

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

FIRST APPEAL NO. 3661 OF 2011

New India Assurance Company Ltd., Aurangabad Through its Divisional Manager, Adalat Road, Aurangabad.	..	Appellants (Original Resp.No.4)
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Versus

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| 1 Sunita w/o. Manik Holambe,
Age 25 years, Occu. Household,
R/o. Helamb, Tal. Parali-Vaijinath,
District Beed. | | |
| 2 Prashant s/o. Manik Holambe,
Age 3 years, Minor | | |
| 3 Praveen s/o. Manik Holambe,
Age 1 year, Minor,
Respondents No.2 and 3 are minors, U/g.
Of their real mother respondent No.1 | | |
| 4 Mudrika w/o. Madhav Holambe,
Age 55 years, Occu. Household,
R/o. As above. | | |
| 5 Madhav s/o. Dhondiram @ Dhondiba
Holambe, Age 60 years, Occu. Agri.,
R/o. As above. | .. | Resp. No.1 to 5
(Orig. claimants) |
| 6 Sidling s/o. Sanjeevan Mitkari,
Age 26 years, Occu. Driver,
R/o. Andhori, Tal. Ahmedpur, Dist.Latur | | |
| 7 Madhav s/o. Kerba Paid,
Age 38 years, Occu. Agri.,
R/o. Dhalegaon, Taluka Ahmedpur,
District Latur. | | |
| 8 Sanjeevan s/o. Shivprasasd Mitkari,
Age 48 years, Occu. Agri.,
R/o. Andhori, Tal. Ahmedpur, Dist.Latur | .. | Resp. No.6 to 8
(Original Resp.
No.1 to 3) |

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Mr. S. G. Chapalgaonkar, Advocate for Appellant.
Mr. S. W. Munde, Advocate for Respondents No.1, 4, 5

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CORAM : A.M. DHAVAL, J.

DATE: 10th August, 2018

ORAL JUDGMENT :-

1. This is an appeal filed by Insurance Company challenging the Judgment and Award dated 18-03-2011 in MACP No. 10 of 2010, passed by learned Member, Motor Accident Claims Tribunal, Ambajogai, District Beed. Thereby, the claimants were granted compensation of Rs.14,12,000/- with interest @ 7.5 % per annum.

2. Shri. S. G. Chapalgaonkar, learned Advocate for the appellant has drawn my attention to the First Information Report (FIR) and spot panchanama and wanted to argue that there was rashness and contributory negligence on the part of the deceased on the ground that he was on the wrong side of the road, but on verification of the spot panchanama and factual situation, he has conceded this point. Even the spot panchanama shows that bike was on the correct side, whereas, the Jeep insured was on wrong side. Shri. Chapalgaonkar, Ld. advocate then argued on the

point of quantum. He submitted that there was no documentary evidence to show that the deceased was earning Rs. 10,000/- p.m. from agriculture and dairy business as held by the learned trial court and this assumption has no base of documents. Though CW2 Gram Sevak Dnyoba Dahiphale was examined, he has not brought the original register to show that the deceased was possessing milching cattles as contended. There was no evidence to show that the deceased was supplying milk of particular quantity every day. He, therefore, submitted that the assumption of income at Rs.10,000/- has led to excessive compensation to the claimants.

3. He relied on the Judgment in the cases - **(1) United India Insurance Vs. Sheela Datta [2011 10 SCC 509]**, **(2) New India Insurance Vs. Charlee [2005 10 SCC 720]** and **(3) State of Haryana Vs. Jagbir Kaur [2003 7 SCC 484]** to submit that while calculating the loss of agriculture income, it must be remembered that the lands are available for the legal heirs and what it lost is the skill of management.

4. Per contra, learned advocate for the respondent

submitted that the deceased was only son of claimant Nos. 4 and 5, who are old. The deceased was having two minor children aged 3 years and one year. The accident claim is beneficial legislation. There is evidence to show that the deceased was maintaining milching animals. Now, nobody is there to look after the business. Besides the deceased was having large acres of lands, some in his name and some in the name of his mother and father. Considering the facts, the income of Rs. 10,000/- per annum as assumed is reasonable and justified and no interference is called for. It is also argued that the claimants were entitled for future prospects, but the claimants have not preferred any counter appeal or cross appeal. He therefore, submitted that no interference is called for in the compensation awarded by the Tribunal.

5. The points for my determination with my findings are as follows :-

(1) Whether there was any rashness and negligence on the part of the deceased ?

In the negative

- (2) Whether the trial court has
awarded excessive compensation
by assuming excessive monthly
income ? In the affirmative
- (3) What order ? The Appeal is dismissed.

REASONS

6. The documents on record disclose and it is not disputed that deceased Manik was husband of claimant No.1, father of claimant Nos.2- Prashant then aged 3 years and claimant No.3 Pravin aged one year and was son of claimant No.4 Unahalabai aged 55 years and claimant No.5 Madhav aged 60 years. On 22-11-2009 at 3.00 p.m. while he was proceeding on his bike, he was given dash by Jeep bearing No. MH-22-B-7497. It was belonging to respondent No.2 and was driven by respondent No.1 and was also insured with respondent No. 4. As per the policy of the insurance company, respondent No. 7 was the owner of the Jeep. As per RC Book respondent No. 8 was the owner.

7. The claimants have claimed that deceased Manik aged 27 years was earning Rs. 60,000/- per year from agriculture

dairy business. He was having 7 to 8 acres of irrigated land of fertile quality and was getting handsome yields by adopting new technology. He was getting Rs. 5,00,000/- per annum from agriculture source where he was growing soybean, pulses, sugarcane, cotton, oranges and lemons. Besides, he was having 2 cows and 7 buffalos and was getting milk of 25 per litres per day. He was selling it to hotel owner Rampuri at Dharmabad @ 25/- per day and thus, he was earning of Rs.100/- per day i.e. Rs.1,00,000/- per year. With these pleadings, the claimants claimed compensation of Rs.87,05,000/- assessed but restricted to Rs.75,00,000/-.

8. Respondent Nos.1 and 3 have denied that negligence and rashness of respondent No.1 and denied the sources of income and total income as claimed by the claimants. Ori. Respondent No.2 (respondent No. 7 herein) has filed written statement. He stated that he has sold jeep to the Ori. respondent No.4 (Ori. Respondent No. 8 herein) but the transfer was not effected though his signature was taken on T.O. form. He also denied the income and sources of the deceased. Respondent No.4 has also filed his written

statement but there is no decree and no issues are framed about his involvement.

9. Claimant No.1 Sunita widow of the deceased has deposed about the sources of income and the income from the deceased as per her claim. The claimants have filed following documents of agriculture income.

F.A. register of deceased Manik 2 hectors 86 R Exh.38, 7/12 extract of block No.600, 2 hectors 86R Exh.39, F.A. register of claimant No.5 Madhav, father of the deceased 1 hector 22R Exh.40, 7/12 extract of block No.197 area 8R Exh.41, 7/12 extract Gut No.418 - 3 acres 57R Exh.42, F.A. register extract Exh.43 in the name of claimant No.4 mother 24R, 7/12 extract Gut No.369 - 24R. total 7 H 13 R.

10. CW2- Dnyanoba is a Gramsevak. He has stated that deceased Manik was having 2 cows, 4 Buffalos and 2 bulls and he has accordingly issued certificate Exh. 52 to 60. However, in the cross-examination he has admitted that he has not brought the register on the basis of which this certificate was issued.

11. Besides, filing the 7/12 extract and certificates about

the milching animals, cattles, the claimants have not filed any specific evidence about the income of the deceased. The above document disclose that he was having agriculture land and was also having source of income from dairy business. The certificates Exh.52 to 60 are issued by Gramsevak with his stamp and seal. Those cannot be ignored only because he has not brought the relevant register but the claimants have not led evidence about the sale of milk to a hotel owner as contended.

12. It is true that the agriculture land, milching animals of the deceased are available to the legal heirs to continue to earn livelihood what is lost is the management skill as well as the personal attention and personal labour of the deceased. Considering the fact that deceased was only son of the claimant No.4 and 5. Claimant no.1 is their guardian. Claimant No.3 and 4 were minors. The deceased must be taking if the agriculture land and dairy business. Normally, at the relevant time, the income of a person having no documentary evidence is assumed at Rs.4,500/-, but considering the skilled nature of work of the deceased and the additional sources of income, the loss of managerial

skill, personal attention and labour work of the deceased work can be assumed at Rs.7,000/- . The assumption by the trial court at Rs.10,000/- is exaggerated.

13. The deceased was self employed and as per ***National Insurance Company Limited Versus Pranay Sethi [(2017) 16 CC 680]***, there should have been 40% increase on account of future prospects. That raises the income of the deceased to Rs.9,800/-. The deceased was having 4 dependents. His father was not dependent as he was having agriculture source. Therefore, there shall be 1/4th deductions towards personal expenses. The loss of income to the family at Rs.7,350/- per month i.e. Rs.88,200/- per annum X 17. The loss of income would be Rs.14,99,400/- + the claimants were entitled for additional Rs.70,000/- towards the loss of consortium, the loss of estate and loss of funeral expenses.

14. Considering these facts, though the learned trial Judge committed error in assuming income Rs.10,000/- per annum, mistake stood rectified by another mistakes by ignoring future prospects and holding personal expenses as

1/3rd instead of 1/4th, the learned Member, MACT has awarded Rs.14,12,000/-. As per above calculation, it is neither excessive nor exorbitant. Since there is no appeal by the claimants, the same cannot be enhanced. In the result, the appeal is liable to be dismissed, and accordingly, dismissed with costs.

(A.M.DHAVAL, J)

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