NILAM SANTOSH KAMBLE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1671 OF 2024

Reliance General Insurance Co. Ltd.,
Avirahi, 2nd Floor, S.V. Road, Borivali (W),
Mumbai-4000092 … **Appellant**

V/s.

1. Mr.Avinash Chandrakant Parab
Age-49 years,
R/at Swami Samarth Society,
S.V. Road, Malad (E), Mumbai-64

2. Ms.Anupama Sisir Samanta
B-29, Jayshree CHS Ltd.,
Navy Nagar, Opp. Mittal College,
Malad (W), Mumbai-400064 … **Respondents**

Ms.Shalini Shankar, for the Appellant.
Mr.Vasant More, for the Respondents.

CORAM : R.M. JOSHI, J.

DATE : 8th DECEMBER 2025

ORAL JUDGMENT :-

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

2. This Appeal filed under Section 166 of the Motor Vehicle Act, 1988 ('M.V. Act.' for short) takes exception to the judgment and award dated 3rd April 2023 passed by Motor Accident Claims Tribunal, Mumbai ('MACT' for short) in MACP No.1357 of 2015 whereby the Tribunal partly allowed the claim filed by the Claimant and directed the owner and Insurer jointly and severally to pay Rs.3,93,000/- with interest @ 7.5% per annum from the date of the Petition till realization of the amount.

3. There is no dispute made by the Opponents with regard to the occurrence of the accident, so also negligence on the part of the driver of the offending vehicle. The issue sought to be raised by the Insurer is with regard to the cancellation of the policy issued to the Insured and therefore the Insurer denies liability of payment of compensation. Apart from this, the exception is taken to the quantum of the compensation.

4. The learned counsel appearing on behalf of the Appellant-Insurer submits that not only defense of the policy is raised before the Tribunal but also evidence was led in this

regard. It is her contention that, the Tribunal has erred in not considering the evidence in proper perspective. On the point of the quantum it is argued that, without any proof of income, the Tribunal ought not to have granted any compensation for loss of income.

5. The counsel for the Claimant supported the impugned judgment and award. According to him the burden is not discharged by the Insurer to prove that there is cancellation of the Insurance Policy issued in favour of the Insured.

6. No doubt in the written statement, defense is taken by the Insurer about the cancellation of the Insurance Policy. The moment such defense is raised the factum of Insurance Policy stands admitted. In such circumstances, the burden would be upon the Insurer to lead evidence to probabilize the said defense. Evidence of witness Kothari indicates that, he has no personal knowledge with regard to the policy in question. Apart from this, testimony of Mr.Shoun Jemes also is not

sufficient to prove the cancellation of policy for non-payment of premium.

7. The Insurer maintains premium register which is best evidence to prove factum of the non-payment of the premium. No such evidence is placed on record before Tribunal. In the circumstances, the Tribunal has not committed any error in rejecting the defense of the Insurer.

8. On the point of the quantum the Tribunal has accepted the income of the Claimant @ Rs.5,000/-, which is absolutely fair and reasonable. Thus the compensation calculated on the basis of the same, cannot be termed as perverse. Hence, there is no merit in Appeal and hence the same stands dismissed.

9. All pending Applications are disposed of.

10. Record and Proceedings be sent back to the Tribunal.

11. Statutory amount be transmitted as per Rule.

(R.M. JOSHI, J.)