IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1832 of 2024

	M/s. Reliance General Insurance Co. Ltd., Chintamani Avenue, 4th Floor, Next to Virvani Industrial Estate, Wester Express Highway, Goregaon (E), Mumbai – 400 063. (Insurer of Motor Tempo bearing registration No..MH-43-Y-6361)	…	Appellant Original Respondent No.2
	versus		
1	Sonam Dilip Yadav, Aged about 26 years, Occupation : Household.	…	
2	Radhemohan Baliram Yadav, Aged : 62 Years, Occupation Nil (since deceased his name is deleted)		
3	Santradevi Rademohan Yadav, Aged : 58 years, Occupation :- Nil.		
4	Siddhi Dilip Yadav, Aged about 7 years, Occupation -Student.		
5	Nidhi Dilip Yadav, Aged : above 02 years, Occupation – Nil Petitioner Nos.04 and 5 being minors represented by natural guardian mother – petitioner No.01 All R/at B 01/202 Pooja Park, A-B-B1 CHS Ltd., Oppo Mira Bhayender Road, Mira Road (East), Bhayender, Thane-401 105.		Respondent Nos.1 to 5/Original Claimants
6	Ramabahdur Vishwakrama, Age-Adult, Occupation;-Business R/at A-1/58/5, Sector No.-12, Turbhe Navi Mumbai, Dist-Thane-400705. (Owner of motor tempo bearing registration No.MH-43-Y-636)		Respondent No.6/ Original Respondent No.1

Ms. Kalpana Trivedi, Advocate for the Appellant.
Ms. Rina Kundu,Advocate for Respondent Nos.1 to 5/claimants.

CORAM : R. M. JOSHI, J.

DATE : 21st NOVEMBER, 2025.

Oral Judgment:

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (for short "the M. V. Act"), takes exception to the judgment and award dated 30th April 2024 passed in M.A.C.P.266 of 2020 whereby the Tribunal has granted compensation of Rs.61,89,567/- along with interest @ 9% per annum in a death claim.

2. The facts leading to filing of the present appeal are narrated in brief as under :

It is the case of the claimants that deceased -Dilip aged about 29 years was returning home from Vasai on motor bike bearing registration No.MH – 02-CF-0657 with his colleague/pillion-rider. It is claimed that the deceased was riding motor-cycle in moderate speed. When they reached at the spot of the accident, a tempo bearing registration No.MH-43-Y-6361 which was proceeding ahead of the motor-cycle suddenly took left turn without indicating any signal and as a result of which, the motor-cycle dashed against the said vehicle. In the said accident, the deceased sustained serious injuries and was declared dead before admission in hospital. The pillion-rider also sustained serious injuries. On the basis of information lodged, the police recorded Crime No.I-00100 of 2020 for the offences punishable under the Indian Penal Code 1860 and the M.V.Act. It is their claim that the deceased was running a rubber factory and was earning Rs.3,40,590/- per annum and that the claimants were dependent on him.

3. The owner of the vehicle though served with the notice, failed to appear before the Tribunal and hence, the claim proceeded ex-parte against him. Opponent No.2 i.e. Insurer of the offending vehicle contested the claim by filing written statement at Exhibit-19. Apart from denying the contentions of the claimants, there is specific plea raised that the driver of the offending vehicle was not holding valid and effective driving license and thus, there is a breach of terms and conditions of the policy. It is also claimed that the deceased himself was negligent in riding the motor-cycle and hence, the insurer is not liable for payment of compensation.

4. The Tribunal framed issues at Exhibit-20. Claimants examined claimant No.1 Smt. Sonam at Exhibit-24 and in addition thereto, led evidence of Sanjiv to prove the medical expenses and examined Prakash at Exhibit-48 to prove the mechanical inspection report of the offending vehicle. No evidence was led by the Insurer before the Tribunal. The Tribunal allowed the claim. Hence, the present appeal.

5. Learned counsel for the appellant submits that this is a case of false involvement of the offending vehicle in the crime. It is argued that the accident has occurred on 27th January 2020, whereas the FIR came to the lodged belatedly on 31st January 2020. It is contended that there is no explanation for lodging the FIR belatedly and, hence, this is a case of false involvement of the vehicle in question. It is further argued that the deceased himself was negligent in riding the motor-cycle and hence, he should be at least held to have been contributed to the accident. She further argued that there is nothing on record to indicate that the deceased was wearing helmet and, therefore, this has added to the severity of the accident and injuries caused therein. Finally on the point of quantum, it is the submission of learned counsel for the appellant that only one year's Income Tax Returns with no other evidence to support the income of the deceased and, hence, at the most, the computation of the compensation could have been done on the notional income of the deceased.

6. Learned counsel for the claimants supported the impugned judgment and order. It is her submission in the cross-examination that no challenge has been made to the case sought to be made out by the claimants in respect of occurrence of the accident so also the income of the deceased. It is argued that the Tribunal ought to have granted consortium to parents and children and, hence, the claimants are entitled

to claim consortium of Rs.48,000/- x 3, I.e Rs.1,44,000/-. It is submitted that in view of the judgment of the Hon'ble Supreme Court in case of ***Pappu Deo Yadav v. Naresh Kumar & Ors., reported in AIR 2020 SC 4424.*** enhancement can be sought even without filing separate appeal or cross-objection.

7. Having regard to the nature of the proceeding before the Tribunal, the claimants were required to prove their claim on preponderance of probability. To support the claim, the claimants led evidence essentially in the form of charge-sheet and police papers. There is no dispute about the fact that offence came to be registered against the driver of the offending tempo and there is nothing on record to indicate that he had at any point of time, challenged the said report or filing of the charge-sheet before the competent Court. Even from the cross-examination of the claimants' witness, nothing elicited in order to discard the case of the claimant about the occurrence of the accident solely due to negligence of the driver of the tempo.

8. As far as rash and negligent riding of the motor-cycle by the deceased or non wearing of the helmet is concerned, the Insurer has not led any evidence before the Tribunal to substantiate the said case. From the evidence available on record, it cannot be held that the deceased was negligent in any manner in occurrence of the accident.

9. With regard to the quantum of compensation decided by the Tribunal, there is no dispute about the fact that the Tribunal has taken into consideration the evidence in the form of Income Tax Return for a year. There is no bar that the Income Tax Return for the year cannot be considered for the purpose of determination of the compensation. What is necessary for the claimants is to prove the income of deceased, on probability. In any case, what was required to be held was what the deceased was earning and what was his last drawn income. The last drawn income is proved through cogent evidence in the form of Income Tax Returns. In the cross-examination, nothing even is suggested to the claimants/witness with regard to the deceased not having such income. Having regard to this fact, this Court finds no reason to cause interference in the impugned judgment and award passed by the Tribunal.

10. Insofar as non-payment of consortium is concerned, in view of ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, parental consortium is required to be paid, which has not been paid in respect of three claimants. The claimants, therefore, are entitled to receive compensation of Rs.48,000/- x 3, i.e. Rs.1,44,000/-. In view of Papu Devi (supra), such enhancement can be sought even without filing appeal or cross objection, hence, needs to be allowed.

11. In the result, following order :

O R D E R

(I) The appeal stands dismissed.

(ii) In addition to the compensation determined by the Tribunal, the claimants are entitled for Rs.48,000/- x3, I.e Rs.1,44,000/- with interest @ 7% p.a. from the date of filing of the application till realisation.

12. Pending interim/civil applications, if any, stand disposed of.

(R. M. JOSHI, J.)