

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 665 OF 2016

TALLE
SHUBHAM
ASHOKRAO

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1. National Insurance Co. Ltd.Appellant
Mumbai Regional Office I, 5th Floor, Sterling
Cinema Bldg, 65, Murzban Road, Fort Mumbai-400
020.

Versus

1. Mrs. Yogita Mohan MaliRespondent
Age. 30 Occ-Household Nos. 1 to 5 (Org
Claimants)

2. Miss. Aishwarya Mohan Mali
Age-9, Occ-Education

3. Krishnat Mohan Mali
Age-6 Occ-Education

4. Vaibhav Mohan Mali
Age-6 Occ-Education

5. Mr. Babaso Bapu Mali,
Age-75 years, Occ-NIL

6. Mrs. Bhagubai Babaso Mali
Age-60 Occ-Household,

All above R/o. Kavalapur,
Tal. Miraj, Dist. Sangli.

7. Mr. Tanaji Shivaji Chavan Age-38 Occ-Driver ...Respondents.
R/o. Plot No. 38, Sanket Bungalow, Shaniwar Peth,
Karad, Tal. Karad Dist. Satara.

Mr. Amol Gatne, Advocate for the Appellant.
Mr. Ramdas A. Shelke, Advocate for the Respondent Nos. 1 to 6.

CORAM : SHIVKUMAR DIGE, J.

DATE : 17th JANUARY, 2024.

ORAL JUDGMENT :

1. The issue involved in this Appeal is income of deceased is considered on higher side.
2. It is contention of learned Counsel for the Appellant that the Tribunal has considered yearly income of deceased at Rs. 2,00,000/- without any evidence on record. Learned Counsel further submitted that it was the Claimant's case that deceased was cultivating the land of his own and others. Except one witness, no other witness was examined in support of contention of the Claimants but the Tribunal has considered yearly income of the deceased at Rs. 2,00,000/- which is not proper. At the most, the Tribunal should have considered managerial loss. Hence, requested to allow the appeal.
3. It is contention of learned Counsel for the Respondents/ Claimants, that deceased was cultivating his own land and he was taking land of other farmers for cultivation and he was doing milk

business and from all these, he used to earn Rs. 2,00,000/- per annum. The income considered by the Tribunal is proper. Learned Counsel further submitted that the Tribunal has not awarded future prospects it be awarded.

4. I have heard both learned Counsels, perused the judgment and order passed by the Motor Accidents Claim Tribunal, Sangli, (for short “the Tribunal”).

5. To prove the income of deceased, the Claimant No. 1 wife of deceased examined herself, she has stated that deceased was cultivating his own land, he was cultivating the land of other farmers on lease basis. The deceased was also doing business of milk and they have one buffalo and two cows. From the agricultural income and milk business the deceased was getting Rs. 2,00,000/- per annum. Nothing elicited in cross-examination of this witness to disbelieve her evidence. This witness denied the suggestion that her husband was not doing any agricultural work and he was not earning Rs. 2,00,000/- annually from the said agricultural work. In support of their case the Claimants have examined PW-2 Prakash Patil at Exhibit-40, he has stated that deceased Mohan Mali used to take his agricultural land on annual lease. The deceased also used to take land

on lease of his neighbours by name Vasant Nilkanth and Lingappa Mali. This witness would share half of the expenses and also the profit to the deceased. He further stated that deceased used to get Rs. 2,00,000/- from the cultivation of these lands. The deceased used to take crop of Jawar, Sugar Cane and Vegetables. This witness further stated the deceased was having buffalos and cows and he was providing milk to nearby local dairy. In cross-examination this witness admitted that there was not written agreement between him and the deceased for giving his land on lease. He has admitted that, he possesses around 12 acre of ancestral land and it is in common possession of this witness and other brothers.

6. Considering the evidence on record the Tribunal has considered yearly income of the deceased at Rs. 2,00,000/- per annum. I do not find infirmity in it. It is contention of learned Counsel for appellant that there is no documentary evidence on record to show that the deceased used to take land of other farmers on lease. Moreover, other farmers from whom deceased had taken land on lease were not examined as witnesses.

7. In my view, the deceased was maintaining family of 6 persons. PW-2 has categorically stated that he used to give his land on

share basis to the deceased. In rural areas there is practice of giving land on lease for cultivation without any agreement. The Claimant No.1 has stated that her husband used to cultivate agricultural land of own and he was cultivating land of others on share basis. Her evidence supports by evidence of PW-2. Hence, I do not find merit in the contention that there was no lease agreement for cultivation and income considered by the Tribunal is on higher side. After death of the deceased cultivating land of others on lease basis has been stopped so no question of considering managerial loss arises. The Tribunal has deducted 1/3rd amount for personal expenses. There are 6 Claimants, it should be 1/4th and the Tribunal has awarded consortium amount on higher side. Each Claimant is entitled for Rs. 48,000/- consortium amount. In my view, the Tribunal has not awarded future prospects while awarding compensation. As per the view of Hon'ble Apex Court in the case of ***National Insurance Co. Ltd. vs. Pranay Sethi, 2017 ACJ 2700 (SC)***. The claimants are entitled for 40% future prospects, if this amount is considered it matches with higher amount awarded for consortium amount and 1/4th amount for personal expenses.

8. In view of above, I pass following Order:

ORDER

a) The Appeal is dismissed. No Order as to costs.

b) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

c) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

9. All pending Applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)