

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 143 OF 2019

Reliance General Insurance Company Limited)
Through its Corporate Office)
4th Floor, Chintamani Avenue)
Off Western Express Highway,)
Goregaon – East, Mumbai)... Appellant

Versus

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|---|---|---|-------------|
| 1 | Smt. Ketki W/o. Sanjay Nene |) | |
| | Age 43 years, Occupation : Household |) | |
| 2 | Vaidehi d/o. Sanjay Nene |) | |
| | Age – 18 years, Occupation : Education |) | |
| 3 | Rahul S/o. Sanjay Nene |) | |
| | Age – 14 years, Occupation - Education |) | |
| 4 | Smt. Sudha Sadashiv Nene |) | |
| | Age – 70 years, Occupation – NIL |) | |
| | Applicant No.3 is minor through his Legal Guardian |) | |
| | Mother i.e. Applicant No.1. |) | |
| | All R/o. Matrusmruti, Behind Taluka Police Station, |) | |
| | Pandharpur, District - Solapur |) | |
| 5 | Milind Balkrushna Shrotri |) | |
| | Age – Adult, Occupation – Business |) | |
| | R/o. 100/1, Rukmini Nagar, Pandharpur |) | |
| 6 | Bajaj Allianz General Insurance Co. Ltd. |) | |
| | City Pride, 2 nd Floor, Office No.4 & 8, |) | |
| | Near City Hospital, Old Employment Chowk, |) | |
| | 162, Ralway Lines, Pin : 413 001 |) | |
| 7 | Dattu Chandrakant Bhongale |) | |
| | Age – Adult, Occupation – Business |) | |
| | R/o. Pondakulwadi, Tal. Indur |) | |
| | District – Pune |) | Respondents |

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Mr. Rahul Mehta i/b. KMC Legal Venture, Advocate for the Appellant.

Ms. Mrinal Shelar i/b. S.S.Patwardhan, Advocate for Respondent Nos. 1 to 4.

Mr. Raj S. Satam i/b. P. M. Arjunwadkar, Advocate for Respondent No.5.

Mr. Devendranath S. Joshi, Advocate for Respondent No.6.

CORAM : SHIVKUMAR DIGE, J.
DATED : 30th JUNE, 2025.

ORAL JUDGMENT :

1. The issues involved in this appeal are, income of the deceased is considered on higher side and accident occurred due to sole negligence of the driver of other vehicle.
2. It is contention of learned counsel for the Insurance Company that deceased was traveling in Bolero Jeep, which was dashed by the Mahindra pick up vehicle. The accident occurred due to contributory negligence of driver of both the vehicles but the Tribunal has fixed liability on driver of Mahindra pick up vehicle, which is erroneous. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.40,400/- without any evidence on record which is erroneous, hence requested to allow the appeal.
3. It is contention of learned counsel for respondent Nos. 1 to 4/ claimants that no witness is examined by the appellant /Insurance Company to prove the negligence of driver of Bolero jeep in which deceased was travelling. Learned counsel further submitted that the income of the deceased was Rs.42,000/- per month, as he was serving as a clerk in the Bank. The income tax returns are produced on record and on that basis the Tribunal has considered income, which is proper. The Tribunal has passed well reasoned order no interference is required in it

and requested to dismiss the appeal.

4. It is contention of learned counsel for the respondent No.6 that offence was registered against the driver of Mahindra pick up vehicle. The chargesheet was also filed against him. He has not stepped into the witness box to prove the negligence of driver of Bolero Jeep. The Tribunal has passed well reasoned order. No interference is required in it. Hence requested to dismiss the appeal.

5. I have heard all the learned counsel. Perused Judgment and Order passed by the Motor Accident Claims Tribunal, Pandharpur (for short “**the Tribunal**”). It is claimant’s case that the deceased was traveling in Bolero Jeep which was dashed by the Mahindra pick up vehicle. The offence was registered against the driver of Mahindra pick up vehicle. To prove the negligence of driver of Bolero jeep, the driver of offending vehicle did not step into the witness box. Hence, I do not see merit in the contention of learned counsel for the appellant / Insurance Company that accident occurred due to contributory negligence of driver of Bolero jeep.

6. It is claimant’s case that deceased was working as a clerk in bank. To prove his income, the claimants have examined claimant No.1, wife of deceased. She has stated that deceased was getting Rs.42,000/- as a monthly income. The claimants have examined PW-3 R.D.Chandanshive, PW-4 S. Sudarshan and PW-5 Bapu Dalvi. While deciding the issue of

income of the deceased, the Tribunal has observed that from the evidence of claimant's witnesses it appears that the deceased was serving in Bank of India and in the year 2011-12 his total income was Rs.4,46,950/- from which income tax of Rs.18,650/- was deducted. The salary details of the deceased Sanjay are placed on record at Exhibit-90. On the basis of documentary evidence and after deducting income tax, the Tribunal has considered monthly income of the deceased at Rs.40,400/-, I do not find infirmity in it.

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

ORDER

- (i) The appeal is dismissed.
- (ii) The respondents / claimants are permitted to withdraw the deposited amount along with accrued interest thereon.
- (iii) The statutory amount along with accrued interest be transmitted to the Tribunal. The parties are at liberty to withdraw it.
- (iv) Pending applications, if any, stands disposed of.
- (v) R & P be sent back to the Tribunal.

(SHIVKUMAR DIGE, J.)