be substantially reduced.

6) Mr.Tambe learned counsel for the respondents submits that the Tribunal has correctly taken the income of the deceased @ Rs.6,000/- p.m. Substantial evidence was produced on record and this has been correctly appreciated by the Tribunal. In so far as medical expenses are concerned, Mr.Tambe again submits that medical bills have been produced which have been verified

by the Tribunal to arrive at the amount of Rs.3,07,778/-. Mr.Tambe submits that in this case, compensation awarded against the head of loss of love and affection is too less. He submits that even the compensation towards loss of estate, funeral expenses and consortium is much lesser compared to what has been prescribed by the Constitution Bench in the *National Insurance Company Limited Vs. Pranay Sethi and ors. [2017 SC Online SC 1270]*. He submits that there is duty of this Court to determine just compensation, and necessary additions are required to be made.

7) In this case, the Tribunal has taken the necessary income of the deceased, who was an agriculturist @ Rs.6,000/- p.m. The Tribunal is however, failed to give true credence to the position that the son of the deceased i.e. respondent No.2, who was of 21 years of age and was continuing agricultural operations. From the evidence on record, monthly income of Rs.5,000/- p.m.

appears adequate. On this basis, even after effecting notional deductions, the compensation towards dependency would come to Rs.6,00,000/- and not to Rs.6,72,000/- as determined by the Tribunal.

8) The Tribunal, it appears has failed to make any addition towards future prospects. Learned counsel for the appellant submits that there is absolutely no evidence with regards to future prospects. He submits that the deceased was not a salaried employee and no income tax return has been filed. This submission cannot be accepted, since, even according to the appellant,, the income of deceased can be taken as Rs.4,000/-. Obviously, it would arise no question of filing of income tax return, as agricultural income upon which normally no income tax is payable. Taking into consideration the decision of the Constitution Bench in the case of **Pranay Sethi** (supra) and the age of the deceased i.e. 43 years, it is only appropriate that 25% addition would be made

towards future prospects. This means that the total compensation towards dependency would come to Rs.7,50,000/-.

9) On the aspect of medical expenses, there is absolutely no doubt or dispute as to the figure of Rs.1,42,000/-. As regards the balance amount, there is a serious dispute raised by the Insurance Company. There are some bills produced on record by the claimants, but they have not been proved in the manner required by law. Nevertheless, there is material on record to suggest that deceased was admitted in the hospital for 20 days. Taking this aspect into consideration, it will be appropriate, if the compensation towards the medical expenses is taken as Rs.2,00,000/-, instead of Rs.3,07,778/- as determined by the Tribunal.

10) Towards loss of love and affection, the Tribunal has awarded only Rs.10,000/-. In this case, the son and the

aged mother are entitled to atleast Rs.25,000/- each towards loss of love and affection. Similarly, in terms of the decision of the Constitution Bench in **Pranay Sethi** (supra), compensation towards loss of estate, funeral expenses and loss of consortium has to be determined @ Rs.15,000/-, Rs.15,000/- and Rs.40,000/- respectively.

11) On the basis of the aforesaid, total compensation amount comes to Rs.10,70,000/-. However, the learned counsel for the appellant is right in his submission that since this was in case of an agriculturist and there is no direct evidence as regards to his income, this is not a fit case to increase the quantum of compensation in the appeal instituted by the Insurance Company. Accordingly, even though the contentions raised by the learned counsel for the appellant are partly accepted, there is no case made out to interfere with the total quantum of compensation as awarded by the Tribunal.

12) For the aforesaid reasons, this appeal is dismissed.

13) There shall be no order as to costs.

14) The claimants are permitted to withdraw the balance compensation amount as deposited in this Court together with the interest accrued thereon consistent with the direction in the impugned award.

15) The Registry is directed to transmit the amount deposited in this Court to the executing Court within the period of two weeks. So that respondents/claimants can withdraw the same.

[M.S.SONAK, J.]