

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 423 OF 2023

[illegible]

7	Ramesh s/o. Vinayak Bapat, Age: 40 years, Occu: Business R/o. 391, Shivaji Nagar Tulip Housing Society, Bhandarkar Road, Pune-411 004	))))))	Respondents
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Mr. P. A. Narayanan, Advocate for the Appellant.

Mr. R. S. Alange, Advocate for the Respondent Nos. 1 to 6.

CORAM : SHIVKUMAR DIGE, J.

DATE : 9th JANUARY, 2024.

Oral Judgment :

1. Heard learned counsel for the appellant – Insurance Company and learned counsel for respondent Nos.1 to 6/claimants.
2. Learned counsel for respondent Nos.1 to 6 tendered evidence of Vyankatesh Vidap, which is taken on record.
3. The issues involved in this appeal are income of the deceased is considered on higher side and the accident occurred due to sole negligence of the deceased.
4. It is the contention of learned counsel for the appellant that the Tribunal has considered monthly income of the deceased at Rs.17,000/- without any evidence on record, which is not proper. Learned counsel further submitted that the accident occurred due to sole negligence of the deceased but this fact is not considered by the Tribunal and has considered that the accident occurred due to driver of the offending car.

Hence, requested to allow the appeal.

5. It is contention of learned counsel for respondent Nos.1 to 6/claimants that to prove the income of the deceased, employer of the factory where the deceased was working was examined and he has stated that deceased was getting a salary of Rs.17,000/- per month. Learned counsel further submitted that an offence was registered against the driver of the offending car. No witness was examined by the appellant-Insurance Company to prove the negligence of the deceased. The order passed by the Tribunal is legal and valid and no interference is required in it.

6. I have heard both learned counsel, perused the judgment and order passed by Motor Accident Claims Tribunal, Solapur (for short "the Tribunal").

7. It is claimant's case that on 10th February 2016 in the morning, the deceased was driving motorcycle No.MH 13 AG 6030 along with claimant No.3 – Neha from Kegaon to Solapur in a moderate speed by the left side of the road and by observing all the traffic rules and regulations. At about 10.45 am, when the deceased came near Kegaon bridge, a car bearing No.MH 12 JZ 5779 came from opposite direction in high speed as well as rashly and negligently and dashed against the motorcycle of the deceased. The deceased sustained injuries due to the said dash and died while taking treatment. An offence was registered against the driver of the offending car. Considering the evidence on record, police papers,

FIR and spot-panchanama, the Tribunal has considered that the accident occurred due to sole negligence of the driver of the offending car. I do not find infirmity in it.

8. The appellant-Insurance Company has not examined the driver of the offending car to prove the negligence of the deceased. Without any evidence on record, this Court cannot consider that the accident occurred due to the negligence of the deceased as the driver of the offending car was the best witness to prove the negligence of the deceased but he was not examined. Hence, I do not find merit in contention that accident occurred due to negligence of the deceased.

9. It is claimants' case that deceased was working as manager in textile factory and he was getting salary of Rs.17,000/- per month. To prove the income of the deceased, the claimants have examined AW-2 Vyankatesh Vidap, the employer of textile factory. He has stated that deceased was working in their firm as Manager since 2010 and he was getting salary of Rs.17,000/- per month. The salary vouchers are produced on record, which are at Exhibit-31 (colly), Nothing elicited in the cross-examination of this witness to disbelieve his evidence. Considering the evidence on record, the Tribunal has considered the salary of deceased at Rs.17,000/- per month. I do not find infirmity in it.

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

ORDER

1. The appeal is dismissed. No order as to cost.

2. The Respondent Nos.1 to 6/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.
11. Pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)