

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

FIRST APPEAL NO. 730 OF 2018

Reliance General Insurance Co. Ltd.)
Through it's Coporate Office)
4th Floor, Chintamani Avenue)
Off Western Express Highway)
Goregaon – East)
Churchgate, Mumbai – 400 063)....Appellant
Orig. Opponent No.2

Versus

1. Smt. Minakshi Balkrishna Shitole)
Age – 52 Years, Occupation - NIL.)....Original
Applicant No.1.
2. Sagar Balkrishna Shitole)
Age – 30 years, Occupation – Education)
....Original
Applicant No.2.
- Both residents of Kalambi, Taluka)
Miraj, District : Sangli)
3. Sneha Balkrishna Shitole (Maiden name))
Previously residing at Kalambi)
taluka, Miraj, District : Sangli)
Name after marriage)
Sneha Amol Patil, Age – 32 years)
Occupation – NIL, Presently residing at)
Gavhan, Taluka, Tasgaon)
District – Sangli.)....Original
Applicant No.3.
4. Pallavi Balkrishna Shitole)

- (Maiden name) previously residing at)
 Kalambi, Taluka Miraj, District – Sangli)
 Name after marriage)
 Pallavi Yogesh Shinde, Age – 26 years)
 Occupation – NIL, Presently residing at)
 Malgaon, Taluka Miraj, District – Sangli)....Original
 Applicant No.4.
5. P. Mallah)
 Age – Adult)
 Resident of 1.33, Aakashpur)
 Nizamabad (Andhra Pradesh))
 Owner of Motor Truck No.)
 AP-25/V-4499)....Original
 Opponent No.1
6. Shri Vyankat Prabhurao Hande)
 Age – Adult.)
 Resident of Bamani, Kuntha Galli)
 Taluka Bhilore, District : Nanded)
 (Driver of Truck No. AP-25/V-4499)....Original
 Opponent No.3
 Respondents

Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant.
 Mr. Mahindra Deshmukh for the Respondent No.4.

CORAM : SHIVKUMAR DIGE, J.

DATE : 29th NOVEMBER, 2023.

JUDGMENT. :

1. Heard learned counsel for the Appellant and learned
 counsel for the Respondents/Claimants.

2. Both learned counsel submit that matter be heard finally at the admission stage and they would argue the matter on available record.

3. Considering the submissions of both learned counsel matter is heard finally at the admission stage.

4. The issues involved in this Appeal are negligence and income of deceased considered on higher side.

5. It is contention of learned counsel for the Appellant that accident had occurred due to negligence of driver of motorcycle on which deceased was riding as a pillion rider but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered salary of deceased on higher side without deduction of Professional Tax. Learned counsel further submitted that the Tribunal has awarded interest rate at 9% which is on higher side. Hence, requested to allow the Appeal.

6. It is contention of learned counsel for the Respondents/Claimants that deceased was working as a Junior Clerk

in Government Granted School. He was getting salary of Rs.30,376/-. The Tribunal has deducted transport allowances of Rs.400/- and Rs.200/- as Professional Tax and after deduction of these amounts, the Tribunal has considered monthly income of deceased at Rs.29,766/- which is proper. Learned counsel further submitted that Appellant has not examined any witness to prove the negligence of motorcycle rider. Hence, requested to dismiss the Appeal.

7. I have heard both learned counsel. Perused Judgment and order passed by the Motor Accident Claims Tribunal, Sangli (for short "the Tribunal"). In respect of issue of negligence the Appellant has not examined any witness to prove the negligence of motorcycle rider without any evidence this Court cannot consider the issue of negligence raised by the Appellant. In respect of the income of deceased. It has come on record that deceased was working as a Junior Clerk in Ajitrao Ghorpade Vidyalyaya and he was getting salary of Rs.30,376/-. The salary certificate is at Exhibit-41 after deduction of Rs.400/-for transport allowance and Rs.200/- as Professional Tax. The Tribunal has considered monthly salary of deceased at

Rs.29,776/- which is proper. The Tribunal has awarded 9% rate of interest on awarded amount hence, I do not find any infirmity in it.

8. Considering the above reasons, I pass following order.

ORDER

- i. Appeal is dismissed.
- ii. Respondents/Claimants are permitted to withdraw the amount along with accrued interest deposited by the Appellant.
- iii. The statutory amount Rs.25,000/- be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

(SHIVKUMAR DIGE, J.)