

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

FIRST APPEAL NO. 83 OF 2021

Reliance General Insurance Co. Ltd.)
The Divisional Manager,)
Office at 4th Floor,)
Chintaman Avenue,)
Near Virvani Industrial Estate,)
Eastern Express Highway,)
Goregaon (E), Mumbai)....Appellant

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Versus

1. Kavita Ningun Singh Thakur)
Age 26 yrs, Occu: at present Nil, (FA stand dismissed
against the Res. No.1
vide Registrar Jud.-II
order dated 10/2/2023.

2. Parvati Sheelajit Thakur,)
Age: 77 years, Occ: Nil,)
Both residing at:)
Room No. 16, Lallu Singh Chawl,)
durga nagar, J.V. Link Road,)
Near Shiv Mandir,)
Jogeshwari (E), Mumbai)

3. Vishal Yashwant Jadhav,)
a/p: Angaon, Tal: Bhiwandi,)
Dist: Thane)....Respondents

Mr. Pandit Kasar for the Appellant.
Ms. Rina Kundu for the Respondent.

CORAM : SHIVKUMAR DIGE, J.

DATE : 13th DECEMBER, 2023.

Oral Judgment. :

1. The issue involved in this appeal is contributory negligence of the rider of motorcycle on which deceased was riding.

2. It is contention of learned counsel for the Appellant that the accident occurred due to collusion between offending truck and motorcycle, on which deceased was riding. There was contributory negligence of the rider of the motorcycle but, tribunal has considered sole negligence of the driver of offending truck, which is not proper, as there was head on collusion between two vehicles. The contributory negligence of the motorcycle rider should have been considered by the tribunal but, it was not considered. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the Respondents/Claimants that Appellant has not examined any witness, to prove the negligence of the rider of motorcycle. Moreover, the

offence was registered against the driver of offending truck. The order passed by the tribunal is legal and valid and no interference is required in it.

4. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal, Thane (for short “the Tribunal”).

5. To prove the contributory negligence of rider of motorcycle, the Appellant has not examined any witness. The offence was registered against the driver of offending truck. Without any evidence on record this Court cannot consider the contributory negligence of motorcycle rider. The observations of the tribunal regarding negligence of the driver of offending truck is proper. I do not find infirmity in it.

6. In view of above, I pass following order.

ORDER

- i. Appeal is dismissed. No order as to costs.
- ii. The claimants are permitted to withdraw the

deposited amount along with accrued interest thereon.

iii. The statutory amount be transmitted to the tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

7. All pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)