

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

FIRST APPEAL NO. 74 OF 2024

Reliance General Insurance Co. Ltd.	}	
Avbrahi Bldg., 2 nd Floor, Above Adidas	}	(Org. Respondent
Showroom, S.V. Road, Borivali (W),	}	No.2)
Mumbai-400092	}	...Appellant

Versus

**NILAM
SANTOSH
KAMBLE**

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|--|---|--|
| 1. Mrs.Krishna Samadhan Londhe | } | |
| Age-30 years, Widow of deceased | } | |
| 2. Mr.Ramchandra Appa Londhe | } | |
| Age-73 years, Father of deceased | } | |
| 3. Smt.Maya Ramachandra Londhe | } | |
| Age-53 years, Mother of deceased | } | |
| 4. Siddharth Ramchandra Londe | } | |
| Age-28 years, Bother of deceased | } | |
| 5. Smt.Rakhi Ramchandra Londhe | } | |
| Age-30 years, Sister of deceased | } | |
| All R/o. A-303, Krisan Crown CHS Ltd., | } | |
| Near Azad Nagar Bus Stop, | } | |
| Mira Bhayander Road, Mira Road (E), | } | |
| District-Thane. | } | |
| 6. M/s.Kaushik Balu Karamble | } | |
| Room No.6, Sitabai Chawl, | } | |

Behind Gautam Chemical, I.b. Patel Road, }
Goregaon (E), Mumbai-400 063 }
(Owner of Vehicle No.MH-02-CU-1818 }**Respondents**

Mr.Akshay Kulkarni, for the Appellant.
Mr.Jitendra Gor, for Respondent Nos.1 to 5.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd APRIL 2024

ORAL JUDGMENT :-

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

2. It is contention of the learned counsel for the Appellant-Insurance Company that, the accident occurred due to negligence of the deceased, but this fact is not considered by the Tribunal. The motorcycle on which the deceased was travelling gave dash to offending motorcycle. The learned counsel further submitted that without any evidence on record the Tribunal has considered monthly income of deceased at Rs.10,000/-, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the

Respondent-Claimant that, the deceased was riding as pillion on motorcycle, hence, no question of his negligence arise. The learned counsel further submitted that the deceased was running business of Chinese food hotel and he was earning Rs.43,000/- per month. But the Tribunal has considered his monthly income at Rs.10,000/-, which is proper. Hence, requested to dismiss the Appeal.

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

5. It is Claimant's case that on 16th March 2015 at about 12.30 a.m., the deceased after closing his Chinese Hotel was proceeding towards his house by motorcycle. His brother-in-law Ravi Parmar was riding motorcycle and deceased was pillion rider, when they reached near S.K. Sand signal, one motorcycle bearing No.MH-02-CU-1818 came from opposite side in high speed and in a rash and negligent manner and gave forceful dash to the motorcycle of the deceased as a result, the deceased failed down and due to said dash the deceased sustained injuries and died

while taking treatment. The offence was registered against the rider of offending motorcycle. The deceased was pillion rider. So no question of his negligence is arises I do not see merit in the contention that accident occurred due to negligence or contributory negligence of the deceased. To prove the income of the deceased the Claimant have examined Claimant No.2 Ramchandra Londhe. He has stated that deceased was running Chinese food hotel in the name and style Evils Food Chinese Restaurant. He was earning Rs.43,000/- per month. In support of his evidence he placed on record the original mark memo of the deceased at Exhibit-44 colly.

6. While dealing with the income of the deceased the Tribunal has observed that deceased had completed his education in B.Tech Mechanical. The degree certificate is at Exhibit-45. Relying on the judgment of *Navjot Singh and Harpreet Singh and Ors*¹. The notional income of the student pursuing a degree course in Engineering was considered at Rs.10,000/- per month. On that basis the Tribunal has considered Rs.10,000/- as notional

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income of the deceased. I do not find infirmity in it.

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

ORDER

(i) The Appeal is dismissed.

(ii) The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.

(iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.

(iv) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)