

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

FIRST APPEAL NO. 101 OF 2021

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Reliance General Insurance Co. Ltd.)
Avhrahi Bldg 2nd Floor, Above)
Adidas Show Room, S. V. Road,)
Borivali (W), Mumbai - 400 092)Appellant
(Org. Opp. No.2)

Versus

1. Mr Kishorbhai Bavbhai Parmar)
Age-59 years)

2. Mrs K K Parmar)
Age-Major, Both R/o - C/303 Chrisand)
Cross Bldg, Near Azad Nagar Bus Stop)
Mira - Bhayader Road, Mira Road {E},)
Dist- Thane)....Respondents
(Org. Applicants)

Ms. Kalpana R. Trivedi for the Appellant.
Mr. Jitendra Gor for the Respondent

CORAM : S. G. DIGE, J.

DATE : 9th MARCH 2023.

JUDGMENT :

1. The issue involved in this appeal is negligence of the

deceased and income of deceased.

2. It is contention of learned counsel for the Appellant that accident was occurred due to head on collision between two motorcycles. Deceased was riding on one motorcycle at that time the rider of offending motorcycle gave dash to his motorcycle. The said accident was occurred due to sole negligence of deceased but tribunal has not considered this fact and held that it had happened due to rider of offending motorcycle. At the most tribunal should have considered the contributory negligence of the deceased. Learned counsel further submits that the tribunal has considered monthly income of deceased at Rs. 14,800/- per month which is on higher side. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondents/claimants that the accident was occurred due to rash and negligent driving offending motorcycle, he gave dash to the motorcycle of deceased, FIR was lodged against the rider of offending motorcycle. Moreover, to prove the negligence of deceased the rider of offending motorcycle did not step into the witness box. Learned

counsel further submits that deceased was working in a company, he was getting salary of Rs. 25,000/- per month, but tribunal has considered his salary at Rs. 14,800/- per month.

4. I have heard both learned counsel, perused judgment and order passed by the Motor Accident Claims Tribunal (for short 'the Tribunal'). The accident was occurred on 16 March, 2015 when deceased along with his brother-in-law was returning to home on Pulsar motorcycle and after filling petrol in motorcycle, when they were crossing the S. K. Stone Signal, at that time one Unicorn motorcycle bearing No. MH-02-CU-1818 came from Bhayander side in a fast speed and in rash and negligent manner. The said Unicorn motorcycle dashed to the motorcycle of deceased on front side, due to said dash deceased and his brother-in-law both had sustained severe injuries, deceased died while taking treatment.

5. While dealing with the issue of negligence, the Tribunal has observed that, FIR Exhibit-'23' spot panchnama Exhibit-'25' and statement of witness Exhibit-'24' collectively show that the accident was occurred due to negligence of the driver of offending motorcycle.

I do not find any infirmity in it.

6. In my view, it has come on record that the driver of offending motorcycle gave dash to the motorcycle of deceased which shows that it was the negligent act of the driver of offending motorcycle. Moreover, to prove the negligence of deceased the driver of offending vehicle did not step into witness box. Hence, I do not find merit in the contention of learned counsel for appellant that there was no negligence of driver of offending motorcycle.

7. In respect of issue of monthly income of deceased. To prove the income of deceased the claimants have examined six witnesses and these witnesses have stated that deceased was getting salary more than Rs. 15,000/- per month by deducting professional tax of Rs. 200/-. The tribunal has considered the salary of Rs. 14,800/-, I do not find any infirmity in it.

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

ORDER

- i. Appeal is dismissed. No order as to cost.

- 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.

(S. G. DIGE, J.)