IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.235 OF 2025

Cholamandalam Ms General Insurance Co. Ltd. Office at 102/103, Rupa Plaza, Jawahar Road, Above IDBI Bank, Near Ghatkopar Station East, Ghatkopar (East), Mumbai – 400077. Insurer of Motor Scooter bearing Registration No.MH-05-EC-1250.	…	Appellant (Original Res.No.2)
V/s.		
1. Yogesh Hanuman Kudav Age : 45 years, Occu-Service, R/at, Chawl No.06/08, Sahyadri Nagar No.03, Behind R.T.O. Officer, Birla College Road, Kalyan (W) 421 301.	…	Respondent No.1/ Original Claimant
2. Vishal Rajendra Shimpi, R/at. Room No.07, Shiv Shobha Sadan, Ram Nagar, Chota Mhasoba Mandir, Chikanghar, Kalyan (W) 421 301, Owner of motor scooter bearing Registration No. MH-05-EC-1250.	...	Respondent No.2/ Original Respondent No.1

Mr. Sarthak S. Diwan, Advocate for the Appellant.
Ms. Rina Kundu, Advocate for the Respondents.

CORAM : R.M. JOSHI, J.

DATE : 25th NOVEMBER 2025

Oral Judgment:-

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

2. Insurer, being aggrieved by the impugned judgment and award dated 28th August 2024 passed in M.A.C.P. No.1007 of 2021, has preferred this appeal under Section 173 of the the Motor Vehicles Act, 1988.

3. The parties are referred to by their nomenclatures in the original proceeding for the sake of convenience.

4. The claimant filed claim seeking compensation against the opponents on account of sustainment of disability in an accident occurred on 23rd July 2021 involving motor-cycle bearing registration No.MH-05-EC-1250. It is the case of the claimant that he was proceeding towards his residence at Sahyadri Nagar by walk. He claims that the offending motor-cycle came from the opposite direction in high and excessive speed and dashed against the claimant resulting into causing of serious injuries to him. He claims that he was required to be hospitalised for considerable period and has sustained permanent disability. He further claims of being having age 42 years and serving as Store Keeper with M/s. Hallmark Advanced Technology Pvt. Ltd. and earning Rs.30,000/- per month. On different heads, compensation of Rs.20,00,000/- is claimed.

5. The owner of the vehicle filed written statement at Exhibit-14. He admitted the time and place of accident, however, denied the

negligence on the part of the rider of motor-cycle. It is claimed that the vehicle was duly insured with the insurer during the relevant period. The insurer filed written statement at Exhibit-15 denying the contentions of the claimant. It is averred that the claimant was crossing the road negligently, due to which, the accident occurred and he is solely responsible for the same. It is further contention of the insurer that the rider of the vehicle was not having valid license and, as such, there was breach of terms and conditions of the policy and hence, the insurer is not liable for payment of compensation.

6. After framing of issues, the claimant examined himself at Exhibit-19 and to prove the factum of the accident and his hospitalisation etc.. Evidence was led by PW2-Leena to prove the employment and income of the claimant. Dr. Sameer was examined for the purpose of proving disability of the claimant. No evidence was led by the owner and insurer of the offending vehicle. The learned Tribunal accepted the claim of the claimant to the extent of Rs.18,40,694/- and directed payment thereof along with interest @ 8.5% p.a. till the date of realisation.

7. Learned counsel for the appellant-insurer submits that there is breach of terms of the policy and the driver of the offending vehicle was not holding valid license during the relevant period. He

further argued that the Tribunal has committed an error in accepting the income of the claimant on higher side. Moreover, according to him, the Tribunal has erred in holding that there is loss of future income of the claimant ignoring the fact that after the accident, the salary of the claimant was increased. It is his further claim that the compensation granted for medical expenses is also on higher side and, hence, the order impugned cannot sustain.

8. Learned counsel for the claimant supported the impugned order with rider that in fact the claimant is entitled for enhancement of compensation, since the future prospects are not considered by the Tribunal while granting compensation. To support his submission, reliance is placed on the judgments of the Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. vs. Nanu Ram, 2018 ACJ 2782 (SC)***, and ***Pappu Deo Yadav v. Naresh Kumar & Ors., reported in AIR 2020 SC 4424*** .

9. Initial burden was on the claimant to prove on probability the manner in which the accident occurred and sustainment of injuries by him. In this regard, the evidence of the claimant is supported by the police papers. There is no dispute made with regard to the fact of offence being registered against the rider of the motor-cycle for riding the vehicle in negligent manner. In absence of any material on record to indicate the said report being taken exception to by the

driver/rider, it cannot be said that the claimant has not established the manner in which the accident occurred. No evidence is led by the owner to prove otherwise. On the basis of oral evidence and police papers, it is held that the accident occurred due to sole negligence of the rider of the motor cycle.

10. Though, the insurer has claimed about breach of terms and conditions of policy, there is no evidence led before the Tribunal to substantiate the said contention. On the other hand, the police papers indicate that rider of the motor-cycle was having driving license. As result of this, it is held that the insurer has failed to prove the said objection.

11. Coming to the employment, income and future loss of income of the claimant, apart from his oral testimony, he examined PW2-Leena in order to prove the employment of income. Perusal of the testimony of this witness indicates that the claimant was employed with M/s. Hallmark Advanced Technology Pvt. Ltd. and was drawing salary of Rs.24,200/- per month. She categorically stated about the promotional prospects of the claimant having affected adversely due to the injuries sustained by him. There is no cross-examination conducted by the opponents challenging the said contention of the witness.

12. Having regard to the evidence on record, though it can be seen that the salary of the claimant was increased after the

accident, it was a routine increase. It is further pertinent to note that on account of the injuries sustained by him and disability caused to him, his future prospects of promotions are affected. In such circumstances, learned Tribunal was fully justified in compensating the claimant. There is no dispute about the fact that owing to the age of the claimant, correct multiplier has been applied. The Tribunal has accepted the income of the claimant to the extent of Rs.22,000/- per month, which is on the basis of average drawn from the salary slips indicating the salary of the claimant in different months. The said assessment of the income cannot be faulted.

13. The Tribunal, however, has not granted any compensation towards future prospects as held by Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd.(Supra).*** Owing to the age of the claimant, he is entitled for 30% additional compensation for future prospects. Having regard to the judgment of Hon'ble Supreme Court in ***Pappu Deo Yadav (supra)***, the claimant is entitled to seek enhancement of compensation without filing cross-objection or cross-appeal.

14. In view of the above discussion, the following order :

O R D E R

1. The appeal stands dismissed.

2. In addition to the compensation granted by the Tribunal, the claimant is entitled receive additional compensation of Rs. 79200/- towards future prospects with interest @ 7% per annum from the date of filing of the petition till the date of realisation.

15. Interim Applications/Civil Applications, pending if any, stands disposed of.

(R.M. JOSHI, J.)