

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

FIRST APPEAL NO.1331 OF 2017

Reliance General Insurance Company Ltd. } Through Its Corporate Office, } 4th Floor, Chintamani Avenue, } Off Western Express Highway, } Goregaon-East, Mumbai. }	...Appellant
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Versus

1. Smt.Rajana Rajesh Gharat } } 2. Master. Summet Rajesh Gharat } (Deleted Since Died) } } 3. Kum. Asmita Rajesh Gharat } } 4. Shri.Chandrakant Narauan Gharat } } 5. Mrs.Parvati Chandrakant Gharat } Applicant Nos.2 and 3 are minors through } their mother & Natural Friend, Applicant } No.1. } } All R/at Palshin, Post-Khardi, Taluka- } Shahapur, District-Thane. }	
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6. Mr.Pravin Dhannjay Walke } Ruby Terrace, Opp. Parel Workshop, } Dr.B.A. Road, Parel, Mumbai-400 012 }	...Respondents
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Mr.Rahul Mehta i/b KMC Legal Venture, for the Appellant.
 Mr.Deepak S. Kilaje, for Respondent Nos.1 to 5.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 13 APRIL 2023

JUDGMENT :-

. The issues involved in this Appeal are that the accident had occurred due to negligence of the deceased and compensation awarded on higher side, under other heads.

2. It is contention of the learned counsel for the Appellant that the accident occurred when deceased was trying to cross road on highway and trying to take turn towards his village. There was no negligence of the driver of the Tavera Jeep. But the Tribunal has not considered this fact and held that accident was occurred due to the negligence of the driver of Tavera Jeep.

3. The learned counsel further submits that the FIR in respect of the said accident was registered against the deceased.

4. The learned counsel further submits that the Tribunal has awarded Rs.1 Lakh towards loss of consortium, Rs.1 lakh towards love and affection and Rs.25,000/- for loss of estate and Rs.25,000/- towards funeral expenses, which are excessive. Hence, requested to allow the Appeal.

5. It is contention of the learned counsel for the

Respondent-Claimants that to prove the negligence of the driver of Taveera Jeep, the Claimants have examined pillion rider of the motor cycle. He has stated that the accident occurred due to negligence of driver of Tavera Jeep. The other eye witness was also examined to prove the negligence of driver of Tavera Jeep. He has also stated that accident occurred due to dash by the Tavera Jeep. The Tribunal has considered all aspects while awarding compensation. Hence, no interference is required in it.

6. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short 'the Tribunal').

7. While dealing with the issue of the negligence the Tribunal has observed that the pillion rider on the motorcycle of the deceased and eye witness have categorically deposed about the negligence of the driver of the Tavera Jeep. Their testimony is not shaken in cross-examination. On that ground the Tribunal has held that the accident occurred due to negligence of the driver of Tavera Jeep. I do not find any infirmity in it.

8. It is contention of the learned counsel for the Appellant that the FIR was lodged against the deceased. It appears from the letter at Exhibit-33 that the fine of Rs.5,000/- was imposed on Investing Officer of this case by his superiors for

filing case against deceased ignoring the statements of eye witnesses. It shows that the offense was registered against deceased without proper investigation.

9. It is the case of the Claimants that on 7 April 2007 at 6.45 p.m. deceased Mr.Rajesh Gharat along with his friend Mr.Tejpalsingh Rajput were returning on his motorcycle. At the relevant time there motorcycle was in moderate speed. When they were proceeding towards Lahe Village at Mumbai Agra Road, at that time one Tavera Jeep No.MH-04-CD-7280 came from Nashik side in very high and excessive speed and in a rash and negligent manner and gave a dash to the motorcycle. Due to the heavy impact the deceased and the pillion rider were thrown away and sustained serious injuries. The driver of the offending Tavera Jeep ran away from the spot without giving any help to the victims. The deceased died while taking treatment. To prove the negligence, the Claimants have examined PW-2 Tejpsalsingh Rajput who was pillion rider on the motorcycle of the deceased. He has stated that the deceased was driving the motorcycle in moderate speed with due care and caution. Around 7.20 p.m. when they reached Lahe Phata, after carefully seeing that there is no traffic, the deceased started taking right turn and he himself gave a signal by the left hand to go to Lahe Village. However at that time one Tavera Jeep No.MH-04-CD-7280 came suddenly in high speed from Nashik side and rashly gave a heavy dash to

their motorcycle and caused the accident. In the said accident both of them were seriously injured. According to this witness the accident took place due to the sole negligence of driver of the offending jeep. In cross-examination this witness stated that the offending jeep gave dash to the backside of the motorcycle. He does not remember whether he gave signal while taking turn. This witness denied the suggestion that accident occurred due to the fault of the deceased.

10. To prove the negligence the Claimants examined another witness Mr.Ganesh Pandurang Patekar (P.W.-4) at Exhibit-30. This witness has stated that on the date of incident he was present with one Kishor Khambalkar on the Lahe Phata as he had gone there for tea. When they were returning after taking tea around 7.15 p.m. the deceased Rajesh Gharat along with his friend were proceeding on motorcycle towards Lahe Village. The deceased had crossed the Highway and was taking a turn towards Lahe Village carefully. At that time the Tavera Jeep came in high speed from Nashik side without giving head lights and gave a dash to the motorcycle of the deceased. The motorcycle was dragged by the Tavera to a long distance. The accident occurred due to the sole negligence of the driver of Tavera Jeep. Nothing elicited in cross-examination of this witness.

11. From the evidence of these two eye witnesses, it

appears that the accident occurred due to sole negligence of driver of Tavera Jeep. Moreover, P.W.-4 has stated that the Tavera Jeep had no headlights. To prove the negligence of deceased the driver of Tavera Jeep did not enter into witness box. Nor any witness is examined by the Appellant. The Appellants main contention is that as offence was registered against the deceased, it was the negligence of deceased.

12. In my view, the pillion rider who was with deceased on his motorcycle has stated that accident occurred due to the sole negligence of the driver of Tavera as well as eye witnesses has corroborated his evidence. Through initially offence was registered against the deceased, it has come on record that the Investigating Officer, has been penalized for registering offence against deceased ignoring the statements of eye witnesses, it shows that the offence was registered without considering the actual facts. As observed earlier to prove the negligence of the deceased Appellant had not examined any witness nor driver of Tavera Jeep. I do not see merit in the contention of the learned counsel for the Appellant that accident occurred due to sole negligence of the deceased. In respect of awarding compensation of higher side the Tribunal has awarded total amount of Rs.2,50,000/- under other heads. There are five Claimants. As per view of Hon'ble Apex Court in the case of *Magma General*

*Insurance Co. Ltd. V/s. Nanu Ram*¹, each Claimant is entitled for Rs.40,000/- with 10% increase as consortium amount and Rs.16,500/- for funeral expenses and Rs.16,500/- for loss of estate, if these amounts calculates the total amount more than comes to Rs.2,50,000/-. Hence, I do not find any infirmity in it.

13. In view of above I pass following order.

ORDER

- (i) The Appeal is dismissed. No order as to cost.
- (ii) The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.
- (iii) The statutory amount be transmitted to the Tribunal. Parties are at liberty to withdraw it as per rule.
- (iv) All pending Civil Applications, if any, are disposed of.

(SHIVKUMAR DIGE, J.)

¹ 2018 ACJ 2782 (SC)