IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 173 OF 2025

1 Smt. Sneha Naresh Tekwani
Age 52 years, Occupation : Housewife
Widow of the deceased

2 Khushboo Naresh Tekwani
Age 31 years, Occupation : Nil
Daughter of deceased

3 Vinay Naresh Tekwani
Age 28 years, Occupation – Service
Son of deceased

All the above appellants are residing at
Sai-Jyoti Apt., 3rd Floor, Opposite Swami Shanty
Prakash-Community Hall, Ulhasnagar No.5,
Dist. Thane, Pin – 421 004 … Appellants

SONALI SATISH KILAJE Digitally signed by SONALI SATISH KILAJE Date: 2025.12.08 11:16:16 +0700

versus

1 Ravi Premchand Vanjani
P I – No. 193/8 A, Opp. Panch Bunglow,Gandhi
Nagar, Kolhapur, Dist. Kolhapur
Pin – 416110
(Owner of Motor Car No. MH-09-CM-0580)

2 The New India Assurance Company Ltd.
(Old Address : Kalyan Division Office,
Kalyan Murbad Road, Near Poornima Talkies,
Kalyan West, Dist. Thane)

New Address :-
At 87, Mahatma Gandhi Road, Kala Ghoda,
Fort, Mumbai, PIN – 400001, Maharashtra.
(Insurer of Motor Car No. MH-09-CM-0580) …. Respondents

…………..

- Mrs. Rina Kundu, Advocate for the Appellants.
- Mrs. S.S.Dwivedi, Advocate for Respondents.

CORAM : R. M. JOSHI, J.

DATE : 2nd DECEMBER, 2025.

P.C. :

1. By consent of both the sides heard finally at the stage of admission. Parties are referred by their nomenclature in the original proceeding for the sake of convenience.

2. This Appeal filed under Section 173 of Motor Vehicles Act (for short "M.V.Act") takes exception to the Judgment and Award dated 05.03.2020 passed in M.A.C.P. No. 135 of 2014. In this appeal original claimants are seeking enhancement of the compensation.

3. On 16.12.2013, deceased Nilesh was driving motor car bearing No. MH-09/CM-0580 along with his friend on Kolhapur Goa road. When they reached vicinity of Phonda Ghat, the driver of the car lost control over the vehicle and dashed to a pole near the bridge. As a result of which the car fell into the canal. In the said accident, deceased sustained grievous injuries. Initially, he was taken to Sanjivani Hospital at Kankavli. He was thereafter shifted to Bombay Hospital, Mumbai and was admitted therein upto 28.12.2013. The deceased thereafter was taken to Shivneri Hospital, Ulhasnagar and while being treated he died on 29.12.2013. The accident is said to have been caused due to the negligent driving of the vehicle by its driver. The deceased was aged about 44 years and according to the claimants he could have earned Rs.50,000/- per month.

4. The owner of the offending vehicle filed written statement at Exhibit-12. The contention of the claimants with regard to the rash driving of the vehicle by the driver is denied. It is claimed that the driver was holding valid driving licence and was abiding all traffic rules. Insurer filed written statement at Exhibit-18 denying the contentions of the claimants with regard to the manner in which accident occurred, age and income of the deceased.

5. Issues were framed at Exhibit-19. The claimants examined claimant No.1 and relied upon police papers to prove the manner in which accident occurred so also income and dependency. The claimants also examined witness to prove income tax returns. Doctors from Shivneri Hospital as well as Bombay Hospital were examined in order to prove medical expenses and discharge summary. No evidence was led by the opponents i.e. owner of the vehicle and insurer thereof.

6. Learned Tribunal has accepted the contention of the claimants with regard to the occurrence of the accident and negligence on the part of the driver of the offending vehicle. Since the said findings are not challenged, the same have attained finality.

7. It is the case of the claimants that the learned Tribunal has failed to take into consideration the evidence on record which indicates that

medical expenses were incurred in Bombay Hospital as well as at Shivneri Hospital and in spite of proof of the same, the Tribunal has not granted the entire medical bills. It is argued that the Tribunal committed error in accepting the statement of the doctor from Bombay Hospital who stated about the part of the bill have been paid by the third party. It is argued that in absence of evidence as to who is the third party, there was no justification to deny the said amount to the claimants. Similarly it is claimed that the medical expenses at Apple Saraswati Multi-Speciality Hospital, Kolhapur ought to have been granted by the Tribunal. It is further argued that the ambulance charges / expenses incurred for bringing the injured from Kolhapur to Mumbai as well as from Mumbai to Ulhasnagar ought to have been accepted and considered by the Court below. Finally it is argued that the Tribunal has committed error in not considering the expenses incurred by the relatives for staying along with the injured so also non grant of interest from the date of filing of the claim.

8. This contention is opposed by the learned counsel for the insurer by submitting that once there is evidence on record that the part of the bill of Bombay Hospital has been paid not by the claimants but by the third party, claimants would not be entitled to receive any amount to that extent. It is further submitted that in the absence of any evidence indicating expenses incurred in the hospital at Kolhapur, the said claim does not deserve acceptance. Insofar as ambulance charges, it is contended that there is no evidence led by the claimants to substantiate the said claim and the Tribunal was fully justified in rejecting the same. As far as non-grant of interest up to the date of framing of the issues is concerned, it is submitted that the Tribunal has recorded reason for not granting the interest for the said period and no perversity can be found therein.

9. There is no dispute made by the opponents with regard to the fact that the accident in question the deceased has sustained serious injuries and was required hospitalisation. There is evidence on record to indicate that the deceased was admitted in Bombay Hospital at Mumbai and also was taken to Sanjivani Hospital at Ulhasnagar before he died. It is pertinent to note that accident in question has occurred in District Kolhapur and considering the nature of injuries caused to the deceased, it was practically impossible for him to be brought in any other vehicle than ambulance to Mumbai and then to Ulhasnagar. In such circumstances, the Tribunal ought to have accepted the claim of the claimants about the ambulance to expenses being incurred.

10. As far as medical bills are concerned, no doubt the Doctor of Bombay Hospital has stated about payment of Rs.2,70,000/- by third party. It is however not clarified as to what third party means. In order to deny the claim of the claimant it must be proved that the said amount has been paid by any person unconnected with the claimants or it is by way of charity. In absence of any such evidence it cannot be presumed that claimants are not concerned with the said payment. It is pertinent to note that the witness who has made the said statement is doctor attached to the hospital, and it is practically not possible for the doctor to know as to who actually made the payment of bills. In such circumstances, for the purpose of denying the said claim there ought to have been more evidence than what is brought on record. This Court, therefore, finds no justification for denying the amount of medical bill of Rs.2,70,000/- to the claimants.

11. The Tribunal has also not granted the consortium for claimant Nos. 2 and 3. As per the view of Hon'ble Apex Court in the case of ***Magma General Insurance Co. Ltd. vs. Nanu Ram**[1]**,* the filial consortium is required to be paid to remaining two claimants.

12. The Tribunal has denied the interest from the date of filing of the petition till framing of the issues on the ground that the claimant has not pressed for an order under Section 140 of M.V.Act. It is pertinent to note that there would be duty of the Tribunal to frame issues once the pleadings are complete. There is no role of the parties in framing of the issues. Moreover, there is nothing on record to indicate that there was any deliberate act on the part of the claimant in not prosecuting the claim. In

1 2018 ACJ 2782 (SC)

such circumstances, there remains no justification for denying interest for the period from filing of the petition till framing of the issues.

13. However, in so far as the claim of the claimants with regard to the expenses incurred for lodging and food of the relatives of the deceased, there is absolutely no evidence on record to indicate any such expenses being incurred. In absence of any evidence, the applicants/claimants would not be entitled to receive any compensation on that head.

14. As a result of the above discussion, the appeal deserves to be allowed partly and is allowed in following terms:

ORDER

(A) In addition to the compensation granted by the Tribunal, claimants are entitled to receive the following amount with interest at the rate granted by the Tribunal from date of claim petition till realisation of amount.

Headings	**Amount in Rs.**
Medical bill	2,70,000/-
Consortium	88,000/-
Ambulance expenses	15,000/-
Total Amount	**3,73,000/-**

(B) All pending applications, if any also disposed of.

(R. M. JOSHI, J.)