

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

**FIRST APPEAL NO.51 OF 2015
AND
CIVIL APPLICATION NO.13060 OF 2014**

New India Assurance Company Ltd. ..Appellant

Vs.

Smt. Rasika w/o. Udhav Patil (Banajgole)
and others ..Respondents

Mr. S.G.Chapalgaonkar, Advocate for appellant
Mr. S.B.Gastagar, Advocate for respondent nos.1 to 3

**CORAM : R.G. AVACHAT, J.
DATE : DECEMBER 02, 2021**

ORDER :-

This is an insurance company's appeal taking exception to the judgment and award dated 30.07.2014 passed by the Motor Accident Claims Tribunal, Osmanabad, granting compensation on account of death in vehicular accident. The challenge is to the extent of Rs.Five Lakhs, said to have been granted in excess of entitlement.

2. According to the respondents-claimants, deceased – Udhav was agriculturist by profession. He would run a grocery shop as well. The deceased had also reared milch cattle. The Tribunal considered his income at Rs.One Lakh from agriculture and Rs.12,000/- from grocery shop.

3. Learned counsel for the appellant-insurance company would submit that the notional income from agriculture is very much on higher side. On demise of Udhav, the land has been inherited by the claimants and is being cultivated as well. According to him, the notional income of not more than Rs.4,500/- should have been considered by the Tribunal for grant of compensation. He, therefore, urged for scaling down the amount of compensation granted under the impugned award.

4. Learned counsel for the respondents-claimants would, on the other hand, submit that only 30% has been granted towards future prospects instead of 40% as the deceased was below 40 years of age. According to him, lesser amount has been awarded under conventional heads. He, therefore, urged for dismissal of the appeal.

5. There was evidence on record to indicate that about 100 tons of sugarcane was supplied to the sugar factory during the relevant year. One must take a judicial note of the fact that an agriculturist necessarily rear milch cattle. The Gram Panchayat also issued certificate to show that the deceased would run grocery shop as well. The claimants are the widow and two minor children.

Moreover, only 30% of notional income of the deceased has been considered for future prospects. It should have been 40%.

6. If we strictly go by the submissions of learned counsel for the appellant-insurance company, there may be a little change in the quantum of compensation awarded under the impugned award. This Court is not inclined to interfere therewith, particularly, in view of the fact that the claimants are widow and two minor children of the deceased.

7. In view of the above, the appeal fails. The same is dismissed. In view of dismissal of the appeal, the Civil Application does not survive and stands disposed of.

8. The amount in deposit, if any, with this Court or the Tribunal, be paid to the claimants with interest accrued thereon.

[R.G. AVACHAT, J.]

KBP