

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

First Appeal No. 1344 of 2014

The New India Assurance Co.Ltd. ... Appellant
V/s.
Mrs. Dolly Satish Gandhi ... Respondent.

Mr. Devendranath S. Joshi (through V.C.)	Advocate for the Appellant
Mr. T.J.Mendon	Advocate for the Respondent No.1.

CORAM : S.M. MODAK, J

DATE : 28th September 2026.

P.C. :

1. Heard learned Advocate Joshi for the Appellant-Insurance Company and learned Advocate Mendon for the Respondent-Claimant.

2. When the Appellant-Insurance wants to withdraw the appeal, question is whether they cannot be allowed to withdraw the appeal because the claimant wants just compensation to be determined by this Court. Learned Advocate Mendon relied upon observations in Para No.15 of the order dated 15th May 2026 passed by Hon'ble Supreme Court in New India Assurance Company Ltd. v/s. Dolly Satish Gandhi and anr. In Civil Appeal No.7938/2026 (Page 107).

It reads thus:

“15. In fine, we hold that the amount received as part of Mediclaim/medical insurance is not deductible from compensation as calculated by the concerned Tribunal, adjudicating a claim for compensation under the MVA which may also include compensation under the head of medical expenses, if claimed. These two stand on a different footing – one is statutory while the other is contractual and the latter is only a sequitur of premiums having been paid in the past while the other is an entitlement as a consequence of an accident or death in a motor vehicle accident.

The matter is remanded to the High Court for making a determination consistent with this opinion. The appeal is dismissed as meritless. Pending application(s), if any, shall stand disposed of.”

3. This is opposed by learned Advocate Joshi for the Insurance Company. With their assistance, I have tried to understand what is the issue raised by the Insurance company in the present first appeal.

A) The MACT Tribunal, Mumbai as per the judgment dated 24th September 2013 directed the insurer and insured to pay compensation of Rs.13,80,000/- along with interest and liberty is granted to recover it from the insured. This is the injury claim. One of the head of the compensation is the expenses incurred by the claimant on hospitalization and

medical expenses. She has made a claim of Rs.14,00,000/- from the Tribunal. The quantification done by the Tribunal is as follows:

- a) Rs.987035/- granted by the Tribunal.
 - b) Remaining amount is not granted.
 - c) Rs.4,27,500/- is the amount granted to the claimant by same Insurance Company out of the mediclaim policy.
- B) The claim of the Insurance Company is while allowing the compensation of Rs.9,90,000/- the Tribunal ought to have considered the amount of Rs.4,27,500/-.
- C) This is one of the ground taken in the present appeal. Considering difference in opinion this Court (Coram: Smt. Anuja Prabhudesai, J) as per the order date 29th June 20 has framed question as follows:
- “Whether the amount received by the Claimant under the Mediclaim Policy Medical Insurance is liable to be deducted from the compensation payable to the Claimant under the head ‘medical expenses’ in proceedings under Section 166 of the Motor Vehicles Act, 1988.”
- D) Accordingly, the Full Bench is constituted and Full Bench as per the judgment dated 28th March 2025 held that reimbursement as per the mediclaim policy is one aspect and statutory compensation as per the M.V.Act is another aspect.

E) Issue was taken before the Hon'ble Supreme Court at the instance of Insurance Company. However, it is answered in the negative and that is how direction as referred above is given.

4. Mr. Mendon, learned Advocate submitted that his client is fighting for the compensation since 2010 and till today she is not paid with a single amount. He placed reliance on the direction given by the Hon'ble Supreme Court in the order dated 21st July 2025. In Para-3 it is observed thus:

“3. We clarify that, in fact, the respondents/claimants are at liberty to withdraw the same if not already done and the outcome of the present Special Leave Petition shall have no bearing on the merits *qua* entitlement or quantification of the amount of compensation.”

5. According to him inspite of this direction his client has not received a single pie. According to him if separate appeal has to be instituted, it requires Court fee and legal charges whereas according to Mr. Joshi after Supreme Court direction on 21st July 2025 the claimant ought to have moved for withdrawal and she cannot blame the Insurance Company.

6. It is true the Tribunal and Courts are under obligation to arrive at a quantum of just compensation. According to Mr. Mendon, the Tribunal ought to have granted compensation for a total amount of

Rs.14,00,000/- and not 9,90,000/-. He is pressing for the compensation under additional heads also. It is true if the compensation is not granted/inadequate amount is granted, it gives right to the claimant to file separate appeal or cross objection. It is very well true that the Courts are entertaining the claim for enhanced compensation by exercising power of determining just compensation even though there is no separate appeal or cross objection. However, in this case the situation is different. Admittedly, there is no separate appeal or cross objection. It is very well true the Hon'ble Supreme Court has directed to determine the compensation. Now whether this direction has to be understood in such a manner "*so as to entertain the prayer for enhancement particularly when Insurance Company do not want to prosecute the appeal is a question.*"

7. I am not in favour of the submission made by Mr. Mendon. When the compensation is to be determined as directed by the Hon'ble Supreme Court, it has to be determined on the basis of the arguments made before the Hon'ble Supreme Court by the Insurance Company. Those arguments are the amount paid towards the mediclaim has to be considered while granting the compensation under the head reimbursement of hospitalisation and medical bills. This cannot be interpreted as submitted by Mr. Mendon. If there is no separate appeal or cross objection, the above said direction of Hon'ble Supreme Court will not enure to the benefit of the claimant so as to give him right to oppose for withdrawal of the appeal. This could have been different if already there is a separate appeal/cross

objection. Unfortunately, it is not there so I am allowing the appellant to withdraw the appeal.

8. Hence, appeal is disposed of as withdrawn with a following direction:

ORDER

- (i) The Tribunal is directed to pay the amount deposited by the Insurance Company to the claimant immediately along with necessary interest.
- (ii) The right of claimant to take appropriate steps thereby praying for enhancement of the compensation is kept intact. Even she is at liberty to pray for condonation of delay.
- (iii) The statutory deposit along with interest be transferred to the Tribunal at earliest.
- (iv) The Registrar (Judicial-1) is directed to see that R & P will be sent to the Tribunal within a period of 7 days.

(S.M. MODAK, J.)