

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 CIVIL APPLICATION NO.1945 OF 2021
IN FIRST APPEAL (STAMP) NO.37963 OF 2019

SUNANDABAI KAILAS PATIL (THAKRE) AND ORS
VERSUS
KEVALBAI MURLIDHAR PATIL AND ANOTHER

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Mr.Amol S. Sawant, Advocate for applicants
Mr.A.S. Usmanpurkar, Advocate for respondent
no.2.

...

CORAM : V.L.ACHLIYA,J.
DATE : 05.02.2021

P.C.

. The applicants-claimants have moved this application seeking withdrawal of amount deposited by the appellant- insurance company.

2. Heard learned counsel for the applicants-claimants and counsel representing the appellant-insurance company.

3. In brief, it is the contention of learned counsel for the appellant that the appellant has good case to succeed in appeal. The Tribunal has erred in not considering the contributory negligence on the part of the deceased. It is further submitted that the compensation assessed is on higher side.

Learned counsel submits that the Tribunal has considered the income of deceased from two sources i.e. salary and income derived by cultivating the land. It is submitted that the source of income by way of agricultural land remains intact even after death of deceased. The loss of income on account of agricultural land can be computed only in terms of supervisory loss. In this background, learned counsel submits that the applicants may not be permitted to withdraw the amount more than Rs.5,00,000/-.

4. On the other hand learned counsel for the applicants-claimants submits that the appeal filed is devoid of merit. It is submitted that the Tribunal has analyzed the evidence adduced in the case. The owner and driver not stepped into witness box themselves to establish negligence on the part of deceased. In that view, the challenge raised in appeal on the ground of contributory negligence is devoid of merit. It is submitted that there is no evidence to dispute that the deceased was not driver by profession. It is also not disputed that the deceased had owned an agricultural land. In that view, the assessment of compensation is

just and proper. The deceased was survived with wife, two daughters, one son and age old father and mother. The daughters are of marriageable age. Much expenses are required for maintenance of the family. The deceased was sole bread earner in their family. He therefore urged to allow the applicants to withdraw the amount to the extent of 75% deposited by the appellant-insurance company.

5. On due consideration of submissions advanced in the light of overall facts of the case, the order of apportionment passed by the Tribunal and challenge raised in appeal, I am of the view, the order in following terms would meet the ends of justice. Hence the following order :-

ORDER

(i) The application is partly allowed.

(ii) The applicants are permitted to withdraw the amount of Rs.5,00,000/-. Out of amount of Rs.5,00,000/-, the amount of Rs.3,00,000/- be paid to the applicant no.1 and the amount of Rs.1,00,000/- each be paid to the applicant nos.5 and 6 to address their immediate need. The amount be transferred in Saving Bank account of respective applicants as per

particulars of bank account to be furnished by them.

(iii) After making payment of Rs.5,00,000/-, the balance amount be invested in fixed deposit with any Nationalized Bank initially for a period of three years with standing instructions to renew the same till further orders from the Court or disposal of appeal whichever earlier.

(iv) The interest accrued over the amount invested in fixed deposit be paid to the applicant no.1 after regular interval of three months by transferring the same in her Savings Bank Account to be utilized for maintenance of herself and co-applicant i.e. applicant nos.2 to 6.

(v) The withdrawal of amount together with interest shall be subject to final outcome of Appeal and on furnishing the written undertaking to the effect that in the event the award is set aside or modified, the applicants shall redeposit the amount within 8 weeks from the date of passing of order.

(vi) Liberty granted to the applicants to

move the Court for release of further amount in the event of settlement of marriage of applicant nos.2 and 3 as well as educational requirement of applicant no.4.

(vii) The Civil Application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

SGA