IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1902 OF 2024

Divisional Manager
Reliance General Insurance Company Ltd.
Address : 106-107-108, First Floor, Space Cosmos, Ashok Stambh, Nashik-422 002 } … **Appellant**

Versus

1. Sou.Komal Rakesh Bhangale
Age-32 years, Occ: Housework.

2. Kum.Tanmay Rakesh Bhangale
Age-15 years, Occ: Education
Respondent Nos.1 is Guardian of Respondent No.2.

3. Smt.Rekha Yashwant Bhangale
Age-61 years, Occ: Housework
All R/at N.42/J, B 2/14, Surya Naryan Square, Pavannagar, Trimurti Square, Nashik-422008

4. Pratidnya Travels
Thr. Proprietor
Rizwan S. Shaikh
Age-Major, Occ: Ownership(Swift Dzire of Maruti Suzuki Company Bearing No.MH-01-BT-4452)
Add: Jinatnagar, Vadalgaon, Gavthan, Post-Vadala, Taluka-District-Nashi. } … **Respondents**

Mr.Avesh Ghadge i/b Mr.Akshay Kulkarni, for the Appellant (Through V.C.)
Mr.Rajan Pawar, for the Respondents.

CORAM : R.M. JOSHI, J.

DATE : 11th DECEMBER 2025

ORAL JUDGMENT :

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

2. This Appeal filed by the Insurer takes exception to the judgment and award dated 11th January 2023 passed in MACP No.707 of 2019 accepting the death claim filed by the Claimants by directing payment of compensation of Rs.25,43,595/- with interest @ 7% from the date of filing of Claim Petition till realization of the amount.

3. It is the case of the Claimants before the Tribunal that on 13th May 2019 deceased was pillion rider on motor cycle bearing No. MH-15-DD-2558 driven by his friend. When they came to the spot of the accident motor car bearing registration No. MH-01-BT-4452 came from the opposite side in rash and

negligent manner and gave dash to the motor-cycle of the deceased. In the said accident both sustained serious injuries. Both died in the said accident.

4. Before Tribunal the owner of the offending vehicle though served with the notice failed to file Written Statement and contest the claim. Insurer filed Written Statement and denied the contention of the Claimant on accident, age, employment and income of the deceased. It is claimed that, the driver of the offending vehicle was not holding valid and effective driving license at the time of occurrence of the accident hence, Insurer is not liable to pay compensation for breach of condition of the policy. The Claimant led evidence to prove the manner in which the accident occurred by relying upon police papers. They also led evidence to prove employment and income of the deceased. Insurer examined the Investigating Officer who conducted investigation in the crime.

5. The learned counsel for Appellant-Insurer submits that, this is case of the non-involvement of the offending vehicle in the accident and hence, Insurer is not liable to make payment

of compensation. It is claimed that, there is delay of two days in lodging of FIR which creates doubt about its genuineness. According to him the driver of the offending vehicle was not holding effective and valid license at the relevant time and which amounts to the breach of condition of the Insurance Policy. It is submitted that the Tribunal has accepted, the income of the deceased on higher side and hence the impugned judgment and award deserves interference.

6. The learned counsel for the Respondent-Claimants supported the impugned judgment and award with regard to the joint and several liability of owner as well Insurer to pay the compensation. On the point of the determination of the compensation, however, it is submitted that the Tribunal has erred in not considering the evidence on record which indicates that the last drawn income of the deceased is Rs.18,892/- and after deducting the Professional Tax of Rs.200/- his income for the purpose of computation of the compensation ought to have been taken @ Rs.18,692/-. It is his submission that even without filing Appeal or Cross-objection it is open for the Claimant to

seek enhancement of the compensation. He relied on the judgment of the Hon'ble Supreme Court in case of ***Pappu Deo Yadav vs Naresh Kumar***[1].

7. Though it is now sought to be argued on behalf of the Appellant that this is case of the non-involvement of the offending vehicle in the accident, no specific plea in this regard has been taken in the Written Statement. In the Written Statement challenge is raised to the liability on the ground of offending vehicle having no valid and effective license so also doubt is sought to be created with regard to the genuineness of the FIR since it is filed after two days of the accident.

8. It is pertinent to note that, the Claimants are required to prove factum of the accident so also negligence on the part of the driver of offending vehicle and its involvement on preponderance of probabilities. The Claimants to substantiate the same have placed reliance on police papers. Perusal of the same indicates that offence came to be registered against the driver of the offending vehicle and on conclusion of the

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investigation charge-sheet is also filed. In this regard the cross-examination of the Investigating Officer who conducted the investigation in the same crime is relevant. He admits in cross-examination that it was revealed that the driver of the offending vehicle was negligent. Similarly, he states about recording statement of Samapt under Section 164 of Cr.P.C. Even perusal of his examination-in-chief does not indicate that the offence has been wrongly registered against the driver of the offending vehicle, merely because there is delay of two days in lodging of the FIR, the genuineness of the same cannot be doubted more particularly both rider as well as pillion rider have died in the said accident. Having regard to the evidence on record, this Court finds no perversity in the findings recorded by the Tribunal accepting involvement of the offending vehicle in the accident.

9. As far as the defence about the driver of the offending vehicle holding no valid and effective license, there is no evidence led by the Insurer. Similarly, the evidence in respect of the employment and income of the deceased, apart from oral testimony of the concerned witness this is support thereto from

the documentary evidence on record. The said evidence indicate that appointment letter, muster roll of the employer is placed before the Tribunal, which leaves no room for doubt that the deceased was employed with the employer as claimed by the Claimant. The Claimants have substantiated their claim by leading cogent evidence to hold that the last drawn gross income of the deceased was Rs.18,892/- per month. By deducting Professional Tax of Rs.200/- the net income for the purpose of computation of the compensation comes at Rs.18,692/-. The Tribunal has not accepted the said income for the purpose of computation of compensation which is an error committed by the Tribunal.

10. In view of judgment of Hon'ble Supreme Court in case of ***Pappu Dev Yadav (Supra)***, it is open for the Claimant to seek enhancement of the compensation without filing Appeal or Cross-objection, hence, Appeal stands dismissed. The judgment and award passed by the Tribunal however stands modified in following terms.

Particulars	Amount in Rs.
Gross Monthly Income	Rs.18,892.00
Less Professional Tax (18,892-200)	Rs.18,692.00
Annual Income (18,692 X 12 months)	Rs.2,24,304.00
(+) Future Prospects (40%) (89,721 + 2,24,304 Age 38 Yrs)	Rs.89,721.00
Annual Income After Future Prospects	Rs.3,14,025.00
(-) Personal Expenses (1/3rd amount)	Rs.1,04,675.00
Net Annual Loss of Income	**Rs.2,09,350.00**
Multiplier (2,09,350 x 15)	Rs.31,40,250.00
Consortium (Rs.44,000 x 3)	Rs.1,32,000.00
Loss of Estate	Rs.16,500.00
Funeral Expenses	Rs.16,500.00 =============
Total Just Compensation Payable	**Rs.33,05,250.00/-** ---------------------

ORDER

(i) The Appeal is allowed. The impugned judgment and award dated 11th January 2023 passed by Motor Accident Claims Tribunal, Mumbai ('MACT' for short) in MACP No.707 of 2019 is modified.

(ii) The original Claimants are entitled for enhanced compensation of Rs.33,05,250/- @ 7% interest per annum from the date of filing Claim Petition till realization of the the amount.

(iii) Rest of the order remains unchanged.

(iv) The Original Claimants are permitted to withdraw the enhanced amount along with accrued interest thereon.

(v) The Claimant shall pay additional Court Fees, as per Rules.

(vi) Record and Proceedings be sent back to the Tribunal.

(vii) All pending Applications are disposed of.

(R.M. JOSHI, J.)