

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1609 OF 2024

United India Insurance Co. Ltd.)
 R/o. Bharati Bhavan, 6th Floor, L.B.Shastri Road,)
 Pune.)
 Through T.P.Hub Mumbai 2, Union Co-op Ins.)
 Building, 23rd Floor No.5, Sir P.M.Road, Fort,)
 Mumbai - 400001)... Appellant

Versus

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| 1 | John Shovon Gomes |) |
| | Age : 54 years, Occ : Business |) |
| | R/o. 5/18, Abdul Halim lane Park Street, |) |
| | Kolkata Circus Avenue, |) |
| | West Bengal – 700016 |) |
| 2 | M/s. Jay Shriram Tours & Travels |) |
| | Prop. Sushant Kulkarni |) |
| | Age : 45 Yrs., Occ : Vehicle Owner |) |
| | R/o. Vetali Galli, Tuljapur, |) |
| | Tal : Tuljapur, Dist. Osmanabad – 413601 |)... Respondents |

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Mr. Amol A. Gatne, Advocate for the Appellant.
 Mr. Yogesh Pande, Advocate for Respondent No.1.

CORAM : SHIVKUMAR DIGE, J.
DATED : 17th DECEMBER, 2024.

ORAL JUDGMENT :

1. The issue involved in this appeal is accident occurred due to contributory negligence of the rider of motorcycle on which the deceased was pillion rider and income of the deceased is considered on higher side.
2. It is contention of learned counsel for the appellant/Insurance Company that deceased was riding pillion on motorcycle in BRTS Lane which was prohibited for other vehicles except PMT buses. The accident

occurred due to sole negligence of the rider of motorcycle. The Tribunal should have considered contributory negligence of the rider of the motorcycle but this fact is not considered by the Tribunal. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.12,000/- p.m. without any evidence on record and on that basis compensation is awarded which is erroneous, hence requested to allow the appeal.

3. It is contention of learned counsel for the claimant/respondent No.1 that motorcycle of the deceased was dashed by the offending car coming from wrong side. The offence was registered against the driver of the offending car. No evidence was produced on record to show the negligence of the rider of motorcycle. Learned counsel further submitted that deceased had completed diploma in Computer Management and he was taking further education in Symbiosis College, Pune and he was third year B.Com. student and notional income considered by the Tribunal is Rs.12,000/- is proper and requested to dismiss the appeal.

4. I have heard both the learned counsel. Perused the Judgment and Order passed by the Motor Accident Claims Tribunal, Pune (for short "the Tribunal"). To prove the negligence of driver of offending car, the claimant has relied on police papers. It is claimant's case that when deceased was going on motorcycle with his friend, their motorcycle was

dashed by the offending car by coming opposite direction. The friend of deceased was riding motorcycle. Due to dash deceased and his friend died. The offence was registered against the driver of offending car. To prove the negligence of rider of motorcycle, the appellant/Insurance Company has not produced any evidence on record. It is settled principle of law if any plea is taken by any party it has to be proved by any substantive evidence. As per the view of Hon'ble Apex Court in the case of ***National Insurance Company Limited Vs. Chamundeswari & Ors. C.A. @ SLP(c) No.4705 of 2019***, the Appellant/Insurance company failed to prove the negligence of the rider of the motorcycle, hence I do not find merit in the contention of the learned counsel for the appellant that accident occurred due to negligence of motorcycle rider. Moreover, the deceased was pillion rider so no question of his contributory negligence arises.

4.1. To prove the income of the deceased the claimant has examined PW-1 Mr. John Gomes, the father of the deceased. He has stated that the deceased was studying in third year B. Com in Symbiosis College, Pune. He was pursuing Chartered Accountancy. Deceased was very clever and extraordinary student. Deceased had very bright future. Deceased had work permit of Canada. Deceased had achieved F2 Management Accounting held at Times and Trends Academy, Computer Based Examination on 09.05.2017. Deceased had also achieved F4 (GLO)

Corporate and Business Law in Computer Base Examination held by Times and Trends Academy on 14.12.2017. He had also achieved F1-Accountant in business held by pwc's Academy Dubai on 07.11.2016. Deceased had also achieved F3-Financial Accounting held at pwc's Academy Dubai on 20.12.2016. He possessed passport and deceased was the only son of the claimant. Noting elicited in cross examination of this witness.

4.2. While dealing with the issue of income of the deceased, considering the educational qualification, the Tribunal has considered monthly income of the deceased at Rs.12,000/-, I do not find infirmity in it. In my view, deceased had completed various courses. He was pursuing further education, hence the income considered by the Tribunal is proper. In view of above, I pass following order.

ORDER

- (i) The Appeal is dismissed.
- (ii) The claimant is permitted to withdraw the deposited amount along with accrued interest thereon.
- (iii) The statutory amount along with interest accrued thereon be transmitted to the Tribunal. The parties are at liberty to withdraw it as per Rule.
- (iv) Pending applications, if any, stand disposed off.

(SHIVKUMAR DIGE, J.)