

S.S.Kilaje

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.239 OF 2024

Reliance General Insurance Company)
 Limited)
 4th Floor, Chintamani Avenue, Western)
 Express Highway, Next to Virvani Industrial) **Appellant**
 Estate, Goregaon (East), Mumbai – 400053)...

V/s.

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| 1 | Mohd Nafish Mohd Ali Khan)
aged about 44 years, Father of the deceased) | |
| 2 | Rukhsana Nafish Khan)
Aged about 44 years, Mother of the)
deceased) | |
| 3 | Nazreen Mohd. Rashid Khan)
Aged about 21 years, Widow of the deceased) | |
| 4 | Mohd. Saif Mohd. Rashid Khan)
Aged about 2 years, Son of the deceased) | |
| 5 | Taslima Nafish Khan)
Aged about 19 years, Sister of the deceased)
The Applicant No. 4 is minor son Through)
His Next friend, Natural Guardian and)
Grand Father Mohd. Nafish Mohd Ali Khan)
Residing at Veer Jaijiamata Bhosale Marg,)
Indira Nagar, Gali No. 18, 30 ft. Road)
Mandala Mankhurd, Mumbai -400043) | |
| 6 | Ajinath Prakash Talekar)
At Bhavani Nagar, Tembhurni,)
Taluka-Madha, Dist. Solapur - 413211).. Respondents | |

Mrs. Shalini Shankar, for the Appellant.
 Mr. Jitendra Gor, for the Respondents.

CORAM : R.M. JOSHI, J.
DATE : 21st NOVEMBER 2025

ORAL JUDGMENT :-

1. By consent of both the sides heard finally.
2. This appeal under Section 173 of M.V.Act takes exception to the Judgment and Award dated 20.08.2022 passed in Application No. 1386 of 2018 whereby the compensation of Rs.63,89,571/- came to be granted along with the interest @7% p.a. from the date of application till realisation of the amount. The insurer being aggrieved by the said Award preferred this appeal.
3. The facts which led to the filing of the present appeal can be narrated in brief as under.
4. On 30.04.2018 the deceased was occupant of the motor car bearing No. MH-04-AS-9389 which was proceeding on Pune-Mumbai Express Highway. It is their claim that the said vehicle was being driven with care and caution. It is further claimed that due to some technical fault the said vehicle suddenly stopped on road. Having regard to the mechanical condition of the car the occupant started returning back. While deceased and others were pushing the car to start it, tempo bearing No. MH-45-AF-9545 came from Pune side in excessive speed and in rash and negligent manner and gave

forceful dash to the motorcar from behind. In the said incident, the deceased sustained serious injury and succumbed to death. The claimant was 26 years old and was earning Rs.25,500/- per month. The total compensation of Rs.75,00,000/- was claimed.

5. The owner of the offending vehicle resisted the claim by filing written statement at Exhibit-13. It is denied that the driver of the vehicle was negligent in driving the same. It is claimed that the accident has occurred due to negligence of the deceased himself.

6. The appellant-insurer filed written statement at Exhibit-15 denying the contentions of the claimant with regard to age, income of the deceased. It is, however, admitted that the offending vehicle was duly insured with the insurer during the relevant time. The challenge is raised to the maintainability of the Petition on the ground that owner and insurer of the other vehicle were not joined a party opponents.

7. The claim is at Exhibit-16. The claimants have examined claimant No.1 Mohd. Nafis Mohd. Ali Khan and relied upon police papers to prove the factum of the occurrence of the accident and death of the deceased then. He further proved the income tax returns of the deceased. No evidence was led on behalf of opponent before the Tribunal.

8. The learned counsel for the appellant/insurer submits that the Tribunal has failed to take into consideration the fact that except for the income tax returns there was no other evidence to indicate that actually any income was received by the deceased. It is their submission that the having regard to the said fact, under the head that the compensation granted to the deceased is excessive.

9. Learned counsel for the claimants opposed the appeal by pointing out the fact that the connected appeals arising out of the said accident filed by the insurer are already dismissed. It is his submission that the claimants are required to prove the age, income and employment of the deceased on preponderance of probability and the evidence in the form of income tax returns more than sufficiently proves the same.

10. The claimants were required to prove the involvement of the vehicle in question in the accident and the death of the deceased arising out of the same. The evidence of the claimant No.1 Mohd. Nafis Mohd. Ali Khan coupled with the police papers i.e. chargesheet clearly indicates that the vehicle in question was involved in the accident. The offence came to be registered against the driver of the said vehicle. There is nothing on record to indicate that at any point of time there was any challenge raised to the filing

of First Information report or chargesheet against him. Having regard to the evidence to this Court finds that the claimants have succeeded to prove the factum of the accident so also death of the deceased on account of receiving injuries in the said accident.

11. Coming to the computation of compensation, there is no serious dispute with regard to the age of the deceased. The claimants have placed on record income tax returns and proved the same before the Tribunal. During the cross examination nothing is elicited in order to discard the said evidence. It can certainly be said that on probability the claimants have succeeded in proving the income of deceased and eventually the claim before the Tribunal.

12. Perusal of the impugned Judgment and Award indicates that the Tribunal has rightly followed the settled principles of law while arriving at just and fair compensation having regard to the application of appropriate multiplier. In the result there is no merit in the appeal.

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

ORDER

- (i) The appeal is dismissed.
- (ii) The statutory deposit of Rs.25,000/- paid by the Appellant be transferred to the Tribunal.

- (iii) All pending applications, if any, stands disposed of.
- (iv) R & P be sent back to the Tribunal.

(R.M. JOSHI, J.)

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