

Shivgan

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1121 OF 2024

ICICI Lombard General Insurance Company
Limited
2nd Floor, Office No.203, Meher House No.15,
Cawasji Patel Street, Opp: Akbar Ali Furniture,
Fort, Mumbai 400 001

...Appellant

Versus

1. Vijay Deepak Vazirani
Aged about 37 years, brother of the deceased
2. Umesh Deepak Vazirani
Aged about 22 years, brother of the deceased
3. Dipesh Deepak Vazirani
Aged about 19 years, brother of the deceased
All residing at 29 Pyaranjan House,
Shyamji Kalyanji Nagar, Sainath Chowke,
Gaunpada, Chembur, Mumbai 400 074
4. Ranjit Kaur Harcharan Singh Saggi
At 1423, F Road No.27, KWC Kalamboli,
Panvel, Raigarh, Maharashtra 400 218

...Respondents

Ms. Varsha Chavan, for the Appellant.
Mr. S.R.Gupta, for the Respondents.

CORAM: R. M. JOSHI, J.
DATED: 19th JANUARY, 2026.

P.C.:-

1. By consent of both the sides, heard finally at the stage of admission.

2. This Appeal takes exception to the Judgment and Award dated 31st July 2018 passed in Application No.2002 of 2012 whereby the Tribunal accepted death claim compensation sought by the Claimants and granted compensation of Rs.25,34,065/- with interest @ 8% p.a. from the date of application till realization of the amount. The present Appeal has been filed essentially on the ground that there was negligence on the part of the deceased in occurrence of the accident and as such, the Tribunal ought to have held him responsible for the same. In this regard, learned counsel for the Appellant submits that having regard to the spot of accident, it cannot be said that the spot was such that even in the absence of any tail lights being on, any prudent driver/rider would have missed the stationery vehicle. It is her submission that having regard to the police papers on record, it ought to have been held by the Tribunal that the deceased contributed to the occurrence of the accident. The Insurer has also taken exception to the grant of compensation more particularly grant of compensation for loss of dependency. Learned counsel for the Appellant to support the said case has drawn attention of the Court to the cross-examination of the Claimant No.1, who admitted that he used to maintain all three brothers including the deceased. Thus, it is her submission

that in absence of any dependency, question of granting any compensation to the Claimants for the death of the deceased does not arise. To support these submissions, she relied on ***Smt. Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.***¹ and judgment in the case of ***General Manager, Kerala State Road Transport Corporation, Trivandrum v. Mrs. Susamma Thomas and Ors.***².

3. Learned counsel for the Claimants supported the impugned Judgment and Award. It is his submission that there is no evidence to hold that the deceased contributed to the occurrence of the accident. In so far as the Claimants' case with regard to the occupation and income of the deceased, evidence is led to prove. He further drew attention of the Court to the examination-in-chief of the Claimant No.1, who states that the deceased was working and earning Rs.15,000/- per month and he was spending his entire income for the household expenses. It is his submission that a stray admission given by the witness with regard to maintenance of younger brothers needs to be considered as if being elder brother, he was maintaining them. To support his submission, he placed reliance on the following two judgments:

1 JT 2009 (6) SC 495

2 AIR 1994 Supreme Court 1631

(i) *National Insurance Company Limited v. Birender & Ors.*³

(ii) *Seema Rani & Ors. v. Oriental Insurance Co. Ltd. & Ors.*⁴

4. There is no dispute about the fact that on the fateful day, an accident occurred involving the motor-cycle, which was drove by the deceased and the truck bearing Registration No. MH-06-AC-2819. Needless to say that it was open for the Claimants to substantiate their case with regard to the negligence on the part of the offending vehicle in the occurrence of the accident on the basis of charge-sheet/police papers.

5. The said record indicates that the offence came to be registered against the driver of the offending truck for negligent driving of the vehicle in view of the fact that vehicle was parked in the middle of the road without tail lights put on. Thus, the Claimants have substantiated their contention on probability. The onus therefore shifted upon the Insurer to prove otherwise. There is no other evidence on record to hold so.

3 AIR OnLine 2020 SC 21

4 2025 ACJ 338

6. As far as the claim of Claimants in regard to the dependency on the income of the deceased is concerned, apart from incorporating pleading in the Application, Claimant No.1 examined himself on oath stating income of the deceased so also he contributing to the entire household expenses. In the cross-examination, he states that he was maintaining all the 3 brothers including the deceased. However, there is no suggestion made to this witness that he was not contributing anything to the household. The evidence of the Claimant No.1 in this regard, therefore, gone unchallenged. This becomes relevant in view of the fact that Claimant No.1 claims himself to be illiterate person and a trainer in a Gym. Apart from this, there is no other evidence to indicate that younger brothers to the deceased were earning at the relevant time. Having regard to these facts, this Court finds substance in the contention of learned counsel for the Claimants that on the basis of stray statement of the Claimant that he was maintaining the brothers, the other evidence on record cannot be ignored.

7. The Claimants were successful in proving that the deceased was employed and was earning Rs.15,000/- per month. In such

circumstances, the Tribunal holding the Claimants to be dependents and to be entitled for the compensation for loss of dependency, cannot be faulted with. There is no dispute about there being any other error committed by the Tribunal in computation of compensation.

8. As a result of the above discussion, the Appeal stands dismissed.

(R. M. JOSHI, J.)

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signed by
SHAMBHAVI
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