

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

**FIRST APPEAL NO.1965 OF 2018**

Reliance General Insurance Company,  
Through its Manager,  
R/o. Reliance General Insurance Company,  
Adalat Road, Aurangabad. **.. Appellant**  
[Org.Resp. no.2]

**VERSUS**

1] Jayshree Narendra Patil  
Age: 29 years, Occu : Household.

2] Bhavesh Narendra Patil  
Age: 12 year, Occu : Student.

3] Smt. Sumanbai Pandit Patil  
Age: 61 years, Occup : Nil,

No.1 to 3 All Resp. No.1 to 3  
All R/o. C/o. Varad, Tq.Dharangaon  
Dist. Jalgaon.

4] Binay Bhadur Singh  
Age : Major, Occupation : Business,  
R/o. 181/61, B.C. Chatterjee Road,  
Belghoria Kolkata 35  
[Deleted as per leave of this Court  
dtd.12.07.2022].

**.. Respondents**

...

Mr.Swapnil Patil, Advocate holding for Mr.V.P.Raje,  
Advocate for the appellant.  
Mr.Vijay B. Patil, Advocate for respondent nos.1 to 3.

...

**CORAM : S.G.DIGE, J.**  
**DATE : 11.08.2022**

**ORAL JUDGMENT :**

1] Being aggrieved by the judgment and award passed by the Motor Accident Claims Tribunal, Jalgaon directing the present appellant to pay jointly and severally the entire award amount of Rs.29,17,000/- along with interest @ Rs.9% to the claimants i.e. respondent nos.1 to 3 herein. The appellant – Insurance Company – original respondent preferred this appeal.

**Brief facts of the case are as under :**

2] On 14<sup>th</sup> July, 2011 at about 3.15 p.m. the deceased Narendra was proceeding on his motorcycle bearing registration No. MH-19/AU-9951 from Jalgaon to Erandol. At the relevant time, truck bearing No. WB-23/6665 came from opposite direction and gave dash to the motorcycle of the deceased. Due to the said accident, Narendra sustained injuries. While taking treatment, he

died due to accidental injuries. A crime was registered against the driver of the truck under various sections of the Indian Penal Code.

3] Respondent nos.1 to 3 [original claimants] filed Claim Petition before the Motor Accident Claims Tribunal, Jalgaon for getting compensation. Considering the evidence on record and hearing the parties, the learned Tribunal has passed the judgment and order. Against the said order, this appeal.

4] The learned counsel for the appellant submitted that appeal is preferred mainly on two grounds, *firstly* contributory negligence and *secondly* quantum of income of the deceased. It is the contention of the learned counsel that the deceased himself given dash to the offending truck. So there was contributory negligence of deceased in the said accident but this fact was not considered by the Tribunal. The learned counsel further submits that the Tribunal has considered Rs.12,000/- per month as the income of the deceased without any concrete

evidence on record. At the most, the income of the deceased should have been considered as skilled labour. The learned counsel further submits that the Tribunal has granted compensation under the head of love of care and affection on higher side as well as for funeral expenses the compensation is granted on higher side. Hence, requested to allow the appeal.

5] It is the contention of the learned counsel for the respondents that the deceased was sub-contractor. It has come on record in the evidence of Shri Narendra Jadhav that he had given sub-contract to the deceased. Deceased was also getting income from his agricultural field. So the Tribunal has rightly considered the monthly income of the deceased as Rs.12,000/- per month. The learned counsel further submits that offence is registered against the driver of the offending truck. The spot panchnama also shows that there was negligence of the driver, hence, no question of contributory negligence arise. Hence, the order passed by the Tribunal is legal and valid.

6] I have heard both learned counsel. Perused the judgment and order passed by the Tribunal. *Firstly*, I will deal with the issue of income of deceased raised by the learned counsel for the appellant. Smt. Jayshree Patil [respondent no.1] has examined herself. In her evidence, she has stated that the deceased was working as Sub-Contractor with Shri Narendra Jadhav (Contractor) and he was getting Rs.15,000/- per month as salary. She further stated that the deceased was also getting income from his agricultural field of Rs.5000/- per month. Evidence of Narendra Jadhav is at Exhibit-40. He has stated that the deceased was working with him and he was giving Rs.15,000/- per month to the deceased. In cross examination this witness admitted that there is no written agreement between this witness and the deceased about the sub-contract work given to the deceased. There is no deduction of TDS amount. This witness has produced letter at Exh.34, which shows that this witness was giving Rs.15,000/- per month to the deceased. Though the

evidence was led before the Tribunal showing that monthly income of the deceased was of Rs.20,000/- i.e. Rs.15,000/- from Shri Narendra Jadhav and Rs.5,000/- from the agricultural income but the Tribunal has considered Rs.12,000/- per month. It is the contention of the learned counsel for the appellant that without any concrete evidence, the Tribunal has considered monthly income of Rs.12,000/- of the deceased. In my view, after accident the first information report filed by Nagraj Bharat Patil, a villager from the village of deceased. In the complaint it is stated that he knows the deceased Narendra Patil and deceased was working in Bharat Gas, Jalgaon. It has come in the evidence of Narendra Jadhav that he was a private labour supplier to Bharat Petroleum and he was giving sub contract to the deceased. The registration of contractor of Bharat Petroleum is in the name of Narendra Jadhav, which is at Exh.41. It proves that the deceased was working with the Contractor Narendra Jadhav, hence, he was getting Rs.15,000/- per month. Mere non-execution of contract agreement with sub contractor cannot be a ground to deny

the income which was getting by the deceased, hence, in my view the income of Rs.12,000/- considered by the Tribunal is proper.

7] In respect of the issue regarding contributory negligence, it is contention of the learned counsel for the appellant that deceased himself gave dash to the offending truck, in my view, the crime is registered against truck driver, it appears from the record that after the incident, truck driver ran away from the spot of incident. The spot panchnama is at Exh.28, which shows that the accident is occurred due to negligence of the truck driver. No evidence produced on record in respect of contributory negligence of deceased, hence, I do not find merit in the contention of the learned counsel for the appellant that there was contributory negligence of the deceased.

8] The issue in respect of higher side compensation awarded under the head of love and affection is concerned, the Tribunal has granted Rs.1,00,000/- each to the claimants under the head of love of care and affection

and Rs.25,000/- for funeral expenses. In my view, it should be 40,000/- each as filial consortium and for the funeral expenses should be of Rs.15,000/-. In view of this, the claimants are entitle to receive the following amount :-

| Sr.No. | Head                                                                                                                                                                                        | Compensation amount |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| 01.    | Monthly income of the deceased                                                                                                                                                              | Rs.12000            |
| 02.    | Yearly income of the deceased<br>Rs.12,000 x 12                                                                                                                                             | Rs.1,44,000/-       |
| 03.    | After 1/3rd deduction towards personal expenses<br>Rs.1,44,000 – Rs.48,000                                                                                                                  | Rs.96,000/-         |
| 04.    | 40% future prospects<br>Rs.96,000/- - Rs.38,400/-                                                                                                                                           | Rs.57,600/-         |
| 05.    | As the age of the deceased was 24 years, hence, multiplier is to be applied 18<br>Rs.96,000 + Rs.57,600/- =<br>Rs.153600 x 18                                                               | Rs.27,64,800/-      |
| 06.    | Compensation towards filial consortium to each of the claimant<br>Rs.40,000 x 3 = Rs.1,20,000/-                                                                                             | Rs.1,20,000/-       |
| 07.    | Funeral expenses                                                                                                                                                                            | Rs.15,000/-         |
|        | Total                                                                                                                                                                                       | Rs.28,99,800/-      |
|        | Tribunal has awarded compensation of Rs.29,17,000/-<br><br>This Court awarded compensation of Rs.28,99,800/-<br><br>Hence difference amount<br>Rs.29,17,000 – Rs.28,99,800 =<br>Rs.17,200/- | Rs.17,200/-         |

The Tribunal has awarded rate of 9% p.a. on the compensation amount. The Hon'ble Apex Court in the case of **Benson George V/s. Reliance General Insurance Co. Ltd. & others** reported in **2022 SCC Online 238** has awarded 6% rate of interest, hence, I am considering the rate of interest at 6% p.a.

9] In view of the above, I pass the following order :-

#### ORDER

i] Appeal is partly allowed.

ii] Respondent nos.1 and 2 are entitled for compensation of Rs.28,99,800/- @ 6% per annum from the date of filing of the claim petition till its realization. This rate of interest would be applicable to the amount which is yet to be withdrawn. It would not be applicable to the amount already withdrawn by respondent nos.1 and 2.

iii] Respondent nos.1 to 3 shall refund amount of Rs.17,200/- to the appellant, if they have already withdrawn entire award amount.

iv] Appeal is disposed of in above terms.

v] No order as to cost.

**[S.G.DIGE]**  
**JUDGE**

DDC