IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 434 OF 2024

Reliance General Insurance Co. Ltd.
4th Floor, Chintamani Avenue,
Western Express Highway,
Next to Virvani Industrial Estate,
Goregaon (E), Mumbai – 400 053 ..... Appellant

Vs.

1) Smt. Manpurna Vinod Mishra
Age : About 34 years, Widow of Deceased

2) Master Varun Vinod Mishra
Age : About 13 years, Minor Son of Deceased

3) Miss Avantika Vinod Mishra
Aged : About 11 years, Minor Daughter of Deceased

4) Mr. Lalabhaiya Ramhit Mishra,
Age : About 63 years, Father of the deceased

5) Mrs. Shakuntaladevi L. Mishra,
Age : 61 years, Mother of Deceased,
(Respondent Nos.2 & 3 are Minors
through next friend & Mother
Manpurna V. Mishra)
Nos.1 to 5 are R/o. Sushil Harmony C.H.S.,
Plot No.92, 03, 'A' Wing, Room No.602,
Kamothe, Navi Mumbai – 410 209.

6) Mr. Vaibhav Gajanan Shinde
R/o. Shirwad C.H.S. Ltd.,
D-20/22, Plot No.8, Opp. Rajiv Gandhi
Udyan, Sector – 29, Vashi,
Navi Mumbai 400 703 ..... Respondents

Mr. Avesh A. Ghadge a/w. Mr. Akshay Kulkarni for the Appellant.
Mr. Vasant More for Respondent Nos.1 to 5.

CORAM : SHYAM C. CHANDAK, J.

DATED : 08th APRIL, 2025.

JUDGMENT :-

. Present Appeal filed under Section 173 of the Motor Vehicles Act of 1988 ("**the Act**"), posed a challenge to the Judgment and Order dated 02/09/2023, in MACP No.1397/2017 ("**Claim**"), passed by the Motor Accident Claims Tribunal, at Mumbai thereby the Tribunal partly allowed the said claim filed under Section 166 of the Act by Respondent Nos.1 to 5 ("**Claimants**") and directed the Appellant/Insurer to pay the Claimants the compensation amount of Rs.53,79,134/- along with interest at the rate of 7 % p.a. from the date of the claim till realization of the compensation.

2) Record indicates that Respondent No.6 was duly served with the notice of this Appeal. Adv. Prajakta Deshmukh filed appearance for Respondent No.6. Perusal of the impugned Judgment and Order indicates that since the offending truck was duly and validly insured with the Appellant at the time of the accident, the Tribunal only directed the Appellant to pay the compensation amount. Therefore, the learned Advocate for the parties submitted that the Appeal be taken up for final hearing at the admission stage.

3) Hence, heard Mr. Ghadge, learned Advocate for the

Appellant and Mr. Vasant More, learned Advocate for the Claimants, at the stage of admission. Perused the compilation of the documents.

4) The facts giving rise to this Appeal are that, late Vinodkumar Lalabhaiya Mishra (**"deceased"**) was the husband of Respondent No.1, father of Respondent Nos.2 and 3 and son of Respondent Nos.4 and 5. The Claimants filed the said claim therein they averred that, on 09th June 2017, at about 13:45 hours, the deceased was riding his motorcycle bearing registration No.MH-03-BB-3465 ("**M/cycle**") from Kamothe towards Vashi on Mumbai-Pune Highway. When the deceased reached near CBD Flyover Bridge under Metro Bridge, a Motor Truck bearing registration No.MH-43-U-9761 (**"the truck"**) dashed against the M/cycle from behind. The deceased fell down and the truck ran over him. Resultantly, the deceased sustained serious injuries and died shortly. On receiving the first information of the accident, the police registered the FIR under Sections 279, 337, 338, 304A and 427 of the Indian Penal Code and Sections 184 and 134 (a) (b) of the Act against the driver of the truck. The Claimants averred that the deceased was doing a business in the name of "Avantika Traders" thereby he was earning Rs.60,000/- per month. The Claimants were dependent on the income of the deceased. Therefore, the Claimants prayed to award a compensation of Rs.1.50 Crore along with interest @ 9% p.a.

5) The Respondent No.6 proceeded '*ex-parte*'. The Appellant filed the written statement (Exh.17) and resisted the claim. The Appellant denied that the accident occurred due to rash and negligent driving of the truck. The Appellant also denied that the deceased was doing the said business and earning as above. The Appellant contended that the accident occurred due to the fault of the deceased. In the alternative, the Appellant contended that the deceased also contributed to the accident.

6) To prove the claim, the Claimants adduced the evidence of Respondent No.1 (AW1/Exh.20). Besides, the Claimants have relied upon certain documents to prove the cause of the accident, the occupation and the income of the deceased :-

7) As to the cause of the accident, evidence of AW1 is that at the time and place of the accident, the truck dashed the M/cycle. As a result, the deceased fell dawn and the truck ran over him. The deceased sustained serious injuries and died on the spot. This evidence is supported with the FIR (Exh.21) and spot panchnama (Exh.22). The FIR was filed by an eye witness to the accident therein the eye witness clearly stated that when the M/cycle of the deceased arrived at the spot of the accident, the driver of the truck dashed his M/cycle from behind by driving the truck in a rash and negligent manner. This assertion in the FIR is supported by the spot

panchanama (Exh.22). On completion of the investigation, only driver of truck stood charge-sheeted for causing this accident by driving the truck rash and negligently. It is not the case of the Appellant that the driver of the truck was falsely implicated in the said crime. The Appellant has not adduced any evidence in the rebuttal. As such, I am in unison with the finding of the Tribunal that the accident occurred due to rash and negligent driving of the truck. The accidental death of the deceased was not disputed.

8) AW1 in her evidence specifically stated that the deceased was doing the business of food in the name and styled as "M/s. Avantika Traders", at Shop No.16, Vishwa Highland Building, at Kamothe, District Raigad. This evidence is supported with the License under Food Safety and Standards Act, 2006 (Exh.28), License under Shop and Establishment Act (Exh.29), Sales Tax Registration Certificate (Exh.30), VAT Certificate (Exh.31), IT Returns for Assessment Years 2014-2015 and 2015-2016 (Exh.32 colly) and Bank Account Statements (Exh.33 colly.) Same IT Returns (Exh.37 colly) alongwith the Certificate under Section 65B of the Indian Evidence Act (Exh.39) were produced by Mrs. Jyoti Menon, Inspector of Income Tax. The IT Returns for the Assessment Year 2015-2016 were submitted on dated 30/03/2017, i.e., few months before the accident. There is nothing to doubt the aforesaid oral and documentary

evidence. The deceased was maintaining the family of 6 members including himself. Therefore, I hold that the deceased was doing the said business to earn the income and maintain his family.

9) The Income Tax Returns (Exh.39 colly) shows that in the financial year 2013-2014, the gross annual business income of the deceased was Rs.2,75,342/- and in the financial year 2014-2015 said income was Rs.3,05,127/-. The deceased was aged 31 years. All the Respondent Nos.1 to 5 were dependent on the income of the deceased. In view thereof and the decisions in ***Sarla Verma and others V. Delhi Transport Corporation and another***[1] and ***National Insurance Co. Ltd. V. Pranay Sethi and Others***[2] 40% of the last net annual income of Rs.3,05,127/- should be added towards the future prospects of the deceased and thereafter 1/4th of the actual net yearly income should be deducted towards the personal and living expenses of the deceased. The applicable multiplier is '16'. As a result, the loss of the dependency comes to Rs.51,26,133.6/-. (Rs.3,05,127/- + Rs.1,22,050.80/- (40%) – 1,06,794.45 (1/4th) = Rs.3,20,383.35/- x 16). In view of the decision in ***Magma General Insurance Co. Ltd. V. Nanu Ram Alias Chuhru Ram & Ors.***[3] the Respondent Nos.1 to 5 are entitled to receive Rs.44,000/- **each** as spousal, parental and filial

1. *2009 ACJ 1298 (SC)*
2. *2017 ACJ 2700 (SC)*
3. *20218 ACJ 1 (SC)*

consortium, respectively. Additionally, the Claimants are entitled to receive Rs.16,500/- under the head ‘funeral expenses’ and total Rs.16,500/- under the head ‘loss to estate’. Thus, the total compensation comes to **Rs.53,79,134/-**. The grant of the interest at the rate of 7 % p.a. is reasonable.

10) Conspectus of the above discussion is that, there is no perversity in the impugned Judgment and Order. Therefore, I find no merit in the Appeal. The Appeal is liable to be dismissed and is dismissed, accordingly.

11) Considering the peculiar facts and circumstances of the case, the parties shall bear their own costs.

12) Statutory deposit, if any, be transferred to the Tribunal and it be disbursed in accordance with the law.

13) Appeal stands disposed of in above terms.

(SHYAM C. CHANDAK, J.)