

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

FIRST APPEAL NO.1374 OF 2013

Appellants : **1] Sanjiwani wd/o Vijayrao Mankar,**
(On R.A.) Aged about 51 years, Occupation – Household.

2] Niraj s/o Vijayrao Mankar,
Aged about 31 years, Occupation – Student.

R/o N.V. Mankar, Professor Colony, Akhada Ward,
Pandharkawada,, Dist. Yavatmal.

-- Versus --

Respondents : **1] Mangeram s/o Bhaichand Pandhal,**
(On R.A.) Aged about Major, Occupation – Owner,
R/o 8th Mile Dattawadi, Amravati Road, Nagpur.

2] The Branch Manager,
The New India Assurance Co. Ltd.,
West High Court, Dharampeth, Nagpur.

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Shri B.S. Mandhare, Adv. h/f Shri P.S. Mirache, Adv. for the Appellants.
Shri M.B. Joshi, Advocate for Respondent No.2.

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CORAM : **SMT. ANUJA PRABHUDESSAI, J.**
DATE : **1st MARCH, 2021.**

ORAL JUDGMENT :-

Being dissatisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Nagpur (hereinafter shall be referred to as the 'Tribunal' for short), the Appellants, who are the Claimants in Claim Petition No.711/2003, have assailed the judgment and award, dated 16/08/2011, whereby the Tribunal has awarded

compensation of Rs.3,33,000/- with interest at the rate of 7.5% per annum from the date of the Claim Petition till final realization.

02] It is not in dispute that the deceased Vijay Mankar, the husband of Petitioner No.1 and father of Petitioner No.2, died in a motor vehicular accident on 14/05/2003 involving Truck bearing No.AP-1/T/2527. The finding recorded by the Tribunal that the accident was caused due to rash and negligent driving by the driver of the offending vehicle, is not under challenge. The only question is, Whether the compensation awarded by the Tribunal can be considered as 'just compensation'?

03] Shri B.S. Mandhare, learned Counsel for the Appellants submits that the deceased was a Doctor by profession and was also an agriculturist. He submits that the evidence of the Claimants proves that the deceased was earning Rs.35,000/- from agricultural income. He, therefore, contends that the Tribunal was not justified in assessing loss of dependency on the basis of notional income of Rs.4,500/-. He further submits that the compensation awarded for loss of consortium and other conventional heads is meagre and that the compensation needs to be enhanced. In support of this, he has relied upon the decisions of the Apex Court in (i) Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma & another - 2014 AIR SCW 6507; (ii) New India Assurance Co. Ltd. vs. Somwati & others - AIR 2020 ACJ 2321; (iii) National Insurance Co. Ltd. vs. Pranay Sethi & others - AIR 2017 SC 5157 and the judgment of learned

Single Judge of this Court in (iv) IFFCO Tokio General Insurance Co. Ltd. vs. Smt. Jyoti Ajay Avatade - 2020 (3) All MR 241.

04] Shri M.B. Joshi, learned Counsel for respondent No.2 submits that the Claimants had not produced any evidence to prove the professional as well as the agricultural income of the deceased. On the contrary, Claimant No.1 has admitted in her cross-examination that the deceased was earning Rs.5,000/- as professional income and Rs.5,000/- as agricultural income. He submits that in the absence of proof of the income, the Tribunal was justified in assessing the compensation on the basis of the notional income of Rs.4,500/-.

05] I have perused the records and considered the submissions advanced by learned Counsel for the respective parties. The evidence on record reveals that the deceased was a Doctor by profession. Claimant No.1 Sanjiwani (CW-1) has deposed that her husband was getting net income of Rs.10,000/- per month. She has stated that the deceased was also possessing 20 acres of irrigated agriculture land and his agricultural income was Rs.35,000/- per month. In her cross-examination, she has stated that since there is no one to look after the agricultural property, the same is given on contract basis (Batai). She has stated that they have been cultivating Soyabin in the said land and paying rent of Rs.8,000/- per annum. She has denied the suggestion that presently she

is supervising the agricultural work and getting the same income as they were getting earlier. She has further stated that it was correctly mentioned in the Claim Petition at Exh.1 that the deceased was earning Rs.5,000/- from his practice and Rs.5,000/- from agriculture land. She has denied the suggestion that the deceased was not deriving Rs.35,000/- per month as agriculture income and Rs.10,000/- from his practice.

06] It is to be noted that the Appellants have not filed the tax returns or any other documents to prove that the deceased was earning Rs.10,000/- as professional income. The claim that the deceased was deriving Rs.35,000/- per month from his agricultural income is also not supported by any corroborative evidence. Be that as it may, Form Nos.1 & 14 at Exh.36 reveals that the deceased owned agricultural land. The evidence of CW-1 reveals that Claimant No.1 was a student and he was unable to look after the property. Her evidence that there was no one to look after the property and that the property was given on contract basis (metuyer system) and they were being paid Rs.8,000/- per annum as rent, has gone unchallenged.

07] The Claimants have not been able to prove the actual loss of income. Nevertheless, considering the fact that the deceased was a Doctor by profession and also an agriculturist, in my considered view, the compensation needs to be assessed on the basis of notional income of Rs.6,500/- per month, which works out to Rs.78,000/- per annum. Since,

the deceased was between the age group of 50 to 60, 10% of actual salary needs to be added to the income of the deceased towards future prospects. Upon addition of this 10%, the income works out to Rs.85,800/-. Considering the number of dependents and upon deducting 1/3rd towards personal expenses, the income works out to Rs.57,200/-. On applying multiplier of 9, loss of dependency works out to Rs.5,14,800/-. Claimant No.1, being the widow, and Claimant No.2, being the son, are entitled for compensation of Rs.40,000/- each towards loss of spousal consortium and parental consortium. In addition, the Claimants are also entitled for compensation of Rs.30,000/- towards loss of estate and funeral expenses. Thus the Claimants are entitled for total compensation of Rs.6,24,800/- with interest at the rate of 7.5% per annum from the date of petition till the date of final realization.

08] The Insurance Company shall deposit the balance amount with interest at the rate of 7.5% per annum from the date of petition till the date of final realization excluding the interest for the delayed period i.e. from the date of the impugned judgment till filing of the appeal. The appeal is allowed accordingly. There shall be no order as to costs.

(SMT. ANUJA PRABHUDESSAI, J.)