

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

FIRST APPEAL NO.169 OF 2024

Reliance General Insurance Co. Ltd.
4th floor, Chintamani Avenue,
Off. Western Express Highway,
Next to Virwani Industrial Estate,
Goregaon (E), Mumbai.

...Appellant

V/s.

1. Kishor Ashok Pandilwar
R/at: Plot No.20,
Jayashree Apartment,
301, Pushtikar Society, Jogeshwari (west),
Mumbai 400 102.
(Husband of deceased)

2. Mr. Kuldeep Daljeet Dhanjal,
R/at: Near Unichem Laboratories,
301, Jayashree Apartment, Plot No.20,
Pushikar CHS, Jogeshwari (W),
Mumbai-400 102.

...Respondents

Mr.Akshay Kulkarni a/w Mr.Aditya Ghadge:- (Through V.C.)	Advocate for Appellant.
Mr.Jitendra Gor a/w Ms.Yashika Jain:-	Advocates for Respondent No.1.

CORAM : S.M. MODAK, J

DATE : 14th October 2025.

ORAL JUDGMENT :

Heard learned Advocate for the Appellant Mr. Kulkarni and

heard learned Advocate for the Claimant-husband of the deceased.

2. Admittedly, two vehicles were involved in the accident. They are Vehicle No. MH-02 EP 4241 in which the deceased and her husband-claimant were traveling. They were traveling on Aurangabad-Nashik Highway and moving towards Mumbai. The accident took place at Warzadi Fata gate No.12 and 3. Whereas another vehicle involved is MH-15-BX-0489. Both these vehicles collided with each other. As result of which the deceased sustained injuries and she died during the accident. Though earlier she was working and having a salary income, at the time of accident she was a housewife and that is how the Tribunal has considered her income as Rs.10,000/- by applying the test of notional income.

3. The Appellant-Insurance Company is insurer of the vehicle in which deceased and claimant were traveling. There is FIR registered against the driver of offending vehicle at Shilegaon Police Station, Dist. Aurangabad on 22nd October 2017. It is for the offences under Sections 279, 304A, 337,338 of IPC. The copy of the FIR, spot panchnama and inquest panchnama, provisional cause of death and death certificate are annexed. The Appellant-insurer participated in the claim petition whereas the insured has not participated before the tribunal. The Appellant-insurer took various defences.

4. In the written-statement they have agitated the case put up by the claimants about the composite negligence amongst the driver of

the two vehicles. They have taken defence that the owner and insurer of the vehicle in which deceased traveled was not made as a party to the proceeding. Even the appellant-insurance company has filed an application before the Tribunal for issuing summons to the driver of the offending vehicle against whom there is a FIR registered. The Tribunal has allowed the application and prayed for adducing additional evidence. It was allowed as per the order dated 24th August 2022. That notice was issued to the driver of the vehicle. His presence could not be secured on behalf of the Appellant. Even Appellant attempted to implead the owner, driver and insurance company of the offending vehicle, however, could not find favour from the Tribunal.

5. The claimant himself has given evidence and relied upon the police papers and the income documents whereas the Appellant has examined their representative. After the evidence the Tribunal was pleased to reject the contentions of the Insurance company. The Award of the Tribunal is as follows:

- (i) The compensation is awarded to the tune of Rs.15,05,000/- to be paid by the insurer-appellant and insured.
- (ii) There was direction to pay future interest at 7% per annum.
- (iii) This amount is deposited by the insurance company.

Submissions

6. During arguments learned Advocate Kulkarni made the following submissions:

- i) Even though in the written-statement and the entire evidence it has come that it is the case of composite negligence, the evidence suggests that in fact it is a case of contributory negligence. According to him during cross-examination the claimant has admitted that the owner of the vehicle in which deceased was traveling was their relative and as such deceased wife falls in the shoes of the owner and it has to be presumed that even he has contributed to the accident.
- ii) According to him if it is a case of contributory negligence, the observations in case of *Khenyei v/s. New India Assurance Co. Ltd. and others*¹ will not be applicable.

7. By way of reply learned Advocate Gor submitted that even though the deceased was traveling in a car and whose driver has contributed to the accident, the deceased cannot be put into the shoes of the owner of the vehicle even though he is her relative. According to him the police papers and evidence on record clearly suggests the accident is involving two vehicles and showing the negligence of the drivers of both the vehicles. According to him the observations in case of *Khenyei* (supra) will be perfectly applicable.

8. There cannot be a dispute that the FIR is lodged against the driver of the offending vehicle which is coming from the opposite direction. The police papers which include the FIR, the spot

¹ 2015 ACJ 1441

panchnama and the version given by the husband of the deceased who is eye witness suggests that driver of both the vehicles have contributed to the accident. The claimant has deposed that the driver of their car drove the car in fast speed and in a rash and negligent manner. He has further deposed that offending vehicle came from opposite direction and drove it in a fast speed and in rash and negligent manner. The police have registered the FIR against the driver of the offending vehicle. When there is accident involving two vehicles and when both drivers drove the vehicle rashly and negligently, ultimately police has to decide which of them was more rash and negligent. Accordingly, they registered the FIR against that driver. There is hardly any case in which FIR is registered against driver of both the vehicles. Considerations for registration of FIR and conduct of criminal trial are different from the consideration involved before the Motor Accident Claims Tribunal.

9. In a criminal trial the test of proving the offence beyond reasonable doubt is applicable whereas in a claim petition, it is a summary enquiry wherein test of preponderance of probability is applicable.

10. No doubt the Appellant-Insurance Company has made an attempt to examine the driver of the offending vehicle. For Some reason, they could not secure his presence. There will be several reasons but the fact remains that the driver could not attend the proceedings. It is true if the driver could have been made available,

he is the another person who could have thrown light about how he drove the vehicle at the time of accident. Ultimately, the Tribunal is bound by the evidence which is given before it. The Tribunal cannot give a finding on the evidence which could not be produced. The Appellant cannot contend that the benefit be given to them for an attempt to examine the driver of the offending vehicle.

11. On the basis of the above evidence, the Tribunal was justified in arriving at the findings on the point of negligence. Learned Advocate Shri Kulkarni argued vehemently that, the deceased falls in the shoes of the owner of the vehicle in which she was driving cannot be accepted. Reason is just because she is a relative of the owner of the vehicle, no liability can be fastened on her which can be fastened on the owner of that vehicle. So this has to be believed that the present case involves the case of composite negligence. Even the Insurance Company is aware about the case put up against them and they have admitted in their written-statement that it is the case of composite negligence. Just because answer is given during cross-examination situation does not changes. The written-statement is on Page No.28.

12. In above set of facts the observations in case of *Khenyei* (supra) are perfectly applicable to the case involved in this appeal. The law is succinctly laid down in that judgment. When there is composite negligence of two vehicles, the passenger of one vehicle is having multiple options. Either he can proceed against the owner or

Insurance Company of the vehicle in which he is traveling or he may proceed against the owner and insurer of offending vehicle. He can proceed against the owner and insurer of both the vehicles. In this case he has chosen to proceed against the owner and insurer of vehicle in which the deceased was traveling. When the law permits opting for one of the option, the claim of claimant cannot be denied. I do not find the Tribunal has committed any error in accepting the claim of the claimant.

13. On the point of compensation, the Tribunal has considered the income of the deceased as Rs.10,000/-. The relevant findings are there in Paragraph Nos.24 and 25. Though the husband has filed Form-16 income-tax returns of his wife, it has come to the evidence that she has resigned from the service seven months prior to the accident. As per Form-16 the yearly income was Rs.2,79,402/-. Monthly income is considered as Rs.10,000/-. The subsequent additions are described in Para No.25. It includes the loss of dependencies, loss of consortium, future prospects and funeral expenses. I find no fault in the said calculation.

14. In view of the above I am unable to accept the contention of Mr. Kulkarni for the Appellant. I find no merit in the appeal. Hence, it is dismissed.

15. At this stage Mr. Kulkarni, the learned Advocate seeks liberty to proceed against the owner, driver and Insurance Company of the offending vehicle No. MH-15-DX-489. Such liberty is always there

and granted. The Appellant to deposit the amount as per the award along with interest if not deposited earlier. In case of dispute, tribunal to decide the issue and pass necessary directions. Hence, the following order:-

ORDER

- (i) The Appeal stands dismissed.
- (ii) In view of that, the Claims Tribunal–Mumbai is directed to disburse the amount to Respondent No.1–Claimant, if it is not already disbursed along with corresponding interest.
- (iii) Parties to bear their own costs.
- (iv) Statutory deposit alongwith interest be transferred to Tribunal.

(S.M. MODAK, J.)