

2. Reliance General Insurance Co. Ltd. }
 4th Floor, Chintamani Avenue, Next }
 Virwani Industrial Estate, Western }
 Express Highway, Goregaon (E), }
 Mumbai-400 063 } ... **Respondents**

Ms.Kalpana Trivedi, for the Appellant in First Appeal No.1209 of 2023 and for Respondent No.2 in First Appeal No.1560 of 2024.
 Mr.T.J. Mendon, for the Respondent No.1 in First Appeal No.1209 of 2023 and for the Appellant in First Appeal 1560 of 2024.

CORAM : R.M. JOSHI, J.

DATE : 17th DECEMBER 2025

ORAL JUDGMENT :

. These Appeals filed by Insurer as well as Claimants take exception to the judgment and award dated 25th July 2022 passed in MACT No.132 of 2016 whereby the learned Tribunal granted lump sum compensation to the Claimants in an injury claim.

2. The Insurer take challenges to the impugned judgment and award on the ground that the Tribunal has failed to take into consideration the negligence on the part of another vehicle in occurrence of the accident. It is therefore contended that, since, this is case of the contributory negligence on the

part of the rider of the motor-cycle on which the Applicant was pillion rider, the Tribunal ought to have held negligence of the rider of the motor-cycle to the extent of 50% in occurrence of the accident. It is further claimed that, the Tribunal has failed to take into consideration the evidence of RTO in order to show that the permit of the auto rickshaw i.e. the offending vehicle expired on 20th July 2014 and since the vehicle was not having valid permit, there is breach of Terms and Conditions of the policy and hence, Insurer is not liable to make payment of compensation. It is further claimed that the Tribunal has erred in awarding lump-sum compensation of Rs.20 lakhs without recording any reason therefor. On these amongst other contentions the impugned judgment is sought to be set aside.

3. Whereas the Claimants by filing Appeal is seeking enhancement of the compensation on the ground that the Tribunal has committed error in not considering the income of the Injured and the appropriate multiplier has not been applied for the purpose of determination of compensation.

4. The learned counsel for the Insurer submits that the

First Information Report ('FIR' for short) as well as the panchnama of the spot which finds part of the police papers indicates that the rider of the motor-cycle was equally responsible for the occurrence of the accident. In such circumstances, the rider must be held negligent to the extent of 50%. She further argued that the Tribunal has committed error in granting lump-sum compensation to the Claimant which is on higher side. It is submitted that the Claimant has failed to prove functional disability and hence no compensation for loss of earning can be granted to the Claimant. To support this submission, she referred to the evidence on record. On these amongst other contentions the impugned judgment and order is sought to be set aside.

5. On the other hand, the learned counsel for the Claimant submits that the Claimant has led her own evidence so also examined witness from the school where she was employed. It is his submission that on the basis of the said evidence on record employment and income of the Claimant is proved. According to him, the Claimant was terminated from

service owing to the disability caused to her. It is argued that in the accident in question claimant sustained injury to her brain and due to the said injury she is incapacitated even from performing even her daily ritual. It is claimed that during the entire lifetime the Claimant would require assistance for performing day to day activities. It is submitted that since the termination of the Claimant is proved for the disability caused to her, the Claimant is entitled for the compensation by applying appropriate multiplier considering her age and income with future prospects.

6. At the outset, it needs to be seen as to whether this is case wherein contributory negligence can be said on the part of the rider of the motor-cycle in occurrence of the accident. Perusal of the FIR so also the spot panchnama indicates that the accident had occurred for the reason that the offending auto rikshaw all of a sudden without giving signal came towards right side which resulted into occurrence of the accident. Even if it is accepted that the accident occurred at the time of the motor-cycle over taking the offending vehicle, that by itself

cannot be considered as an act of negligence on the part of the rider of the motor-cycle. It is permissible for any vehicle to overtake another vehicle from the right side. It was necessary for the driver of the offending vehicle to see as to whether any vehicle is overtaking him before he comes to the right side of the road. There seems no precaution taken by the driver of the offending vehicle and hence the Tribunal has rightly held the accident occurred due to the sole negligence of the driver of the auto rickshaw.

7. Though the Insurer has taken a defense about there being no permit of the offending vehicle, there is no evidence on record to prove the said fact. The burden would be on the Insurer to show that there is breach of Terms and Conditions of the Insurance Policy. Insurer though examined Prashant Virkud from RTO office, Panvel to show that during the relevant time the vehicle was plyed without permit. However, the documents on record indicate that the owner of the offending vehicle was duly insured with the Appellant-Insurer in respect of the said vehicle during the relevant time.

There is nothing on record to indicate that there is any breach of terms of policy. As a result of this, the direction issued by the Tribunal holding owner as well as Insurer of the offending vehicle jointly and severally liable to pay compensation cannot be faulted with.

8. This Court however finds substance in the contention of the counsel for both sides that the Tribunal has committed error in granting lump-sum compensation to the Claimant.

9. Perusal of the impugned judgment and award indicates that the permanent disability to the extent of 60% has been accepted by the Tribunal. The said finding has been recorded on the basis of evidence of Claimant as well as Dr.Chandrashekar Sathye. He has specifically deposed about nature of injuries caused to the Claimant including head injury. He has also stated about Claimant having palpable defect in the skull on the left side and has hemiparesis on right side, and on that count functions like memory and speech are affected to a large extent. By way of cross-examination nothing is brought

on record to discard the assistant done by the doctor of disability to the extent of 60%. The Tribunal however, has not accepted the evidence of Dr.Sathe and observed that possibility of disability certificate having been issued on the say of Claimant is not ruled out. The Tribunal has failed to take into consideration the nature of injuries and other evidence placed on record which indicates about the permanent disability caused to the Claimant.

10. The Tribunal determined the compensation for loss of income and pain and suffering of Rs.20 lakhs in lump-sum. This manner of determination of compensation is alien to the settled principles of law. Once it is proved that there is disability which has led to the termination of service of the Claimant, the compensation ought to have been calculated on the basis of applying appropriate multiplier. In view of the judgment of the Supreme Court in case of *Rajan V/s. Soly Sebastian*¹.

11. The Claimant has examined herself as well as led

¹ 2013 SCC Online Ker 5788

evidence of attendance to substantiate her claim about she being required assistance for a substantial period of time. In view of the judgment of the Hon'ble Supreme Court in case of *National Insurance Co. Ltd. vs. Pranay Sethi*², the loss of future prospects are also required to be added to the computation. The age of the Claimant was 36 years at the time of the occurrence of the accident. She was terminated from service owing to the disability caused to her and therefore there is loss of income caused to the Claimant. The income of last drawn salary of the Claimant was Rs.36,233/- as claimed proved by her. The appropriate multiplier applicable to the case would be 15. There shall be addition of the future prospects to the extent of 50%. Owing to the percentage of disability Claimant would be entitled for 60% of compensation, medical expenses at Rs.17,33,220/- pain and suffering Rs.2 lakhs, loss of amenities of the life Rs.2 lakhs, attendance charges Rs.4,21,000/-, conveyance and special diet Rs.50,000/-.

² 2017 ACJ 2700 (SC).

Particulars	Amount
Monthly Income	Rs.36,233.00
Annual Income	Rs.4,34,796.00
(+) Future Prospects (50% - Age 36 Yrs)	Rs.2,17,398.00
Less Loss of Income after Future Prospects 40%	Rs.2,68,877.00
Annual Income After Future Prospects	Rs.3,91,316.00
Multiplier 15	Rs.58,69,740.00
Medical Expenses	Rs.17,33,220.00
Pain and Suffering	Rs.2,00,000.00
Loss of Amenities of Life	Rs.2,00,000.00
Attendance Charges	Rs.4,21,000.00
Conveyance & Special Diet	Rs.50,000.00
Total Just Compensation Payable	Rs.84,73,960.00
Awarded by Tribunal	Rs.37,33,220.00
Enhanced Compensation	Rs.47,40,740.00

12. The Appeal filed by the Insurer is dismissed and Appeal filed by the Claimant shall allowed.

ORDER

(i) The First Appeal No.1209 of 2023 filed by the Insurer is dismissed.

(ii) The First Appeal No.1560 of 2024 filed by the Claimant is allowed.

(iii) The Claimants are entitled for enhanced compensation of Rs.47,40,740/- alongwith interest @ 6% per annum from the date of filing of Claim Petition till realization of the amount.

(iv) The Claimants shall pay Court Fees on enhanced amount.

(v) The Claimants are permitted to withdraw the enhanced compensation along with interest.

(vi) The statutory deposit amount in First Appeal No.1209 of 2023 is transmitted to the Tribunal, as per Rules.

13. All pending Applications are disposed of.

(R.M. JOSHI, J.)