IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 369 OF 2024

Reliance General Insurance Co. Ltd.
4th floor, Chintamani Avenue,
Next to Veerwani Industrial Estate,
Off. Western Express Highway,
Near Oberoi Tower, Goregaon (East)
Mumbai – 400063. ...Appellant

Vs.

1. Smt. Rekha Lalchand Patel
Aged about 27 years,
widow of the deceased

2. Alka Lalchand Patel
(Through mother and next friend
Smt Rekha Lalchand Patel)
Aged about 7 years,
minor daughter of the deceased.

3. Raj Lalchand Patel
(Through mother and next friend
Smt. Rekha Lalchand Patel)
Aged about 5 years
Minor son of the deceased

4. Mrs. Sita Rajpat Patel
Aged about 65 years,
Mother of the deceased

5. Shri Rajpat Maghu Patel
Aged about 70 years,
Father of the deceased

*order modified as per Speaking to the minutes of order dated 14.11.2025.

All Residing at Village and Post-Dan.,
Dist. - Jaunpur, Tehsil – Machllashar,
State :- Uttar Pradesh

6. Mr. Mohammed Israil Chaudhary
At CHIL Ontransport Gupta Compound,
Borivali E villa Gepost Padgha Bhiwandi
Thane - 421 302. Maharashtra. ...Respondents

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Mr. Akshay Kulkarni	Advocate for the Appellant
Mr. T. J. Mendon	**Advocate for the Respondents**

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CORAM : S. M. MODAK, J.

DATE : 08th OCTOBER 2025

JUDGMENT :-

1. Heard learned Advocate Shri Kulkarni for the Appellant-Insurance Company and learned Advocate for the Respondents.

2. The correctness of the award dated 07.11.2023 passed by learned Chairman MACT, Mumbai is challenged by the Insurance company. The claimants/present Respondent Nos. 1 to 5 are the legal representatives of the deceased-Lalchand Patel. The accident took place on 18th October 2019, at about 6:55 a.m.. The Lalchand Patel was walking on MHADA ground, behind Faijan A. Raja Masjid, Kandivli (W) and one Motor Lorry No. MH-04-GF-0128 owned by

Respondent No. 6 and it was insured with the Appellant came at the spot. The driver has driven the lorry, rashly and negligently, and dashed the deceased. The deceased-Lalchand was shifted to Shatabdi Hospital, but he was declared dead. There is an offence registered against driver of Lorry under Section 279, 304(A) of the Indian Penal Code and under Section 187 of the Motor Vehicles Act. The deceased was working with one Arvind Singh, who owns business of Imitation Jewellery. The deceased was 32 years old. He was earning Rs. 16,000/-. His family consist of Respondent No. 1-wife and Respondent Nos. 2 and 3 are the children, and Respondent Nos. 4 and 5 are the parents. In the written statement filed by insurer, several grounds were taken including breach of the policy and not holding valid driving license by the driver of the offending Lorry. The Respondent No. 1 gave evidence, whereas no oral evidence on behalf of the Insurance Company.

3. Though there is a ground taken about non proof of "*rash and negligent driving*", when I have perused the findings by the Tribunal, it is clear that they are well reasoned findings on the basis of the evidence. In fact, the driver of the Lorry has to be vigilant, because the

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deceased was walking on the ground. The copies of the DAR and charge-sheet were tendered in the evidence. The learned Tribunal has also referred Spot Panchnama. There were skid marks, so driver was required to apply breaks. The Tribunal has applied principles of *res ipsa loquitor*. The accident took place in the daylight. The reasoning finds place in para nos. 8, 9 and 10 of the impugned award. I find no reason but to agree with those findings.

4. There is plea of "*absence of driving license/permit*". However, those documents were filed with the proceeding of DAR. So also no evidence was adduced on behalf of the Insurance Company. These reasoning finds place in para no. 6 of the impugned judgement, no interference is warranted.

The amount of compensation

5. The deceased was 32 years old at the time of accident. Aadhaar card is referred. **The only dispute is about monthly income of the deceased**. Admittedly, no documentary evidence is produced to show the said income. Admittedly, no witnesses were examined from the side of employer. **The tribunal in para no. 15 considered Rs. 15,000/- as a notional income**. The Tribunal relied upon observations in case of

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<u>Maheshwari and Others Vs. Ramachandran and Others</u>[1]. This is challenged on behalf of Insurance Company.

6. Learned Advocate Mr. Kulkarni has made the following submissions:-

(i) The observation in case of ***<u>Maheshwari and Others (supra)</u>*** are on the basis of evidence of that case. My attention is invited to para no. 9 of the said judgement wherein the Hon'ble Supreme Court observed "*Appellant have led evidence to assert that the deceased used to earn Rs. 1,000/- per day*".

(ii) <u>According to Mr Kulkarni</u>, this evidence has persuaded the Hon'ble Supreme Court to <u>enhance the compensation to Rs. 15,000/-,</u> earlier the <u>Tribunal considered it as Rs. Rs. 8000/-</u>, and it was <u>enhanced by the High Court to Rs. 10,000/-</u>. Deceased used to run a vegetable shop and he used to sell vegetables. He was 44 years old.

<u>According to Mr Mendon</u>, in that case the deceased was survived by wife and two minor children. Whereas in this

1 (2023) ACJ 1210 (SC)

case deceased was survived two children and parents.

7. According to learned Advocate Mr. Mendon an amount of Rs. 15,000 was fixed considering the expenses to be borne by the deceased, so that family members can survive, and another consideration was the prevailing condition in the city in which the deceased was staying.

8. **Learned Advocate Mr. Kulkarni** has invited my attention to the report on Minimum Wages Act, 1948 for the year 2019, issued by Government of India and relevant page no. 15, wherein the **minimum wages on 31.12.2019,** for an employee engaged in silver articles or ornaments is **Rs. 315.45/- per day.**

9. Whereas according to learned Advocate Mr. Mendon, the per day wages for an employee working in construction of road is Rs. 15,354/- as per circular issued by Maharashtra Government for the period of 01/07/2019 to 31/12/2019.

10. Learned Advocate Shri Mendon relied upon the following two judgments :-

(a) In case of ***S. Vasanthi and Anr. Vs. Adhiparasakthi Engineering College and Anr.***[2], wherein the evidence

2 (2023) ACJ 100

given by the Claimant was not challenged. The observation in para nos. 10 and 11.

(b) He also relied upon observations in case of ***Hitesh Nagjibhai Patel Vs. Bababhai Nagjibhai Rabari and Anr***. passed by the Hon'ble Supreme Court on 08.08.2025 wherein the notional income of the child was considered by applying the '*test of minimum wages*' payable to skilled worker.

(c) According to learned Advocate Mr. Mendon, the said endevour can be made applicable and facts of this case justified notional income considered by the tribunal.

11. It is true when there is no evidence on the part of monthly income, the Court applies test of notional income. The factors which are considered for notional income are the job or business undertaken by the deceased, whether deceased was a skilled worker, unskilled worker or semi-skilled worker. No doubt there are no supporting documents to show the income as Rs. 16,000/-. So far as earning livelihood by working imitation jewellery business is not under serious dispute. It is true that in a such a business, the person involved needs to have some skill for the purpose of manufacturing those ornaments because those ornaments must look like natural ornaments, so that customer can purchase it. It can certainly be considered a job involving skill.

12. Now whether "*rate given as per the Government of India report for silver articles is to be considered*" or whether "*the rates given by the Maharashtra Government for employees in construction business"* is to be accepted. It is also true in the circular relied upon by learned Advocate Mr. Mendon '*for the silver industry*', the monthly income shown is Rs. 10,450/-. It is also true, it will be also difficult for the concerned authorities to prescribe the minimum rates for every job undertaken. Ultimately, the Court will have to consider the jobs which are more or less similar to the job undertaken by the deceased. There is difference in imitation jewellery, silver articles and ornaments. It is important to note that the deceased was survived by his wife, two minor children and parents. It is but natural for the deceased to provide some money for their livelihood. Even though the address is from Uttar Pradesh, at the time of accident the deceased was residing at Mumbai.

13. **Considering all the factors together, this Court is of the opinion that the amount of Rs. 15,000/- ascertained by the Tribunal is on higher side**. At the same time, it cannot be at rate of Rs. 315.45/- as mentioned in the Central Government record.

14. **This Court feels that amount of Rs. 13,000/- being notional income can be just amount for calculating compensation**. In view of that subsequent heads needs to be re-calculated. There is no dispute about those heads in between the parties. So award needs to be modified.

15. If it is considered as base, the subsequent calculation will change. It is as follows:-

Nature of work	**Imitation jewellary**
Income	Rs. 13,000/-
Future prospect 40 %	Rs. 5,200/-
Total	Rs. 18,200/-
Dependency 3/4 (18200-4550) = Rs. 13,650/- (Rs. 13650/- X 12 months X 16 multiplier)	Rs. 13,650/- Rs. 26,20,800/-
Consortium for 5 Claimants	
Rs. 48,000/- (48,000 X 5)	Rs. 2,40,000/-
Loss to Estate	Rs. 18,000/-

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Funeral Expenses	Rs. 18,000/-
	Rs. 28,96,800/-
Rounded off	**Rs. 28,97,000/-**

16. For the above reasons, the following order is passed:-

ORDER

(i) The appeal is partly allowed.

(ii) The Award dated **07th November 2023** passed by the Motor Accident Claims Tribunal, Mumbai in **MACP No. 803 of 2020** is modified as follows:-

(a) The Appellant – **Reliance General Insurance Co. Ltd.** and Respondent No. 6-**Mr. Mohammed Israil Chaudhary** are directed to pay compensation of Rs. **28,97,000/-** (Rupees Twenty Eight Lakhs Ninety Seven Thousand) along with interest at the rate of 7 % p.a. from the ***date of application**** till the actual realization.

(b) The money which is already deposited by the Appellant Insurance Company will be adjusted towards the final amount.

(c) The Appellant – Reliance General Insurance Co. Ltd.

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and Respondent No. 6-**Mr. Mohammed Israil Chaudhary** are directed to deposit the remaining amount within a period of four (4) weeks from the date of uploading the order before the MACT – Mumbai.

(d) Out of this amount, 30% be paid to Respondent Nos. 4 and 5 in equal proportionate with corresponding interest.

(e) From remaining 70%, 40% be paid to Respondent No. 1 and 15% each in equal proportion be deposited in nationalised bank in the name of Respondent Nos. 2 and 3 in fixed deposit for five years and quarterly interest be paid to Respondent No. 1.

17. In view of the above terms, the First Appeal is disposed of.

[S. M. MODAK, J.]

*order modified as per Speaking to the minutes of order dated 14.11.2025.