

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****FIRST APPEAL NO.1672 OF 2024**

Reliance General Insurance Co. Ltd.
 Having its office RGICL
 South Wing, 4th Floor, Off. Western Express
 Highway, Santacruz (East), Mumbai -400 015

... Appellant

V/s.

- 1 Mrs. Ishwari Vijay Kenjale
Aged 34 years, wife of deceased
- 2 Master Nikhil Vijay Kenjale
Aged about 10 years, Son of the deceased
- 3 Mr. Damodar Manik Kenjale
Aged about 74 years, Father of the deceased.....
Deleted
- 4 Mrs. Yashodha Damodar Kinjale
Aged about 69 years, Mother of the deceased

Applicant No.2 Through next friend and
 Guardian i.e. Applicant No.1
 All residing at Room No.12, Building No.3,
 Santok Mansion, Mattiwala Building, Barrister
 Nath Pai Road, Mazgaon, Mumbai - 10

- 5 Kavita K. Krishnani
Vetul House, Plot No. 203
Flat No. 204, 2nd Floor, Maruaai Temple,
Danpad
Khar West, Mumbai
- 6 Prakash Kishan Mane
Room No. 19, BDD Chawl No.16, Sewri Cross
Road, Mumbai -15
- 7 Jilani Babjan Shaikh
Mechanical RTO Agent,
Room No. 18, Gandhinagar, Behind BDD

Chawl, Near Fish Market, Rak Marg, Sewri (West), Mumbai - 15 8 Ramzan Gole Shaikh Room No. 11, Gandhinagar, Behind BDD Chawl, Near Fish Market, Rak Marg, Sewri (West), Mumbai-15	... Respondents
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Mrs. Shalini Shankar, for the Appellant.
Mrs. Varsha Chavan, 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 is filed under Section 173 of Motor Vehicles Act (for short “M. V .Act”) takes exception to the Judgment and Award dated 19.04.2024 passed in M.A.C.P. No. 664 of 2019 filed under Section 166 of M.V. Act whereby the Tribunal has directed the opponents to pay jointly and severally a compensation of Rs.39,22,020/- with interest @7% p.a. from the date of filing of application till realisation of the amount.
3. The facts which led to the filing of the present appeal can be narrated in brief as under.
4. On 10.12.2019 at around 20.45 Hr. deceased was crossing the road in front of H.P Petrol Pump, Barrister Nath Pai Road, Mazgaon, Mumbai.

According to the claimants the deceased was crossing the road with care and caution. It is alleged that the driver of Maruti Esteem M/car bearing registration No. MH-01-PA-1463 drove his vehicle in the high speed and in rash and negligent manner and dashed the applicant which has resulted into causing of the accident. Due to dash given by the vehicle deceased sustained serious injuries and succumbed thereto. It is claimed by the claimants that the deceased was employed with Metro Brands Co. and was drawing salary of Rs.22,220/- per month. He was aged about 39 years.

5. The owner of the vehicle failed to cause appearance before the Tribunal and the claim proceeded ex-parte against him. The insurer filed written statement at Exhibit-18 opposing the contentions of the claimants. Apart from other contentions, it is the case of the insurer that the driver of offending vehicle was not holding valid and effective driving licence and that there was breach of terms and conditions of the policy. It is also claimed by the insurer that the deceased was negligent and the accident had occurred solely on account of his negligence.

6. Before the Tribunal the claimants led evidence. To support the case of accidental death, reliance is placed on the police papers. To prove employment and income, HR Manager of the establishment wherein the deceased was working was examined. No evidence was led by the

opponents before the Tribunal.

7. Learned counsel for the appellant/insurer submits that the issue of non-involvement of the vehicle in question in the accident has not been properly appreciated by the Tribunal. In this regard, she drew attention of the Court to the fact that the First Information Report (FIR) has been lodged against the unknown vehicle. It is her further submission that the Tribunal has committed error in accepting the salary of the deceased at Rs.22,220/- per month and compensation granted is excessive.

8. Learned counsel for the original claimants supported the impugned award. According to her, though the FIR has been lodged in respect of unknown vehicle however statements of eye witnesses indicates involvement of the offending vehicle in the accident. It is her submission that in the absence of any evidence by the owner and the insurer before the Tribunal, this issue cannot be decided against the claimants. In so far as the employment and the income of the deceased, according to her evidence of AW-2 Roshan who is working as Assistant HR Manager in Metro Brands Co. indicates that the deceased was employed and was earning Rs.22,000/- to Rs. 24,000/- per month.

9. Though the insurer has taken plea with regard to the non involvement of the vehicle in question in the accident, the police papers indicate that there are the statements of eye witnesses which clearly show

the involvement of the vehicle in question in the accident. Apart from this the offence has been registered against the driver of the said car. There is nothing on record to indicate that the filing of FIR or filing of chargesheet against him has been exception to at any point of time. Similarly no evidence is led by opponents to indicate negligence of deceased in accident. Having regard to the evidence on record and more particularly, in view of the fact that the insurer and the owner have not led any evidence before the Tribunal, this Court finds no reason to accept the contention of the insurer in that regard.

10. There is evidence led by the claimant in order to show age of the deceased to be 39 years and his employment and income. On the cross examination of the witness it cannot be said that the insurer was able to make out any case for discarding the said testimony of AW-2. In any case, the claimants are required to prove their case on preponderance of probability and evidence on record is sufficient to prove their contention with regard to the age, employment and income of the deceased.

11. Perusal of the impugned Judgment and Award indicates that the Tribunal has rightly taken into consideration the settled position of law with regard to the computation of compensation and has applied correct multiplier. In the circumstances, this Court finds no reason to cause interference in the Judgment of the Tribunal and 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. The said amount be adjusted towards the compensation.
- (iii) All pending applications, if any, stands disposed of.
- (iv) R & P be sent back to the Tribunal.

(R.M. JOSHI, J.)

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
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