IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1047 of 2022

1.	**Reliance General Insurance Company Ltd.** 4th Floor, Chintamani Avenue, Next Virvani Industrial Estate, Western Express Highway, Goregaon (East), Mumbai.	]]]]	….Appellant
	Versus		
1	**Varsha Aashish Daiya** Age-36 years, Occ : Housewife	]]	
2	**Harsh Aashish Daiya** Age : 20 years, Occ : Nil	]]	
3	**Varun Aashish Daiya** Age-15 years, Occ : Nil	]]	
4	**Pravin Babulal Daiya** Age : 68 years, Occ : Nil	]]	
5	**Ranjan Pravin Daiya** Age- 64 years, Occ : Nil. All residing at Kachru Bhavan, Room No.8, Building No.4, In front of Madhavi Bunglow, Rajaji Path, Mhatre Nagar, Dombivali (E), Kalyan, Thane, Tilaknagar.	]]]]]]	
6	**Vivekanand Inde** R/at 3021, 'A' Wing, Bhima Complex, Kalamboli, Panvel.	]]]	...Respondents

Mr.Pandit Kasar, Advocate for the Appellant.
Mr.Sandeep Shinde i/b Ergo Juris, Advocate for Respondent Nos.1 to 5/claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 19th DECEMBER, 2023.

ORAL JUDGMENT :

1. Both learned counsel submitted that matter be heard finally at the admission stage. Considering their request, the matter is heard finally.

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2. The issues involved in this appeal are income of deceased is considered on higher side, there was contributory negligence of the deceased in the said accident and there was breach of terms and conditions of the insurance policy.

3. It is the contention of learned counsel for the appellant that at the time of the accident, the driver of the offending vehicle was not holding valid and effective driving license but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered the yearly income of the deceased on the basis of Income Tax Returns of two years, which is not proper. Learned counsel further submitted that there was contributory negligence of the deceased in the said accident but sole responsibility is fixed on the driver of the offending vehicle, which is not proper. Hence, requested to allow the appeal.

4. It is the contention of learned counsel for the respondent Nos.1 to 5/claimants that to prove the contributory negligence of the deceased, no witness was examined by the appellant-Insurance Company. Learned counsel further submitted that the Tribunal has considered average income of the deceased on the basis of two years' Income Tax Returns. Learned counsel further submitted that in respect of breach of terms and conditions of the insurance policy, the Tribunal has passed pay and recover order, which is proper.

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

6. It is the claimants’ case that on 19th October 2016 at about 5.15 pm, deceased – Ashish was proceeding on his motorcycle bearing No.MH-03-BM-1757. When he reached near Navghar circle, one container bearing No.MH 46/H1789 gave dash to the motorcycle of the deceased. Due to the said dash, deceased died on the spot. An offence was registered against the driver of the container, to prove negligence of the deceased. No witness was examined by the appellant – Insurance Company. The documents produced on record i.e. FIR and spot-panchanama shows the negligence of the driver of the container. I do not find merit in the contention of learned counsel for the appellant that there was contributory negligence of the deceased in the said accident.

7. In respect of issue of income of the deceased, it is claimants’ case that deceased was doing business and he was income-tax payer. The income tax returns for the Assessment Years 2015-2016 and 2016-2017 are filed on record at “Exhibits 38-39”. The income of the deceased for the Assessment Year 2015-2016 was Rs.2,91,272/- and for the Assessment Year 2016-2017 was Rs.3,01,639/-. The Tribunal, on the basis of average income of these two years, has considered yearly income of deceased at Rs.2,88,000/-. I do not find infirmity in it.

While dealing with the issue of breach of terms and conditions of the insurance policy, the Tribunal has passed pay and recover order, which is proper.

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

O R D E R

1. The appeal is dismissed. No order as to cost.
2. Respondent Nos.1 to 5/claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
3. 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. The appellant/Insurance Company can recover the compensation paid to respondent Nos.1 to 5/claimants from respondent No.6.

10. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)