IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.884 OF 2022

	Cholamandalam MS General Insurance Company Limited, Kalyan Branch Office Old Suchak Niwas Building, above Axis Bank, Kalyan Murbad Road, Kalyan City, District : Thane -421301.	)))))	Appellant
	Versus		
1	Ratna Vishwas Baviskar Age 39 years, Occupation – Housewife.	))	
2	Vishal Vishwas Baviskar Age 21 years, Occupation – Student.	))	
3	Vivek Vishwas Baviskar Age 16 years of education student (being minor through natural guardian mother number 1).	)))	
4	Dadaji Vishnu Baviskar Age 67 years, Occupation – retired.	))	
5	Tarabai Dadaji Baviskar Age 57 years, Occupation – Housewife All 1 to 5 residing at 08, A Wing, Ganesh Complex CHS, Milind Nagar, Gauri Pada, behind Birla College, Kalyan (West), District – Thane 421301.	)))))	
6	Ratnakar Appaji Wagh Age Adult, Occupation – owner residing at/post Varhane Kavlane Taluka Malegaon, District – Nashik 423203 (Present owner of Tempo number MH-15 9/B 1581)	)))))	
7	Abdul Aziz Abdul Karim Age Adult, Occupation – owner residing at 26/1, Bhau Miya Takia, Mutton Market, Navapura Road, Malegaon, District – Nashik 423 203 (previous owner of tempo number MH-15 (/B 1581)	))))))	Respondents

Mr. Nitesh V. Bhutekar along with Mr. Aniket Nangare, Advocate for the Appellant.
Mr. Yogendra Pendse along with Mr. Priyanka Patkar, Advocate for the Respondents/Claimants.

CORAM : SHIVKUMAR DIGE, J.

DATE : 1st FEBRUARY, 2024.

<u>Oral Judgment. :</u>

1. The issues involved in this appeal are the income of the deceased is considered on higher side and the accident occurred due to contributory negligence of the deceased.

2. It is contention o of learned counsel for the appellant-Insurance Company that the Tribunal has considered monthly income of the deceased at Rs.32,122/- without any evidence on record and without deducting profession tax, income tax and other allowances. Learned counsel further submitted that the accident occurred due to contributory negligence of the deceased but it was not considered by the Tribunal. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the respondents/claimants that the deceased was police constable, his salary was Rs.32963/. After deducting income-tax, professional tax and other allowances, the Tribunal has considered it at Rs.32,122/- which is proper. Learned counsel further submitted that the accident occurred due to sole negligence of the driver of the offending tempo who gave dash to the auto-rikshaw, in which, the deceased was travelling. As the deceased was occupant of the auto-rikshaw, so the question of his contributory negligence does not arise. Hence, requested to dismiss the appeal.

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

5. It is the claimants' case that on 19th February 2015 at about 2.00 p.m., the deceased -Vishwas Baviskar and his mother were returning back from Motampool via Malegaon – Manmad Road in Apache rickshaw bearing No.MH-41/V-7180. When the said rickshaw was crossing through the vicinity of Kavlane Shivar, near Nandgaon Phata, at about 2.15 p.m., one tempo bearing No.MH-15/D-1581 came from the opposite side in high speed. The said tempo, which was driven rashly and negligently, dashed the Apache rickshaw and thereby caused fatal injury to Vishwas Baviskar.

6. It is contention of learned counsel for the appellant-Insurance Company that the accident occurred due to contributory negligence of the deceased. I do not find merit in it as the deceased was occupant in the rickshaw, so no question of his contributory negligence arises. The deceased was working in police department, he was in permanent employment. To prove his income, the claimants have examined claimant No.1, wife of the deceased. She has stated that her husband was working in police department and his salary was Rs.32,963/-. In support of evidence of PW-1, the claimants examined Sadanand Johare, Billing Clerk of Police Department, he has stated that the deceased was earning Rs.32,963/-. The salary slip is at Exhibit-49. Considering the

evidence on record and after deducting professional tax, income tax and other allowances, the Tribunal has considered monthly salary of deceased at Rs.32,122/-. I do not find infirmity in it.

7. Considering the above, the appeal is devoid of merit and I pass following order :

O R D E R

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

7. Pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)