

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO. 1708 OF 2024

Reliance General Insurance Co. Ltd.]
 A/p 4th Floor, Chintamani Avenue,]
 Next to Virvani Industrial Estate,]
 Western Express Highway, Goregaon (E),]
 Mumbai 400063.]

.... **Appellant**
 (Org. Respondent
 No.2)

Versus

1. Indumati Subhash Navale,]
 Age: 54 years, Occ: Household,]

2. Subhash Krushna Navale,]
 Age: 62 years, Occ: Nil,]

Both R/o. Vitthalnagar, Tal. Atpadi,]
 District: Sangli.]

3. Roshan Diliprao Kantode,]
 Age: 33 years, occ: Owner + Driver,]
 R/o. Mangli, Tal. Umred,]
 District: Nagpur-24.]

.... **Respondents**
 (Nos.1 & 2 are
 Orig. Claimants
 and No.3 is Orig.
 Respondent No.1)

Mr. Akshay Kulkarni, for the Appellant.
 Mr. Sarthak S. Diwan a/w Ms. Snehal Jadhav, for Respondent Nos.1
 and 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 6th DECEMBER, 2024.

ORAL JUDGMENT. :

1. 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 learned counsel for the Appellant/Insurance Company that the deceased was riding motorcycle and he gave dash to the Maruti Car due to said dash the deceased sustained injuries and succumbed to injuries but this fact is not considered by the Tribunal.

2.1. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.20,827/- without any evidence on record, which is on higher side, and on that basis the compensation is awarded, which is erroneous.

2.2. Learned counsel further submitted that the driver of offending vehicle was not holding effective and valid driving licence but this fact is not considered by the Tribunal and passed the impugned judgment and order. Hence, requested to allow the appeal.

3. It is contention of learned counsel for the

Respondents/Claimants that the deceased was riding motorcycle and offending car gave dash to the motorcycle of the deceased from backside. Due to which, the deceased sustained injuries and succumbed to injuries. The offence was registered against the driver of offending car. No evidence is produced on record to show that accident occurred due to sole negligence of the deceased.

3.1. Learned counsel further submitted that the deceased was working as Team Head Leader in PhonePe Company Ltd, under Future Z Staffing Solutions Private Limited as contract labour, and he was getting monthly salary of Rs.30,857/- but the Tribunal has considered monthly income of the deceased at Rs.20,827/-, and on that basis the compensation is awarded. The Tribunal has passed well reasoned order, and no interference is required in it, and requested to dismiss the appeal.

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

5. To prove the income of the deceased, CW-1/Indumati has stated that the deceased was working in her company and he was getting monthly salary of Rs.30,857/-, CW-2/Ajit Ranjane employer

of Future Z Staffing Solutions Private Limited, has stated that deceased was working as Team Head Leader in their company as a contract labour. The appointment letter of the deceased is at Exhibit-26 and contract extension letter is at Exhibit-27 and salary certificate of the deceased is at Exhibit-28. The salary certificate shows that the deceased was getting actual monthly salary of Rs.20,827/- and on that basis, the Tribunal has considered monthly income of the deceased at Rs.20,827/-. I do not find infirmity in it. In my view, it has come on record that the deceased was getting salary of Rs.20,827/- on that basis, the Tribunal has considered monthly salary of the deceased which is proper.

6. While dealing with the issue of negligence, the Tribunal has observed that the offence was registered against the driver of Maruti Car. The police papers produced on record shows that the accident occurred due to sole negligence of the driver of Maruti Car. I do not find infirmity in it.

6.1. In my view, the motorcycle of the deceased was dashed by the driver of offending car from backside. Moreover, to prove the negligence of the deceased, the driver of offending car did not step into witness box. It is settled principle of law that if any defense is

taken, it has to be proved by cogent evidence. The Appellant has not examined any witness to prove the negligence of deceased. Hence, I do not find any merit in the contention that the accident occurred due to sole negligence of the deceased.

6.2. Though, learned counsel for the Appellant has taken defense that at the time of accident, the driver of offending car was not holding effective and valid driving licence but no evidence is produced on record in that regard. Hence, I do not find merit in it.

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

ORDER

- i. Appeal is dismissed.
 - ii. The Respondents/Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
 - iii. The statutory amount be transmitted to the Tribunal.
The parties are at liberty to withdraw it, as per Rule.
 - iv. Record and Proceedings be sent back to the Tribunal.
8. All pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)