

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

FIRST APPEAL NO. 49 OF 2019

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DHUDUM

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Reliance General Insurance Co. Ltd.)
 570 Naigaon, Cross Road,)
 Next to Royal Industrial Estate,)
 Wadala (W), Mumbai-400031)
 Policy/ Cert. No. 1110702349000145)
 Validity: 24/10/2010 to 23/10/2011)....Appellant
 (Org. Insurer)

Versus

1. Megha Amol Ingale)
 Hindu, Age About- 27 years,)
 widow of the Deceased)

2. Maithili Amol Ingale,)
 Hindu, Age about – 5 years,)
 Daughter of the Deceased)

3. Nivruti Gulabrao Ingale)
 Hindu, Age about 58 years,)
 father of the deceased)

4. Saroj Nivruti Ingale)
 Hindu, Age about the deceased)

All R/at Worli Police Camp)
Bldg/ No. B/1/1Room No. 19)
Shiv pochakakhwala Road,)
Worli Mumbai – 400030)...Org. Applicants

5. Fayaz Kadar Mogul)
C-3/35, Sector-17, Khanda Colony,)
New Pnvel, Tal. Panvel,)
Dist. Raigad 410210)...Org. Opp. Party
....Respondents

Ms. Shalini Shankar, Advocate for the Appellant.
Mr. Tejpal Shrikant Ingale a/w Ms. Priyanka Babar, Advocate for the
Respondent Nos. 1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 14th FEBRUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is contributory negligence of the deceased.

2. It is contention of learned counsel for the Appellant/Insurance Company that at the time of accident deceased was under influence of liquor, in his postmortem report it is

mentioned that liquor was found in blood sample of the deceased but, this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that no evidence was produced on record to prove that the deceased was under influence of liquor. Moreover, the offending trailer was stationed on road without parking lights. Accident occurred due to sole negligence of driver of offending vehicle. Hence, requested to dismiss the Appeal.

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

5. It is claimant’s case that on 24th September, 2011 at about 10:30 pm. the deceased was going to his home on motorcycle bearing registration No. MH-15-AW-7409 with his friend. The deceased dashed the motor trailer bearing registration No. MH-06-AC-7922 which was negligently parked at the centre of the road without

putting parking lights and tail lights on and without light reflector. To prove the negligence of driver of offending trailer, the claimants have examined PW-2 pillion rider on the motorcycle of the deceased. He has stated that, the offending trailer was parked in the middle of the road without any parking lights on. Accident occurred at 10:30 pm, there was dark and due to dark deceased could not notice the parked trailer and accident occurred due to negligence of the driver of offending trailer.

6. It is contention of learned counsel for the Appellant/Insurance Company that postmortem report shows that the deceased was under influence of liquor. Perused postmortem report, in this report cause of death is mentioned as “Hemorrhage and shock as a result of the blunt blood and viscera preserved and send to rule out presence of poison (Alcohol)”. In this report it is not mentioned that deceased was under influence of liquor or alcohol. Only blood sample was sent to rule out his cause of death. Moreover, no other evidence is produced on record to show that the deceased was under influence of liquor. Hence, I do not see merit in the contention that at the time of accident, the deceased was under influence of

liquor.

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

ORDER

- i. Appeal is dismissed.
 - ii. The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. The statutory amount be transmitted to the tribunal along with accrued interest thereon. Parties are at liberty to withdraw it, as per Rule.
8. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)