

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

FIRST APPEAL (ST) NO. 12487 OF 2023

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Reliance General Insurance Company)
Ltd. 4th Floor, Chintamani Avenue)
Next To Virwani Industrial Estate)
Opp. Western Express Highway)
Goregoan East Mumbai-400063)Appellant

Versus

1. Sugandha Waman Belanekar)
Aged: about 55 Years.)
Mother of the Deceased)
2. Waman Bandu Belanekar)
Aged: about 62 Years.)
Father of the Deceased)
Residing at Kulkarni Chawl)
Near Bhuta High School, Shivaji)
Nagar Vile Parle)
Mumbai- 400057)Org. Applicants
3. Sunandha Tukharam Kadam)
46, Navnath Co-op Housing society)
Plot No.187, RSC-23)
Charkop, Kandivali (W))
Mumbai-400087)Respondents

(Res. Nos.1 & 2 are Org.
Applicants & Res.2 is Orig.
Opponent Party)

WITH
FIRST APPEAL NO. 188 OF 2024

Reliance General Insurance Company)
Ltd. 4th Floor, Chintamani Avenue)
Next To Virwani Industrial Estate)
Opp. Western Express Highway)
Goregoan East Mumbai-400063)Appellant

Versus

1. Damodhar Gangaram Manve)
Age: about 62 Years)
Father of the Deceased)
2. Vasanti Damodar Manve)
Aged: about 59 Years)
Mother of the Deceased)
Residing at, 13, Siddhi Vinayak Seva)
Sangh Shivaji Nagar, Shahaji Raje)
Marg Vile Parle, Mumbai-400057) ...Org. Applicants
3. Sunanda Tukaram Kadam)
46, Navnath Co-op. Hsg. Society)
Plot No.187, RSC-23)

Charkop, Kandivali (W))
 Mumbai-400087)Respondents
 (Res. Nos.1 & 2
 are Org. Applicants & Res.)

WITH
FIRST APPEAL NO. 189 OF 2024

Reliance General Insurance Company)
 Ltd. 4th Floor, Chintamani Avenue)
 Next To Virwani Industrial Estate)
 Opp. Western Express Highway)
 Goregoan East Mumbai-400063)Appellant

Versus

1. Vishwanath Balaji Sawant)
 Aged: about 57 Years.)
 Father of the Deceased)
2. Vaishali Vishwanath Sawant)
 Aged: about 51 Years.)
 Mother of the Deceased)
3. Nitin Vishwanathi Sawant)
 Aged: about 28 years.)

All Residing at, Room No.7, Bhalekar)
 Wadi, naresh Kunj Chawl, Shivaji)
 Nagar, Shahaji Raje Marg, Vile)
 Parle, Mumbai-400057)Org. Applicants

4. Sunanda Tukaram Kadam)
 46, Navnath Co-op. Hsg. Society.)
 Plot No.187, RSC-23)
 Charkop, Kandivali (W))
 Mumbai-400087)Respondents
 (Res. Nos.1 & 3 are Org.
 Applicants & Res. No.4 is
 Org. Opp. Party)

WITH

FIRST APPEAL NO. 102 OF 2024

Reliance General Insurance Company)
 Ltd. 4th Floor, Chintamani Avenue)
 Next To Virwani Industrial Estate)
 Opp. Western Express Highway)
 Goregoan East Mumbai-400063)Appellant

Versus

1. Bandu Haribhau Todkar)
 Aged: about 57 Years.)
 Father of the Deceased)
 2. Anu @ Anusaya Bandu Todkar)
 Aged: about 50 Years.)
 Mother of the Deceased)
 Residing at, Zulekabei Nazir Mohd.)
 Chawl, Shivaji Nagar, Shahaji Raje)
 Marg, Vile Parle, Mumbai-400057)Org. Applicants

3. Sunanda Tukaram Kadam)
 46, Navnath Co-op. Hsg. Society)
 Plot No. 187, RSC-23)
 Charkop, Kandivali (W))
 Mumbai-400087)Respondents
 (Res. Nos.1 & 3 are Org.
 Applicants & Res. No.3 is
 Org. Opp. Party)

Ms. Shalini Shankar, Advocate for the Appellant in all matters.
 Mr. Abhishek Ingale a/w Ms. Priyanka Babar and Mr. Tejpal Ingale,
 Advocate for the Respondent No.1 in all matters.

CORAM : SHIVKUMAR DIGE, J.

DATE : 16th APRIL, 2024.

Oral Judgment. :

1. These appeals are preferred by the Appellant/Insurance Company against the judgment and order passed by the Motor Accident Claims Tribunal, Mumbai (for short “the Tribunal”). The issues involved in all these appeal’s are same. These appeal’s are against same judgment and order hence, I am deciding it with this common judgment.

2. It is contention of learned counsel for the Appellant/Insurance Company that passengers travelling in the offending jeep were more than capacity. The driver of the offending jeep was driving it in rash and negligent manner, it was in high and excessive speed. The driver of jeep lost the control over it and gave dash to the road side tree, there was negligence of the driver in the said accident but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered income of the all deceased on higher side. No evidence was produced on record to prove the income of the deceased. Hence, requested to allow the Appeals.

3. It is contention of learned counsel for the Respondents/Claimants that the Insurance Policy of the offending jeep shows that the sitting capacity of jeep was 1 + 7 persons. Learned counsel further submitted that the deceased were occupants in the said jeep, so no question of their contributory negligence arises. Learned counsel further submitted that the Claimants have produced evidence in support of the income of all the deceased. The Tribunal has considered all the aspects while passing the judgment

and order and no interference is required in it.

4. I have heard both learned counsel. Perused judgment and order passed by the tribunal.

5. It is Claimants' case that on 8th February, 2017, the all deceased were proceeding in Mahindra Xylo XUV car bearing registration No. MH-06-AS-6291 towards Goa. On the way, at around 7:30 a.m. when Xylo Car reached in vicinity of Khaungaon (Pali) on Mumbai – Goa Highway, Dist. Ratnagiri, the driver of Xylo Car lost control on the car and collided with the tree standing on the right side of the road and all occupants of the Xylo Car sustained fatal injuries. Mr. Prashant Gurav was driving the said Xylo car. The offence was registered against the driver of the Xylo Car.

6. It is contention of learned counsel for the Appellant that passengers travelling in the offending Xylo Car were more than capacity. The Insurance Policy produced on record shows that the capacity of Xylo Car was 1 + 7 passengers. It has come on record that 7 to 8 persons were travelling in the said car. It shows that the car was having passengers as per capacity. Moreover, to prove the

fact that car was over loaded, no evidence was produced on record by the Appellant/Insurance Company hence, I do not see merit in it. Moreover, the deceased were occupants in the car, so no question of their contributory negligence arises and, I do not find merit in the contention that there was contributory negligence of the deceased.

7. It is contention of learned counsel for appellant that income of the deceased in all appeals have been considered on higher side. To prove the income of the deceased in Appeal Stamp No.12487 of 2023, the Claimant No.1 Sugandha Belanekar has examined herself. She has stated that deceased was her son, who was 27 years old and he was working with Metro Lion Chemoleum India Private Limited Company. He was getting salary of Rs.12,000/- per month. In support of evidence of PW-1, the Claimants have examined PW-2 Rupesh Shah at Exhibit-25, Proprietor of Metro Lion Chemoleum India Private Limited Company. He has stated that deceased was working in his firm and he was paying him salary at Rs.12,000/- per month. The salary certificate is at Exhibit-26. In cross-examination, he has admitted that he has no documents to show that the deceased was working with him.

7.1 Considering evidence on record, the Tribunal has considered monthly income of the deceased at Rs.12,000/-. I do not find infirmity in it. In my view, at the time of accident, the deceased was 27 years old, he was maintaining his family. There is no reason to disbelieve the evidence of PW-2 Proprietor of Metro Lion Chemoleum India Private Limited Company. He has produced salary certificate of the deceased on record which shows that deceased was working with him hence, I do not see merit in the contention that income of the deceased is considered on higher side.

8. To prove the income of the deceased in Appeal No.188 of 2024. The Claimants have examined Damodar Manve. He has stated that at the time of accident, deceased was 32 years old and he was working with Smt. Ashwini Kunte, Member of the Chairman's Club as agent and, he was getting monthly salary of Rs.15,000/- per month. In support of evidence of PW-1, the Claimants have examined Ashwini Kunte at Exhibit-25. She has stated that she does the business in the name and style Smaart Investment. The deceased was working with her as an Office Assistant since 2005. She was paying him salary at Rs.15,000/- per month. The salary vouchers are at

Exhibit-26 and 27. In cross-examination, she has admitted that she used to pay salary to the employees in cash and deceased was working on temporary basis.

8.1. Considering evidence on record, the Tribunal has considered monthly income of the deceased at Rs.15,000/- per month. I do not find infirmity in it. In my view, at the time of accident deceased was 32 years old and he was maintaining his family. Though, PW-2 has stated that, she was paying salary in cash to the deceased, it cannot be a ground to consider that the deceased was not working with her. Though, the deceased was working on temporary basis, at the time of accident he was in service. Hence, I do not see merit in the contention that salary of the deceased is considered on higher side.

9. To prove the income of the deceased in Appeal No.189 of 2024. The Claimants have examined Vishwanath Sawant (PW-1), he has stated that at the time of accident deceased was 32 years old and he was working with Ms. Maersk Global Services Centre India Private Limited and he was getting salary at Rs.23,330/-. In support of evidence of PW-1, the Claimants have examined Bhavna Rojandar, at

Exhibit-25. She is a H.R. Lead in Maersk. She has stated that deceased was working in their company at job level 2. He was getting salary at Rs.21,641/-. She has produced Form No.16 on record, it is at Exhibit-29. Nothing elicited in the cross-examination of this witness.

9.1. While dealing with the issue of income of the deceased, the Tribunal has considered evidence on record. Tribunal has considered monthly income of the deceased on the basis of salary certificate produced on record. In my view, the salary slip produced on record of the deceased shows that his monthly gross salary was Rs.23,330/- and after deducting the allowances, the Tribunal has considered his monthly salary at Rs.21,641. I do not find infirmity in it.

10. To prove the income of the deceased in Appeal No.102 of 2021. The Claimants have examined (PW-1) Bandu Todkar, he has stated that at the time of accident, deceased was 23 years old and he was working as Make-up Artist with Mukesh S. Patil and he was getting salary at Rs.15,000/- per month. In support of evidence of PW-1, the Claimants have examined Maya M. Patil, she has stated that her husband Mukesh Patil is Cine Make-up Artist and she assist

her husband in his business. The salary certificate of the deceased produced on record is at Exhibit-26 and 27. The deceased was working with her husband from 2012 and he was getting salary of Rs.15,000/- per month. In cross-examination, she has admitted that she is not aware about the financial affairs of her husband and she personally not aware about the salary of the deceased.

10.1. While dealing with the issue of income of the deceased, after considering the evidence on record, the Tribunal has considered monthly income of the deceased at Rs.15,000/- per month. I do not find infirmity int it. In my view, the deceased was Make-up Artist, he was maintaining his family, income considered by the Tribunal is proper.

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

ORDER

- i. All appeals are dismissed.
- ii. The Claimants in all appeals are permitted to withdraw the deposited amount along with accrued interest thereon.
- iii. The Appellant/Insurance Company shall deposit the

deficit Court fees of Rs.25,000/- after depositing the fees Appeal be registered for statistical purpose.

iv. The statutory amount in all appeals be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

12. All pending application, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)