IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1408 OF 2024

Bharti AXA General Insurance Co. Ltd.
Fun Republic, Plot No.844/1, Mezzanine Floor, Shah Industrial Estate,
Veera Desai Road, Andheri (W),
Mumbai-53 .... **Appellant**

Versus

1. Smt.Sumati Suresh Sawant
Age-52 years, Mother of Deceased

2. Rakesh Suresh Sawant
Age-34 years, Son of Deceased

3. Nagesh Suresh Sawant
Age-32 years, Son of Deceased

All R/at Subhash Vikas Mandal, Chawl No.2, Room No.32, Wadala-Sevari Cross Road, Wadala (W), Mumbai-400 031.

4. Y Khan Transport Company
Plot No.3, Ground Floor, Salman Apartment, Hirabai Ghodepdev Cross Road No.1, Mumbai-400010 .... **Respondents**

(FA stand dismissed against R.No.4 vide RJ-II order dated 27/06/2024)

Mr.D.S. Joshi a/w Mr.Pradyumna S. Thakurdesai, for the Appellant.
Mr.S.R. Gupta, for the Respondents.

CORAM : R.M. JOSHI, J.

DATE : 9th DECEMBER 2025

ORAL JUDGMENT :

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

2. This Appeal filed under Section 173 of the Motor Vehicle Act, 1988 ('M.V. Act.' for short) takes exception to the judgment and award dated 23rd March 2018 passed by Motor Accident Claims Tribunal, Mumbai ('MACT' for short) in MACP No.414 of 2014 wherein the death claim is allowed by directing payment of the compensation sum of Rs.27,94,800/- with interest @ 8% per annum from the date of the Application till realization of the amount.

3. The Appellant-Insurer takes exception to the said award essentially on the ground that, the Tribunal has committed error in computing the compensation by accepting the income of the deceased as it is without considering the valid deduction. It is sought to be argued by referring to the documents on record that, the conveyance allowance as well as

washing allowance were meant for the personal expenses of the deceased and therefore in view of the judgment of the Hon'ble Supreme Court in case of the ***Kavita Devi & Ors V/s. Sunil Kumar & Anr***[1] unless the Claimants show that these allowances were regularly received and used for the family benefits, they are required to be excluded from the determination of loss of dependency. It is further argued that, in the accident in question deceased as well as his wife died, therefore, on the death of the wife only parents remained to be dependent upon the deceased and hence ½ of the income should have been considered towards the personal expenses of the deceased. Similarly, it is argued that, the Claimant No.1 has admitted in her cross-examination about her two other sons being employed and therefore it cannot be held that she was totally independent upon the deceased.

4. The learned counsel for the Appellant supported the impugned judgment and award.

1 **2025 SCC Online SC 1639**

5. Insofar as the employment and income of the deceased is concerned, there is evidence on record to hold so. Now question arises as to whether there would be deduction of conveyance allowance as well as washing allowance from the income for the purpose of computation of compensation. No doubt, Hon'ble Supreme Court in the case of *Kavitadevi* (Supra) has held that it is for the Claimant to shows that this allowances regularly received and used for family benefit, they could be excluded for the determination of loss of dependency.

6. It needs to be mentioned that, in the proceedings under the M.V. Act the facts are required to be proved on preponderance of probability. The Claimant No.1 in her evidence has specifically stated about his son as well as daughter-in-law used to spend their income for the maintenance of the house. There is no cross-examination on this point and no specific questions are put to the witness that the amounts received towards the conveyance and washing allowance are not used for the family. Similarly, though the Claimant No.1 has admitted in the cross-examination that her

other two sons are working, however, there is no suggestion that she was dependent upon them. There is no presumptions in respect of the facts which are required to be proved by leading evidence.

7. Insofar as the contention of the counsel for the Appellant-Insurer about after death of wife only parents remaining as dependent and therefore half income should be taken towards his personal expenses deserves no consideration for the reason that in view of the judgment of ***Sarla Verma & Ors vs Delhi Transport Corp.& Anr.***[2] in case of a married person the 1/3rd amount is required to be deducted towards his personal expenses and not half as if he is unmarried. It is pertinent to note that, in the accident in question both of them died on the spot and therefore this Court finds no justification to accept the said contention of the learned counsel.

8. As a result of the above, this Court finds no merit in the matter. Hence, Appeal stands dismissed.

9. All pending Applications are disposed of.

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2 ***AIR 2009 SC 3104***

10. The statutory amount be transmitted to the Tribunal as per Rules.

(R.M. JOSHI, J.)