

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 536 OF 2019

Reliance General Insurance Company Limited
 Through it's Corporate Office
 4th Floor, Chintamani Avenue, Off Western Express
 Highway, Goregaon-East, Mumbai-400 063

... Appellant

Versus

- 1 Mr. Sachhidanand Goraknath Pathak
 Age : 65 years, Occ : Retired
 (Father of the deceased)
- 2 Mrs. Rajgrihi Sachhidanand Pathak
 Aged : 62 years, Occ : Housewife
 (Mother of the deceased)
 Both R/at:A-603, Kohinoor Plaza Nandadeep Nagar,
 Tisgaon, Kalyan (E)
- 3 Smt. Mamata Dilip Pathak
 Aged : 34 years, Occ. Housewife
 (Widow of the deceased)
 R/at Gram Devbari, Post – Mauna
 Bada Post, Bharat Bazar, Tahasil Barhas
 District Deoria, State of Uttar Pradesh
- 4 Kusum V. Karad
 Block No. 1061, Giriraj Niwas
 OT Section, Ulhasnagar, Thane
- 5 Mr. Amarjeet P. Sing
 B-14, Shree Om Shanti Complex
 Sector – 1, Airoli, Navi Mumbai – 400 601
- 6 The New India Assurance Co. Ltd.
 Old Bombay Agra Road, Next to Bigbajar,
 Balkum, Thane (W)
 Ins. Proposal No. 19159446
 Valid from 15/11/2010 to 14/11/2011

... Respondents

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Mr. Rahul Mehta i/b. KMC Legal Venture, Advocate for the Appellant.
 Mr. Rohan S. Darandale, Advocate for Respondent Nos. 1 and 2.

CORAM : SHIVKUMAR DIGE, J.
DATE : 10th APRIL, 2024

ORAL JUDGMENT :

1. The issues involved in this appeal are contributory negligence of deceased and at the time of accident driver of the car was not holding effective and valid driving licence.

2. It is contention of learned counsel for the appellant / Insurance Company that driver of the car in which deceased was travelling gave dash to the stationed truck from back side. There was contributory negligence of the driver of the car in which deceased was travelling but this fact is not considered by the Tribunal. Learned counsel further submitted that monthly income of deceased is considered on higher side. Learned counsel further submitted that the driver of offending truck was not holding effective and valid driving licence but these facts are not considered by the Tribunal, hence requested to allow the appeal

3. It is contention of learned counsel for the respondent Nos.1 and 2/claimants that the offending truck was going ahead of the car in which deceased was travelling. The accident occurred at 1.15 a.m. The driver of offending truck suddenly applied breaks without giving any signal/indicator. There were not brake light and tail lamps to the said motor truck and due to darkness, the driver of the motorcar could not see the truck was stopped in the middle of the road and he dashed it from the back side. The offence was registered against the driver of the offending

truck. Learned counsel further submitted that appellant has not examined person from R.T.O. officer to prove that the driver of offending truck was not holding effective and valid driving licence. Learned counsel further submitted that the claimant was working in foreign company as a fitter and he was receiving salary in US dollars. The Tribunal has not awarded future prospect. Learned counsel further submitted that the Tribunal has awarded consortium amount to only one claimant. There are three claimants hence, consortium amount be awarded to remaining claimants.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Kalyan (for short "**the Tribunal**"). It is claimant's case that on 06.08.2011 at about 10.30 p.m. the deceased along with his friends were travelling by a motor car. The deceased was sitting beside driver seat. They were proceeding from Kalyan to Shirdi on extreme left side of the road in a moderate speed. At the relevant time i.e. on 07.08.2011 at about 1.15 a.m. the motor truck bearing registration No.MH05-K-9677 was going ahead of their car. The driver of truck had suddenly applied immediate breaks. There was no break light and tail lamp to the said motor truck and due to dark the driver of motor car did not see the sudden stop of said motor truck therefore said motor car dashed on the back side of motor truck. Due to said dash occupant's motor car were seriously injured, and the

deceased died on the spot. The offence was registered against the driver of offending truck.

4.1. To prove the negligence of the driver of offending truck, the claimants have relied on police papers. While dealing with the issue of negligence, the Tribunal has observed that offence was registered against the truck driver. The chargesheet has been filed against the truck driver. The spot panchanama produced on record shows negligence of the truck driver. The Tribunal has observed that offending truck was not having tail lamps or broke light hence Tribunal has held that truck driver is responsible for the said accident. I do not find infirmity in it. In my view, accident is occurred at 1:15 am. The truck was going ahead of the car in which deceased was travelling. The truck suddenly stopped on the road due to dark the driver of car could not see it and gave dash from backside. There was no break light and tail lamps to the said offending truck. Moreover, police has registered offence against the driver of offending truck, after making enquiry the driver of offending truck did not step into the witness box to prove the negligence of the driver of the car hence I do not see merit in the contention of learned counsel for the appellant/Insurance Company that accident occurred due to negligence of the car. No question of contributory negligence of the deceased arises as deceased was sitting beside the driver. It is claimants' case that deceased

was working as a fitter at Medaterian Ship Management (Hong Kong) Ltd., Andheri, Mumbai and he was getting salary of US dollars 1236 per month. To prove the income the claimant has examined father of the deceased and to support his evidence the claimants have examined P.W.2- Mr. Avinash Sawarkar at Exhibit-54. He has stated that deceased was doing job as fitter in their company and appointment letter and salary certificate are at Exhibit-56 & 57. He further stated that salary of the deceased was US Dollars 1236 per month. Nothing elicited in his cross examination. Considering evidence on record the Tribunal has considered monthly salary of the deceased at Rs.55,620/-. I do not find infirmity in it. Moreover, the Tribunal has not awarded 50% for future prospects for which the claimants are entitled. Hence, salary income considered by the Tribunal is proper. To prove the defence that driver of offending truck was not holding an effective and valid driving licence at the time of accident, the appellant/Insurance Company has not examined any witness hence I do not see merit in it. The Tribunal has awarded consortium amount to only one claimant. There are other two claimants, hence, they are entitled for it.

4.2. As per view of Hon'ble Apex Court in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)*, each claimant is entitled for Rs.48,000/- as consortium amount, Rs.18,000/-

for funeral expenses and Rs.18,000/- for loss of estate. There are three claimants. The total comes to Rs.1,80,000/-. The Tribunal has awarded Rs.70,000/- under conventional head, if this amount deducts from the amount considered by this Court it comes to Rs.1,10,000/-. The claimants are entitled for this amount.

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

ORDER

- i. The appeal is dismissed.
- ii. The claimants are entitled for enhanced amount of Rs.1,10,000/- @ 7.5% interest from 1st November, 2017 till realisation of the amount.
- iii. The appellant shall deposit enhanced amount with interest within six weeks after receipt of the order.
- iv. The claimants are permitted to withdraw the deposited amount as per apportionment fixed by the Tribunal.
- v. The claimant shall pay deficit Court fees on the enhanced amount as per rule.
- vi. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

6. The appeal is disposed of. All pending applications, if any also disposed of.

(SHIVKUMAR DIGE, J.)