



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO.2137 OF 2024

Reliance General Insurance Co.Ltd.
570, Naigum Cross Road, Next to
Royal Industrial Estate, Wadala (W),
Mumbai -- 400031.
(Insurer of Milk Tanker No. MH-11-AL-1058,
Policy / Certificate No. 1701722334004395
M.A.C.T. M.A.C.P.
No.Valid from 20.01.2013 to 19.01.2014)
Through its Legal Officer,
R/o: c/o Reliance General
Insurance Company Ltd. ... Appellant
... Ori Respondent No.2

VERSUS

- 1] Smt. Manisha alias Rani Vikas Bandrao
Age : 30 yrs., Occu. : Household, Ori Claimant No. 1
Bhimrao Laxman Bandrao,
Age- 70, yrs, Occ. — Nil.
... Ori Claimant No.
- 2 Sou. Dropati Bhimrao Bandrao,
Age : 66 yrs., Occu. :Household
All R/o. Fakrabad, Tal Jamkhed,
Dist. Ahmednagar. ... Ori Claimant No. 3
- 4] Ramdas Vishwanath Mane,
Age : 55 yrs., Occu. :Business,
R/o. Dhawalewadi Post- Nimbhore,
Tal. Phaltan, Dist. Satara.
(Owner of Milk Tanker No. MH-11-AL-1058)
... Ori Respondent No.1
RESPONDENTS

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Mr. S.S. Patil h/f R.H. Dahat Advocate for appellant.
Mr.A.C. Darandale, advocate for respondent 1 to 3.

...

WITH

CIVIL APPLICATION NO. 1372 OF 2025 IN FA/2137/2024

Smt Manisha Alias Rani Vikas Bandrao And Ors

VERSUS

Ramdas Vishwanath Mane And Anr

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Advocate for Applicant : Mr. A.C. Abhijit

Advocate for Respondent 2 : Mr. S.S. Patil h/f R.H. Dahat

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CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 07, 2025

FINAL ORDER :-

1. Heard learned advocates appearing for the respective parties.

2. The appellant/original respondent no.2-insurer filed present appeal assailing the judgment and award dated 28.8.2023 passed by the MACT, Shrigonda, in MACP no.10 of 2019.

3. Respondents/claimants instituted the claim seeking compensation under section 166 of the Motor Vehicles Act towards accidental death of Vikas Bhimrao Bandrao contending that on 13.11.2013, while Vikas was proceeding on his motorcycle insured Milk Tanker gave dash to the motorcycle. In result, Vikas suffered fatal injuries. The incident was reported to the police. Consequently, offence was registered against the Tanker driver.

4. The insurer contested claim mainly on the ground that deceased contributed in cause of accident; so also objection was raised as to his income as pleaded in the claim petition. Claimants no.1 Manisha recorded her evidence. She has further relied upon evidence of Pritam Ghatge to prove income of the deceased. The Tribunal, after assessment of the evidence concluded that deceased was annually earning salary @ Rs.1,30,000/- so also recorded findings of sole negligence on the part of the tanker driver and finally passed an award for Rs.22,70,000/- alongwith interest @ 9% p.a. in favour of the claimants.

5. Mr Patil learned counsel appearing for the appellant/ insurer submits that it is a case of contributory negligence between deceased/motorcycle rider and driver of the tanker. The Tribunal erroneously recorded finding of sole negligence on the part of the tanker driver. He would further submit that there is no acceptable evidence as to income of the deceased. Form no-16 produced by CW 2 is not sufficient to assess income of the deceased. He would further submit that Tribunal awarded excessive interest @ 9% p.a. Therefore, award passed by the Tribunal needs to be modified.

6. Mr. Darandale, learned counsel appearing for the claimants supports the impugned judgment and award contending that Tribunal has recorded elaborate findings on each aspect. All such findings are based on the evidence. Therefore, no interference is called for.

7. Having considered the submissions advanced, it cannot be disputed that deceased suffered injuries in the motor vehicular accident and consequently he died. The accident was reported to police station. Spot panchnama is placed on record. It depicts that road at the spot is South-North direction. Tanker and motorcycle were approaching each other from opposite directions. Taking into account width of the road, there was sufficient distance for the tanker driver to pass on his vehicle by maintaining his side of the road. However, it transpires from record that tanker driver could not follow rules of the road traffic that mandates that vehicle driver shall maintain his left side while driving the vehicle. In that view of the matter, Tribunal has recorded finding of sole negligence on the part of the tanker driver. Pertinently, tanker driver has not stepped into witness box to explain circumstances as to why he could not maintain his left side. In this scenario, finding

recorded by the Tribunal on point of negligence does not require interference.

8. Second contention raised on behalf of the appellant is that income of the deceased is excessively considered. Record indicates that claimants relied upon evidence of CW-2, who placed on record form no.16-A of the deceased. Said document is admitted in evidence. It appears that deceased Vikas was in service and his employer has filled in form no.16 that depicts his annual income @ Rs.1,30,000/-. Aforesaid evidence is not controverted on behalf of the respondents. Tribunal found it appropriate to rely upon evidence of CW-2 alongwith form no.16. Consequently, income of the deceased is fixed @ Rs.1,30,000/- p.a. which appears to be just and proper.

9. Last submission advanced on behalf of the appellant is that Tribunal granted interest @ 9% p.a. which excessive and exorbitant. Section 171 of the Motor Vehicles Act states that it is for the Tribunal to grant pendent-lite interest appropriately. It is trite law that interest rate as provided by the Nationalized Banks against fixed deposits for similar period would be the guiding factor. Judicial note of the

fact can be taken that interest rate during the period from 2013 to 2023 were fluctuating in range of 6.5% to 7.5 %. Keeping in mind aforesaid fact, Tribunal ought to have granted interest @ 7% p.a. In that view of the matter, Award needs to be modified to that extent. Hence, following order.

O R D E R

- i. First Appeal is partly allowed.
- ii. The judgment and award dated 28.08.2023 passed by the Motor Accident Claims Tribunal at Shrigonda in M.A.C.P. no.10 of 2019 is modified.
- iii. The opponent nos.1 and 2 are jointly and severally liable to pay the compensation of Rs.22,70,000/- including the NFL amount alongwith interest @ 7% p.a. from the date of application till realization of the amount.
- iv. Rest of the directions under award passed by the Tribunal are maintained.
- v. First Appeal stands disposed of.
- vi. In view of disposal of the appeal, pending civil application stands **disposed of**.
- vii. The claimants are permitted to withdraw the amount deposited by the appellant-insurance company alongwith accrued interest thereon.

- viii. Excess amount, if any, be refunded to the Insurance Company.

(S. G. CHAPALGAONKAR)
Judge

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