

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.956 OF 2018

Reliance General Insurance Co. Ltd.

4th Floor, Chintamani Avenue, Off
 Western Express Highway, Next to
 Virwani Industrial Estate, Goregaon (E),
 Mumbai 400 063

....Appellant

Versus

1. Sarita Vipinkumar Pandey

2. Vipinkumar Pandey

3. Swati Vipinkumar Pandey

All R/o D. N. Pandey Chawl,
 Indira Nagar, Roopa Devi Pada No. 1
 Wagle Estate, Thane West,

4. Rajkumar Pooranlal Gautam

Jhuggi No. 336, Khand No. 2, Durga Nagar,
 Hibibganj, Bhopal, State M. P.
 (Driver of Motor Truck No. MP-04-K-4664)

5. Abdul Wahid Gaffur

Residing at House No. 6, Galli No. 2,
 Beldarpura, Bhopal, State of M. P.
 (Owner of Truck No. MP 04 K 4664)

....Respondents

Ms. Poonam Mital, Advocate for the Appellant.

Ms. Rina Kundu, Advocate for Respondent Nos. 1 to 3.

FIRST APPEAL NO.958 OF 2018**Reliance General Insurance Co. Ltd.**4th Floor, Chintamani Avenue, Opp.

Western Express Highway, Next to

Virwani Industrial Estate, Goregaon (E),

Mumbai - 400 063

}
 }
 }
 }
 }
 }
 }

....Appellant**Versus****1. Shruti Shrikant Prabhu**

}
 }

2. Shrikant Venkatesh Prabhu

}
 }

3. Neha Shrikant Prabhu

All are R/at 401, Sahakar CHS ltd.,

M.K. Road, Near Bedekar Hospital,

Namdeo Wadi, Naupada, Thane (W.)

}
 }
 }
 }
 }
 }
 }

4. Abdul Wahid Gaffur

Residing at House No. 6, Galli No. 2,

Beldarpura, Bhopal, State of M. P.

(Owner of Truck No. MP 04 K 4664)

}
 }
 }
 }
 }
 }
 }

....Respondents

Ms. Poonam Mital, Advocate for the Appellant.

Ms. Rina Kundu, Advocate for Respondent Nos. 1 to 3.

CORAM : S. G. DIGE, J.**DATE : 3rd March, 2023****JUDGMENT :**

1. Both these Appeals are out of the same accident. Hence, I

am deciding by common judgment.

2. The issues involved in these Appeals are same i.e at the time of accident rider and pillion rider of motorcycle were under influence of alcohol and income of deceased considered on higher side.

3. It is contention of learned Counsel for Appellants that the accident was occurred due to sole negligence of deceased-motorcycle rider. The deceased pillion rider was also under influence of alcohol. But this fact is not considered by the Tribunal and had wrongly fixed liability on the driver of offending truck, which is improper. The learned counsel further submit's that the Tribunal has considered income of both deceased, on higher side. Hence, request to allow the Appeals.

4. It is contention of learned Counsel for the Respondent-Original Claimants in both Appeals that no witness was examined to prove that the motorcycle rider and pillion rider were under influence of liquor nor from the postmortem report's it revealed that alcohol was found in the stomach of deceased.

5. The learned Counsel further submits that the Tribunal has considered all the aspects while awarding compensation. Hence, no interference is required in it.

6. I have heard both the learned Counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal (for short the

Tribunal)

7. It is contention of the learned Counsel for Appellants that deceased-motorcycle rider and pillion rider were under influence of alcohol, but there is no reference in the FIR or documents produced on record about it nor any witness is examined by the Appellant to prove this fact.

8. Hence, I do not find any merit in the contention of learned Counsel for the Appellant. Moreover driver of offending vehicle didn't step into witness box to prove the defence taken by the Appellant.

9. The Tribunal has considered the monthly income of motorcycle rider at Rs.15,000/- per month. While dealing with the issue of income of deceased in First Appeal No.958 of 2018, the Tribunal has observed that the deceased was student of final year of BSC in faculty of Hospitality and Hotel Management course in the institution of Hotel Management Bhopal. His father Claimant No. 1 has stated that deceased had got placement from the campus selection and he was selected for the post of team member culinary by IHHR Hospitality (Andhra) Pvt. Ltd. ISTA Bangalore and he was offered monthly salary of Rs.8,000/- & city living allowance of Rs.2,100/-, alongwith other perks such as P.F., Gratuity, Bonus.

10. To support the evidence of this witness the Claimant have examined AW 2 Ajit Arvind Telang, who is Security Manager in IHHR

Company. He has stated that deceased had given appointment letter by the company and he was selected as kitchen assistant at their Ista Hotel, Bangalore. Deceased had also given joining intimation to the company.

11. On the basis of evidence by these witnesses and considering the qualification of deceased, the Tribunal has considered monthly salary of deceased at Rs.15,000/-. I do not find any infirmity in it. The Tribunal has relied on the judgment of Hon'ble Apex Court in the case of *Ashvinbhai Jayantilal Modi vs. Ramkaran Ramchandra Sharma*¹. Wherein para 9, Hon'ble Apex Court has observed that deceased was 19 years old having medical degree, and considered income at Rs.25,000/- per month. In my view, in present case the deceased was BSC final year student. He had received the appointment letter from the company, so monthly income considered by the Tribunal is proper.

12. In respect of, income of deceased in First Appeal No.956 of 2018, to prove the income of deceased, the Claimant No. 2 has stated that his son was 22 years old and he was studying Hotel Management and Catering Technology and applied Nutrition from institution of Hotel Management at Bhopal. He was final year student. He was selected through campus by Taj Groups of Hotel for job at Mumbai and he was offered monthly salary of Rs.15,000/- and the said offer was accepted by his son.

1

2014 ACJ 2648

13. To support the evidence of the Claimant the witness Mayank Bijendra Istwal, who was working at Taj Fort Agwada, Goa was examined, he has stated that deceased was his friend who was having same qualification as his, and he was getting salary of Rs.38,000/- per month. Considering evidence of these witnesses, the Tribunal has considered the salary of deceased at Rs.15,000/- per month. I do not find any infirmity in it.

14. The learned Counsel for the Appellants pointed out that the Tribunal has awarded compensation under loss of love and affection of Rs.1,00,000/-, it is on higher side. In my view, each Claimants are entitled for Rs.40,000/- as consortium amount. There are two Claimants, they are entitled to receive total amount of Rs.80,000/- as consortium amount and Rs.15,000/- for funeral and Rs.15,000/- loss of estate, so total amount comes to Rs.1,10,000/-.

15. The Tribunal has awarded of Rs.1,25,000/, if this amount deducts from Rs.1,10,000/- it comes to Rs.15,000/-, it is excessive amount. The Appellants are entitled for this amount.

16. In view of the above, I pass following order.

ORDER

- i. Both Appeals are partly allowed.
- ii. The Appellants are permitted to withdrawal Rs.15,000/- in both Appeals along with accrued interest thereon.

- iii. The Claimants are permitted to withdraw rest of the amount along with accrued interest thereon.
- iv. The statutory amount of Rs.25,000/- along with accrued interest be transmitted to the Tribunal. Parties are at liberty to withdraw it as per rule.
- v. All pending Civil Applications, if any, are disposed of.

(S. G. DIGE, J.)