

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

**FIRST APPEAL NO. 961 OF 2024**

|                                                    |   |                     |
|----------------------------------------------------|---|---------------------|
| <b>Reliance General Insurance Co. Ltd.</b>         | } |                     |
| Reliance Centre, 4 <sup>th</sup> Floor, Chintamani | } |                     |
| Avenue, Near Off Western Express                   | } |                     |
| Highway, In front of Virwani Industrial            | } | (Org.R.No.2)        |
| Goregaon East, Raigad-400 063                      | } | <b>...Appellant</b> |

*Versus*

|                                 |   |  |
|---------------------------------|---|--|
| <b>1. Kritofar Thomas Goams</b> | } |  |
| Age-21 years, Occ : Education   | } |  |

|                                           |   |  |
|-------------------------------------------|---|--|
| <b>2. Lili Tomas Goams</b>                | } |  |
| Age-23 years, Education                   | } |  |
| Both are R/o. Kalote Mokashi, Taluka-Pen, | } |  |
| District-Raigad.                          | } |  |

|                                             |   |                       |
|---------------------------------------------|---|-----------------------|
| <b>3. Gurmit Singh Sahota</b>               | } |                       |
| R/o. Plot No.10A/103, Visha Arcade, Sector  | } |                       |
| No.04, Kharamboli, Taluka-Panvel, District- | } |                       |
| Raigad, Maharashtra-410218                  | } | <b>...Respondents</b> |

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Mr.Akshay Kulkarni a/w Mr.Avesh Ghadge, for the Appellant.  
Mr.Yogesh Pande, for Respondent Nos.1 and 2.

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**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 16<sup>th</sup> JANUARY 2025**

**ORAL JUDGMENT :-**

. The issues involved in this Appeal are, accident

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occurred due to negligence of the deceased and income of the deceased is considered on higher side and driver of offending vehicle was not holding effective and valid driving license.

2. It is contention of the learned counsel for the Appellant that, the accident occurred due to sole negligence of the deceased as he gave dash to the offending trailer, but this fact is not considered by the Tribunal. The learned counsel further submitted that, the Tribunal has considered monthly income of the deceased at Rs.21,000/- without any evidence on record. The learned counsel further submitted that, age of the deceased was not proved, but the Tribunal has considered age as 47, which is erroneous. The driver of offending vehicle was not holding effective and valid driving license but this fact is not considered by the Tribunal. Hence, requested to allow the Appeal.

3. It is contention of the learned counsel for the Respondent-Claimant that, the accident occurred due to negligence of driver of the trailer, he gave dash to the scooty of the deceased. The offence was registered against the driver of the trailer. The driver of the trailer did not enter into witness box to

prove the negligence of the deceased. The other Claim Petition out of the same accident is satisfied by the Insurance Company. The learned counsel further submitted that, the evidence was led before the Tribunal to prove the income of deceased and he was working as chef in Monteria resort.

4. The learned counsel further submitted that, to prove the age of the deceased, copy of advance death certificate is admitted by the Appellant before the Tribunal. The Tribunal has passed well reasoned order, no interference is required in it. Hence requested to dismiss the Appeal.

5. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal ('The Tribunal' for short), Raigad.

6. It is Claimant's case that, on 18<sup>th</sup> July 2020 when deceased was going on scooty, at that time the offending trailer gave dash to the scooty from backside and turned turtle on road. The offence was registered against the driver of offending trailer. Considering the police papers and evidence produced on record, the Tribunal has held that, accident occurred due to negligence of

driver of offending vehicle. Though, learned counsel for the Appellant stating that, the accident occurred due to negligence of the deceased but no evidence is produced before the Tribunal, in that regard, nor driver of the offending trailer was examined before the Tribunal. Hence, I do not find merit in contention that, the accident occurred due to negligence of the deceased. To prove the age of the deceased, the Tribunal has considered advance death certificate at Exhibit-28. The Appellant has not challenged the said certificate and age of the deceased before the Tribunal. Hence, the said issue cannot be considered at the Appellate stage.

7. It is Claimant's case that, the deceased was working as Chef in Monteria Resort and he was getting salary of Rs.22,000/- per month. To prove the income the Claimant's have examined PW-2-Mr.Abhijit Pawar, at Exhibit-21. He has stated that, the deceased was working as a cook in their Resort and he was getting Rs.22,000/- per month salary. The salary slips were produced on record. These are at Exhibit-52. Nothing elicited in cross-examination of this witness.

8. Considering evidence on record, the Tribunal has considered monthly income of this deceased at Rs.21,000/-. I do not find infirmity in it.

9. In my view, there is no reason to disbelieve the evidence of owner of Resort that, the deceased was working in the resort as Chef. Though the Appellant has taken defence that, at the time of the accident, the driver of the offending trailer was not holding effective and valid driving license, but no evidence is produced on record in that regard. Considering above reasons, the Appeal is of devoid of merit and I pass following order.

### **ORDER**

- (i) The Appeal is dismissed.
- (ii) The Claimants are permitted to withdraw the deposited amount alongwith accrued interest.
- (iii) The statutory amount alongwith interest be transferred to the Tribunal. Parties are at liberty to withdraw it, as per Rules.
- (iv) Record and Proceedings be sent back to the Tribunal.

(v) All pending Civil and Interim Applications are disposed of.

(SHIVKUMAR DIGE, J.)