

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 1102 OF 2010

M/s New India Assurance Co. Ltd
Versus
Thaknath Prabhatrao Shirsath
and others

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Advocate for the appellant : Mr. V. N. Upadhye
Advocate for respondent : Mr. P. P. Patni
h/f Mr. A.S. Bajaj

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CORAM : S. G. DIGE, J.
DATE : 12.09.2022

PER COURT :-

1. The short issue is involved in this appeal regarding income of the deceased.

2. Brief facts of the case are as under :-

Deceased Prayagbai met with motor vehicle accident on 13th April, 2003 at about 7.45 p.m on Jalna-Aurangabad high way. At the time of accident, deceased Prayagbai was proceeding by Trax bearing registration No. MH-06-K-874 along with her husband Thaknath. In the said accident, Prayagbai and Thanknath both got injured. Prayagbai was got admitted in the hospital but she succumbed to the injuries.

3. It is contention of the learned counsel for the appellant that respondent Nos. 1 to 4 (original claimants) filed claim petition under Section 163-A of the Motor Vehicle Act (for short, " the M.V. Act") claiming that the income of the deceased Prayagbai, who is the wife of respondent No.1 and mother of respondent No.2 to 4, was earning Rs. 3,000/- to Rs. 4,000/- per month. If the income of the deceased was at Rs. 4,000/- per month, the claim petition should be under Section 166 of the M. V. Act and not under Section 163-A of the Motor Vehicle Act.

4. It is the contention of the learned counsel for the respondents that the death of Prayagbai was untimely death. Deceased left behind respondent No.1-her husband and respondent Nos. 2 to 4 three minor children, who are below 8 years i.e. two daughters and one son. The son is hardly one years old at the time of accident. Respondent Nos. 2 to 4 lost the love and affection of their mother forever. The learned counsel further submits that the deceased was doing milk business and also doing agricultural work. She was therefore earning Rs. 3000/- to Rs. 4,000/- per month. The defence was not taken by the appellant before the Tribunal that the claim under Section 163-A of the Motor Vehicle Act is not maintainable. The order passed by the Tribunal is legal and

valid.

4. I have heard both the learned counsel. Perused the judgment and order passed by the Tribunal.

5. Admittedly, respondent No.1's wife and mother of respondent Nos. 2 to 4 has died in the accident. The issue in this appeal is in respect of the income of the deceased. It has been brought on record that deceased Prayagbai died at the age of 25 years. The deceased was able bodied and she was doing household work. PW. No.1 Shri. Thaknath at Exh. 33 has stated that deceased Prayagbai was earning Rs. 3000/- to Rs. 4000/- per month. After considering evidence on record, the Tribunal has considered notional income of the deceased as Rs. 3,000/- per month, and the accordingly, the calculations are made. I do not find any infirmity in it. Moreover, no defence was taken before the Tribunal that the claim petition under Section 163-A was not maintainable, hence said defence cannot be raised in the appeal.

6. In view of the above, I pass the following order :-

ORDER

(i) The appeal is dismissed.

- (ii) Pending civil applications, if any, the same stand disposed off.
- (iii) Respondent Nos. 1 to 4 are permitted to withdraw the amount deposited by the appellant, if already not withdrawn.

**(S.G. DIGE,)
JUDGE**

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