IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.733 OF 2025

Royal Sundaram
Alliance Insurance Co. Ltd.
315, Arenja Corner, B-Wing
3rd Floor, Sector-17, Vashi,
Navi Mumbai, District-Thane. ... Appellant

Versus

1. Smt. Chitra Siddharth Malve
Aged about 40 years,
Indian Inhabitant,
Occ. Housewife, residing at
9/2, Jai Padmavati CHS,
Ramdaswadi, Syndicate,
Murbadroad, Opp. Mali Samaj Hall,
Kalyan (W) – 421 301, ...

2. Kumari Asmi Siddharth Malve
Aged about 10 years,
Indian Inhabitant,
Occ. Housewife, residing at
9/2, Jai Padmavati CHS,
Ramdaswadi, Syndicate,
Murbadroad, Opp. Mali Samaj Hall,
Kalyan (W) – 421 301
(The Respondent No.2 is minor
represented through His mother
i.e. Applicant No.1, ...

3. Smt. Sheela D. Malve
Aged about 75 years,
Indian Inhabitant,
Occ. Housewife, residing at
Ashirwad Bungalow
Samarth Nagar, Opposite Majid
Vashind (West), Shahpur, District Thane,

4. Smt. Jyoti Ganesh Warungase
Warunase Patil Galli,
Warunase Kirana, Trimbakeshwar,
District Nashik. ... Respondents

WITH
INTERIM APPLICATION NO.10075 OF 2024
IN
FIRST APPEAL NO.733 OF 2025

1. Smt. Chitra Siddharth Malve
Aged about 30 years,
Occ. Housewife ...Applicant

In the matter between

Royal Sundaram
Alliance Insurance Co. Ltd.
325, Arenja Corner, B-Wing
3rd Floor, Sector-17, Vashi,
Navi Mumbai, District-Thane. ... Appellant

Versus

1. Smt. Chitra Siddharth Malve
Aged about 40 years,
Indian Inhabitant,
Occ. Housewife, residing at
9/2, Jai Padmavati CHS,
Ramdaswadi, Syndicate,
Murbadroad, Opp. Mali Samaj Hall,
Kalyan (W) – 421 301 ...

2. Kumari Asmi Siddharth Malve
Aged about 10 years,
Indian Inhabitant,
Occ. Housewife, residing at
9/2, Jai Padmavati CHS,
Ramdaswadi, Syndicate,
Murbadroad, Opp. Mali Samaj Hall,
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(The Respondent No.2 is minor
represented through His mother
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3. Smt. Sheela D. Malve
Aged about 75 years,
Indian Inhabitant,
Occ. Housewife, residing at
Ashirwad Bungalow
Samarth Nagar, Opposite Majid
Vashind (West), Shahpur,
District Thane ...Respondents

Mr. Rahul Mehta i/b KMC Legal Venture for the Appellant.

Mr. Nikhil Ghate for the Respondent No.1 in FA No.773/2025 and for the Applicant in IA No.10075/2024.

CORAM : SHYAM C. CHANDAK, J.

DATE : 27th MARCH 2025

JUDGMENT :

. Present Appeal impugning a Judgment and Order dated 15.12.2018, in Motor Accident Claim Petition No. 162 of 2013 ("**claim**"), passed by the Motor Accident Claim Tribunal, Kalyan ("**Tribunal**") thereby said claim filed under Section 166 of Motor Vehicle Act, 1988 by Respondent Nos.1 to 3 ("**the claimants**") was partly allowed and Respondent No.4/original opponent No.1-owner and the Appellant/original opponent No.2-insurer of the offending vehicle held liable to jointly and severally pay to the claimants a compensation in the sum of Rs.83,72,350/- (inclusive of no fault liability) along with interest at the rate of 9% per annum from the date of application till the realization of entire amount.

2) Record indicates that the notice to Respondent No.4 was dispensed with in the application seeking condonation of delay in filing the Appeal. Therefore, and considering the issues involved in the appeal, the learned Advocate for the parties submitted that the Appeal be finally heard. Hence, taken up for final hearing.

3) Heard Mr. Mehta, the learned Advocate for the Appellant and Mr. Ghate, the learned Advocate for the claimants. Perused the record.

4) Facts in brief are that, on dated 30.06.2013, at about 9:00 p.m., late Siddharth Malve ("**deceased**") was proceeding towards his house by travelling in a Maruti Car ("**car**") alongwith his friends, by Mumbai-Agra Highway, on Nashik lane. One of his friends was driving the car. When the car reached within the limits of *Koshimbigaon*, near *Vaisnadevi* temple, one Bolero Jeep bearing No.MH-15-CM-4323 ("**Jeep**") came from behind, driven in a high and excessive speed, rash and negligent manner and gave a dash to the car on its rear side. As a result, the deceased sustained serious injuries. Immediately, the deceased was taken to Aayush Hospital. On

receiving information of the accident, *Padgha* Police Station registered an FIR bearing Crime No. I-91 of 2013, under Sections 279, 337 and 427 of I.P.C.,and Section 184 of the Act against the driver of the Jeep. The deceased succumbed to the injuries on dated 03.07.2013 while undergoing the medical treatment.

4.1) It was averred that the deceased was aged 36 years and employed with ICICI Bank thereby he was getting a monthly salary of Rs.52,854/-. The claimants are the widow, daughter and mother of the deceased and, they were dependent on the deceased. Therefore, the claimants prayed to award a compensation of Rs.1,00,00,000/-.

5) Respondent No.4 filed his written statement (Exh.22) and opposed the claim, contending that the accident took place due to the sole negligence of the driver of the car. In the alternative, it was contended that there was contributory negligence on the part of the drivers of both the vehicles in the ratio 50:50. It was contended that the offending vehicle was insured with the Appellant. Therefore, the Appellant was liable to indemnify the Respondent No.1.

6) The Appellant also filed the written statement at Exh.16 and challenged the claim. The Appellant contended that the driver of the Jeep was not holding a valid and effective driving licence at the

time of the accident. It was contended that the driver of the car was 90% negligent in causing the accident whereas, the driver of the Jeep was negligent only to the extent of 10%. The Appellant, therefore, prayed that the claim be dismissed with costs.

7) In order to prove the claim, the claimants presented the evidence of Respondent No.1 on Affidavit (CW1/Exh.24) and Asha Gole (CW2/Exh.37), Manager, ICICI Bank Ltd., Bandra Kurla Complex, Bandra (East). Besides, the claimants have relied upon various documents in the evidence.

8) Mr. Mehta, the learned Advocate for the Appellant submitted that the claimants failed to prove that the accident occurred due to rash and negligent driving of the Jeep. The claimants could have established the fact of negligent driving of the Jeep by examining the investigation officer, but they did not. Therefore, adverse inference shall be drawn against the claimants. He submitted that the reasons recorded to foist the negligence on the Jeep driver are perverse. Mr. Mehta submitted that the Tribunal erred in holding the income of the deceased based on the Form No.16 of the assessment year 2013-2014 instead of taking an average monthly income of the last three years based on Form No.16 adduced in the

evidence. He submitted that instead of the 1/3rd, the Tribunal has deducted ¼th of the actual yearly income of the deceased towards his personal and living expenses. This lead to awarding an exaggerated compensation of Rs.83,72,350/-. Thus, there are infirmities in the impugned Judgment and Order, according to Mr. Mehta.

9) Mr. Ghate, the learned Advocate for the claimants, on the other hand, submitted that there is overwhelming evidence by the claimants which proved that the accident occurred only due to rash and negligent driving of the Jeep. He submitted that the evidence as to the occupation and income of the deceased is sufficient, cogent and reliable. Hence, the Tribunal rightly held that the net yearly income of the deceased was Rs.5,51,848/- excluding the income tax of Rs.24,714/-. He submitted that the deceased was in the regular employment. Therefore, the award of 40% of the proved net annual income of the deceased towards his future prospects is incorrect and, it be corrected as 50% of the net annual income. He submitted that only Rs.40,000/- has been awarded as cumulative consortium, which should be separate. Hence, Mr. Ghate submitted that the award be modified and just compensation be awarded as per the settled law.

10) Looking at the rival submission first it must be seen as to

whether it has been proved that the accident occurred due to rash and negligent driving of the Jeep or not. In this regard, the evidence of the Respondent No.1 is that on at the relevant time and place, the Jeep was driven in a high speed and in a rash and negligent manner. As a result, the driver of the Jeep lost his control and the Jeep dashed the car from the back side. To corroborate her evidence, Respondent No.1 relied on the FIR (Exh.27). Mr.Gaurav Kashinath Khairnar, one of the occupants of the car, filed the FIR therein he narrated that at the relevant time and place, when he was driving the car, the Jeep gave a forceful dash to the car from behind. As a result, the car and the Jeep turned turtle. He and others sustained injuries. The FIR is consistent with the spot panchnama (Exh.28). Thus, both the documents supported the version of the Respondent No.1. The Appellant did not explain as to why the Jeep dashed the car on its back side. This fact indicates that the driver of the Jeep did not keep proper lookout at the road. The deceased died due to the injuries sustained in the accident. In view thereof, I hold that the accident occurred due to negligent driving of the Jeep.

11) CW2-Asha Gole, has been Manager at ICICI Bank Ltd., Bandra Kurla Complex, Bandra (East). The evidence of Respondent

No.1 and CW2 indicates that from dated 15.04.2008 the deceased was working with ICICI bank. CW2 stated that the deceased was Assistant Manager-II in the said bank and he was the permanent employee. CW2 stated that the deceased was getting salary of Rs.5,65,603/- per annum. To support this evidence, CW2 has referred the Offer Letter (Exh.41) and Form No.16 of the financial years 2012-2013, 2013-2014, 2014-2015 (Exh.42, 43 & 44). Besides, CW2 has produced the computerized salary slips for the months of May, June and July of the year 2013 (Exh.45, 46 and 47). The aforesaid oral and documentary evidence did not meet sufficient challenge in the cross examination.

12) The Form No.16 of the financial year 2013-2014 (Exh. 43) was submitted on dated 06.06.2013, i.e., just before the accident. The gross annual income of the deceased was Rs.5,51,848/-, out of which Rs.24,714/- deducted towards the income tax. Therefore, the Tribunal considered the Form No.16 (Exh.43) and accordingly held that the net annual income was Rs.5,27,134/-. The learned Advocate for the parties did not take any exception to the said finding. I am, therefore, in agreement with the said finding recorded by the Tribunal.

13) The evidence of Respondent No.1 and CW2 clearly established that, deceased was aged below aged 38 years, he was in

regular/permanent employment. All the claimants were dependent on the income of the deceased. Therefore and in view of the decisions in ***National Insurance Co. Ltd. v/s. Pranay Sethi and Others***[1] and ***Sarla Verma and others Vs. Delhi Transport Corporation and another***[2], 50% of the established net annual income should be added towards the future prospects of the deceased and thereafter 1/3rd from the actual net yearly income should be deducted towards the personal and living expenses of the deceased. The applicable multiplier is '15'. As a result, the loss of the dependency comes to Rs.79,07,010/-. (Rs.5,27,134 **+** Rs.2,63,567 **–** 2,63,567 (1/3rd) **=** Rs.5,27,134/- **x** 15). In view of the decision in ***Magma General Insurance Co. Ltd. v/s. Nanu Ram Alias Chuhru Ram & Ors.***[3], the Respondent Nos.1 to 3 are entitled to receive Rs.40,000/- each as spousal, filial and parental consortium, respectively. The Tribunal, awarded Rs.15,000/- towards 'funeral expenses' and Rs.15,000/- under the head 'loss to estate', which is just. Thus, the total compensation comes to **Rs.80,57,010/-**.

14) Upshot of the above discussion is that the Tribunal erred in adding just amount (percentage) as the future prospect, deducted lesser amount towards the personal and living expenses and did not

1. *2017 ACJ 2700 (SC)*
2. *2009 ACJ 1298 (SC)*
3. *2018 ACJ 2782 (SC)*

award sufficient consortium. Therefore, the impugned Judgment and Order warranted an interference by this Court to modify the award. Thus, the Appeal partly succeeds. Hence, following Order is passed :-

(a) The Appeal is partly allowed. The parties shall bear their own cost.

(b) The impugned Judgment and Order dated 15th December 2018, in M.A.C.P. No.162 of 2013, passed by the Motor Accident Claims Tribunal at Kalyan, is modified.

(c) Appellant and Respondent No.4 shall jointly and severally pay to the claimants the compensation in the sum of Rs.80,57,010/- (inclusive of NFL amount) together with interest thereon at the rate of 9% per annum from the date of the Claim Petition till realization of the amount.

(d) The Appellant and Respondent No.4 are directed to comply with this Judgment and Order within a period of four months from today, by depositing the amount in the Tribunal, if not deposited earlier.

(e) On deposit of the amount the Tribunal shall immediately inform about the deposit to Respondent

Nos.1 to 3.

(f) The award amount shall be disbursed and invested as directed by the Tribunal.

(g) Appellant/insurance company will be entitled to refund of the excess compensation amount, if any, alongwith proportionate interest accursed thereon till date.

(h) Appeal stands disposed of in the aforesaid terms.

(i) In view of the disposal of the Appeal, Interim Application No.10075 of 2024, does not survive and is disposed of, accordingly.

(SHYAM C. CHANDAK, J.)