

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 344 OF 2021
WITH
INTERIM APPLICATION NO. 2411 OF 2021
IN
FIRST APPEAL NO. 344 OF 2021**

Reliance General Insurance Company
Limited

...Appellant

Versus

Habibun Nisha Shaikh & Ors.

...Respondents

.....
Mr. Nikhil Mehta i/b KMC Legal Venture for the Appellant.
Mr. Bharat Gadhavi for the Respondents.
.....

CORAM: V.G.BISHT, J.

DATE: 24th February, 2022

PC:-

1. The present appeal which impugns the judgment and award of learned Member, C.R. No. 7, M.A.C.T., Mumbai on 18th January, 2020 passed in M.A.C.P. No. 876 of 2013 deserves to be rejected on the short point which is sought to be canvassed and argued by learned counsel for the appellant, being that the various parameters laid down in case of **National Insurance Co. Ltd. v Pranay Sethi**, cannot be made applicable, since the accident took place prior to the said decision.

2. The claimants before the M.A.C.T. were the mother and children of deceased Nizamuddin Shaikh, who was working as a driver and earning Rs. 8,000/- pm. On 4th March, 2013, the driver of offending tanker bearing No. GJ-16-SX-6963 containing LPG gas was proceeding from Chembur towards Vashi via Sion Panvel Highway, drove the vehicle in a fast speed and in a rash and negligent manner. Because of that, the driver lost the control over the vehicle and ultimately dashed against the pillar on Mankhurd bridge. The tanker of LPG gas fell down in the nala exactly below the bridge and because of gas leakage, fire took place in which 14 persons sustained injuries and 12 vehicles were damaged. The deceased succumbed to the serious burn injuries.

3. The above incident resulted into registration of C.R No. 54 of 2013 under Sections 279, 337, 338, 304-A and 285 of the Indian Penal Code in Govandi Police Station against the driver of offending tanker. Hence, the claim petition.

4. Learned Member framed various issues and found that the accident in question took place because of negligent driving of driver of the offending tanker bearing bearing No. GJ-16-SX-6963. Learned member also came to the conclusion that deceased was earning Rs. 8,000/- p.m. and accordingly passed the impugned order.

5. Perused record.

6. It appears that arising out of the same incident, the legal representatives of other victims had also preferred the claim petition, which was allowed by learned Member. Against which, the insurance company had preferred First Appeal (St.) No. 5465 of 2020. This Court vide order dated 7th December, 2021 dismissed the appeal holding that negligence of diver of the offending tanker was well established by the claimants. I have no reason to take a different view than the view taken by this Court in the said appeal.

7. As far as objection of learned counsel for the appellant as to the parameters laid down in case of **National Insurance Company v Pranay Sethi**¹ of being not applicable is concerned, same cannot be accepted for the reason that the claim petition was decided by learned Member, MACT on 18th January, 2020 and the compensation came to be awarded by taking the factors which have been determined in **Pranay Sethi**, which is a binding judgment on the date on which the petition was decided by learned Member.

8. As far as the amount of compensation is concerned, the tribunal applied the principle laid down in **Sarla**

1 2017 ACJ 2700

Verma v Delhi Transport Corporation² and National Insurance Company (*supra*).

9. In the present appeal, learned counsel for the appellant has only disputed the earning income of deceased.

10. I have also gone through the evidence of mother of deceased, namely, Smt.Habibun Nisha Jabbar Shaikh, who clearly stated in her evidence that the deceased was a driver with Singh Water Supplies and was earning Rs. 8,000/- p.m. Except general denial in the cross-examination, there is nothing to disbelieve the statement of mother of deceased.

11. In my considered view, the learned Member committed no illegality in coming to the conclusion that the income of deceased at the time of incident was Rs.8,000/- p.m. Rest of the calculations done by learned Member are also in consonance with the judgments relied upon by him. I again do not find any fault with those findings.

12. In view of above, I do not find merit in the appeal and the same is liable to be dismissed.

13. Appeal accordingly stands dismissed.

2 2009 ACJ 1298

14. Respondents/ claimants are entitled to withdraw the entire amount of compensation, if not withdrawn, deposited by the insurance company along with interest accrued till the date of its withdrawal.

15. In view of above, nothing remains in the interim application and the same is accordingly disposed of.

16. The statutory amount of Rs.25,000/ deposited in this Court at the time of filing of appeal shall be transferred to the Motor Accident Claims Tribunal, Mumbai.

(V.G.BISHT, J.)

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