

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

First Appeal No. 571 of 2024

Bajaj Allianz General Insurance Company
Ltd.

Office at Rustomji Aspire,
3rd floor, Everad Nagar-2,
Near Priyadarshini Circle
Sion Chunabhatti, Imax Road,
Mumbai-400022

... Appellants

V/s.

1. Alka Vijay Chautray
R/At: A-103, Ranjigandha
Near PKC Hospital, Sec-15,
Vashi-navi Mumbai 400703.

2. Bhalerao Adaji Katkar
Sarkalwadi, Tal. Koregaon, Aane,
Satara 415103.

... Respondents

Mr. Sarthak S. Diwan	Advocate for the Appellant.
Mr. Vasant N. More	Advocate for the Respondents.

CORAM : S.M. MODAK, J

**RESERVED ON : 15th October 2025
PRONOUNCED ON : 11th November 2025.**

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JUDGMENT :

In this appeal there is a challenge to an Award dated 1st February 2024 passed by the learned Member, M.A.C.T. Mumbai in

Application No.626/2017. It was an injury claim. The insured has not appeared whereas the insurer contested the claim petition. Both of them have adduced oral and documentary evidence. Tribunal held that driver of the offending vehicle was rash and negligent. The claimant was standing on the road. The compensation awarded is Rs.58,54,183/- along with interest of 7.5% per annum from the date of petition till realisation.

2. I have heard Mr. Diwan, the learned Advocate for the Appellant-Insurance Company and learned Advocate More for Respondent No.1 - Claimant. **Mr. Diwan raised the following points:**

- (i) The driver of the insured vehicle was holding the licence to drive light motor vehicle non-transport whereas the tempo is having weight of 7500 kg.
- (ii) The claimant has received Rs.1,75,000/- from mediclaim of Star Health and Allied Insurance Company and as such this amount ought to have been deducted.
- (iii) The date of accident is 8th January 2015 whereas claimant has taken voluntary retirement on 23rd May 2016. She has received retirement benefits and also pension. If this amount is considered, there is no loss of future income. The reason for VRS is not mentioned in the letter dated 23rd May 2016.

3. **By way of reply Mr. More made the following submissions:**

- (A) That the issue of licence holder of light motor vehicle non-

transport driving a heavy transport vehicle of 7500 kg is no more *res integra* and it is decided by the Hon'ble Supreme Court in the case of *Bajaj Allianz General Insurance Co. Ltd. v/s. Rambha Devi and others*¹

(B) The amount received from mediclaim policy is a separate and is decided by Full Bench of this Court in the case of *New India Assurance Co. Ltd. v/s. Mrs. Dolly Satish Gandhi and anr.*²

(C) Retirement benefits stand on a different footing and they are by way of compensation offered by the employer for the services rendered by an employee.

(D) the amount of pension is not same as that of a monthly income during service.

(E) the employee can take retirement for various reasons. It may be due to disability or it may be due to his own volition.

4. There is no challenge to the issue of rash and negligent act of the insured vehicle. Minimum facts are stated for understanding purpose.

5. The claimant was working in Naval Materials Research Laboratory on Shil-Badlapur road and she was drawing a salary of

1 Civil Appeal No.841/2028

2 First Appeal No. 1344/2018

Rs.93,990/- per month. On 8th January 2015 at about 17.15 hours she was waiting outside office gate and at that time the driver of the tempo bearing MH-11 T-5517 was taking reverse in high and excessive speed and without blowing any horn gave dash to the claimant. During her cross-examination an attempt was made to point out her fault of standing in the middle of the road. However, it has failed. She has lodged complaint with Shivaji Nagar Police station under Section 279,337,338 of Indian Penal Code and under Section 184 of the Motor Vehicle Act. She has tendered a copy of the spot panchnama. The tempo was without cleaner. The driver ought to have taken care when he was not assisted by cleaner. This evidence is sufficient to hold the driver guilty for rash and negligent driving. This finding is for the purpose of deciding a compensation claim.

Injury and Disability

6. There is ample evidence brought on record to show permanent partial disability of the claimant. After the accident she was taken to **NMRL Hospital** for first aid and then shifted to **AIMS Hospital**, Dombivli for further treatment. She remained there from 8th January 2015 to 10th January 2015. As she was not satisfied with the treatment, she took discharge against the medical advice and got herself admitted to **MGM Hospital**, New Bombay on 10th January 2015 till he was discharged on 2nd March 2015. There were various fractures and other injuries. Details are given in Para No.4 of the said

affidavit. There is no serious dispute about these injuries. There are papers showing the injuries and treatment. **It is suffice to hold that claimant sustained these injuries on account of vehicular accident caused by the driver of the offending vehicle.**

7. She was examined by the Medical Board from NMMC General Hospital. The disability ascertained is 43% and it is “*permanent in nature but non-progressive and not likely to improve*”. Dr. Sudhir Gajanan Late has examined her assessing her disability.

8. The Tribunal has discussed the evidence in paragraph No.18 and 19. Dr.Late from NMMC General Hospital has examined the claimant and assessed the disability as 43%. Whereas Tribunal considered functional disability as 40%.

Deductions under certain heads:

9. As per the submission of Mr. Diwan the amount received on following heads ought to have been considered and the quantum ought to have been reduced to that effect. They are:

- (i) The amount received by way of benefits at the time of sanction of VRS, it has got two dimensions. If the money is received on that account, compensation ought to have been granted less.
- (ii) Secondly, the amount of pension ought to have been

considered while considering the future income of the claimant.

(iii) The amount received on the basis of mediclaim policy (by way of reimbursement of medical expenses) can be deducted.

10. Whereas it is the submission of Mr. More that the amount of pension and reimbursement of medical expenses stands on different footing and they are on the basis of contractual liabilities and it has nothing to do with statutory liability to pay compensation.

11. The Tribunal has referred about reimbursement of Rs.1,75,000/- from mediclaim Star Health and Allied Insurance Company (in Para No.44). The claimant has attentively prosecuted the enquiry before the Tribunal. Even she has examined Mr. Rajesh Vidyasagar Ban who is a representative from MGM Hospital, New Bombay, Vashi. He has proved the hospital bill of Rs.6,15,453/-. This amount is received to the hospital. The bifurcation is as follows:

- (a) Rs. 1,75,000/- ----- Received as per mediclaim policy.
- (b) Remaining amount paid by claimant either by cash or credit card.
- (c) So also an amount towards reimbursement of nurse service of Rs.27,450/- (witness No.4) is allowed.

12. The submission of Mr. Diwan is the Tribunal was wrong in saddling the Insurance Company for an amount of Rs.6,42,903/-

(Rs.6,15,453/- + 27,450) towards the medical expenses. According to him in fact an amount of Rs.1,75,000/- was not paid by the claimant but by the Insurance Company.

13. Mr. More is disputing this submission and he is relying upon the Full Bench Judgment of this Court in the case of ***New India Assurance Co. Ltd. v/s. Mrs. Dolly Satish Gandhi and anr.*** First Appeal No.1344 of 2014 dated 28th March 2025 on the basis of observations in case of ***Sebastiani Lakra and Others v. National Insurance Co. Ltd. and Another***³. The benefits received as per contractual obligation is different from compensation to be awarded as per the statute. Medical benefit is nothing but the reimbursement on the basis of premium paid by the policyholder whereas the compensation payable as per the provisions of Section 168 of the Motor Vehicles Act is on the basis of covering risk of third party on the basis of policy. The Tribunal has rightly included amount received as per the mediclaim policy while allowing the reimbursement of medical expenses (45). I find no merit in the submission advanced by Advocate Diwan.

VRS Benefit

14. Mr. More has relied upon observations in case of ***Hanumantraju B. through LR v/s. Akram Pasha and anr.***⁴. It was an injury claim and the claimant was Sub-Inspector in CRPF. He also took VRS. While considering the monthly income of the claimant,

³ 2019 ACJ 34

⁴ 2025 ACJ 1521

the High Court made following calculation:-

- (a) the monthly salary at the time of VRS – Rs.36,231/-.
- (b) monthly pension Rs.15,247/-.
- (c) loss of earning considered was Rs.20,984/- (Rs.36,231 – Rs.15,247)

15. The Hon'ble Supreme Court has disallowed this method of calculation. The findings are there in Para No.19 onwards. Earlier judgments are also referred. It is observed *“it would not be permissible to deduct the pensionary amount of Rs.15,247/- from the salary of Rs.36,231/- as done by the High Court and for computing loss of earning, monthly salary of Rs.36,231/- has to be accepted.”*

16. Mr. Diwan also made a submission that there is no reference of *“reason of VRS in the letter issued by the employer”*. It is true to prove the monthly income and the VRS correspondence, the claimant has examined Naresh Tukaram Dhongade being the employee of Naval Materials Research Laboratories. He produced the following documents:-

- (i) Salary certificate for the month of January 2015 showing the salary as Rs.94,790/- per month.
- (ii) attested copies of Form-16 for the year 2013-14, 2014-15 and 2015-16 (alongwith affidavit under Section 65-B of the Evidence Act).

- (iii) The hospital bill tendered by the claimant,
- (iv) VRS application approved on 23rd May 2016 (the claimant was unable to work).

17. An employee can take voluntary retirement on various grounds. One may be, incapacity to work due to accidental injuries. Another may be, his family commitments or it may be on account of his volition. This is the issue in between the employer and employee. Mr. More has also relied upon the observations in case of ***Madhukar Dnyanoba Shinde v/s. M.S.R.T.C.***⁵

18. The retirement benefits are paid by the employer for the services rendered by the employee. This is also contractual obligation. It has nothing to do with the statutory obligation so to say if the claimant is having fixed deposit in Bank and if it has matured and if he gets the money it cannot be considered as a income of the claimant and cannot be deducted while fixing the quantum of compensation. This is true in case of V.R.S. also.

What can be the monthly income of the claimant:

19. The accident took place on 8th January 2015. At that time claimant received the salary of Rs.94,790/- The amount considered by the Tribunal (Para-43) is as follows:

- (i) monthly salary Rs.94,790/-.
- (ii) Income-tax Rs.17,500/- (the net salary Rs.77,290/- rounded

5 First Appeal No.703/2015 dated 7/8/25

to Rs.77,000/-).

20. The VRS was sanctioned on 23rd May 2016. She gets pension of Rs. 47,900/-.

21. I do not find the Tribunal was wrong in considering monthly income of Rs.77,000/- even after retirement. The Court has to decide the quantum of compensation on the basis of loss of income due to disability. After 23rd May 2016 the claimant was not getting full amount of Rs.94,790/-. Two dates are important. First the date of accident and the income received on that date and second date of VRS. Admittedly, she has not received Rs.94,790/- after VRS is sanctioned but it can certainly be said that she was capable to earn that much amount. Even though the reason of VRS is not mentioned in the letter, witness Naresh Dhongade (witness No.5) has deposed the accident is the cause of V.R.S.

22. The claimant was 51 years old. Considering that age group, 15% towards loss of future prospects is correct. It comes to Rs.11,550/-. The functional disability considered is 40%. The multiplier of 11 is proper considering her age as 51 years.

Breach of Policy:

23. Just like the claimant, Insurance company was also attentive in proving their case. They have examined her representative Vishal Darkhare from RTO Satara and Asmita Sawant, Assistant Manager

from the Appellant Company. They were examined to prove the breach of the insurance policy by the insured. The insured is Bhalerao Adaji Katkar whereas the driver of the offending vehicle is not known. The driving licence produced by the RTO is for two wheeler and four wheeler light motor vehicle non-transport. It is in the name of Rahul Bhalerao Katkar whereas the insured vehicle is heavy transport vehicle tempo having the weight of 7500 kg. Weight is mentioned in the policy.

24. It is the submission of Mr. Diwan that the insured vehicle being a transport vehicle, it cannot be driven by the person having a licence to drive light motor vehicle non-transport. According to him the insured has committed breach of policy by allowing unlicensed driver. However, Mr. More relied upon the observations in case of *M/s. Bajaj Allianz Insurance Company Ltd. v/s. Rambha Devi* (supra).

- (a) The relevant observations in *Mukund Dewangan's* case is upheld but the decision is not *per incuriam* for not considering certain provisions of M.V. Act and Rules.
- (b) for licensing purpose the motor vehicle and Transport vehicles are not entirely separate clauses.
- (c) a driver holding a licence for light motor vehicle class under Section 10(2)(d) for vehicles with gross vehicle weight under 7500 kg is permitted to operate transport vehicle without needing additional authorisation under Section

10(2)(e) of the Motor Vehicle Act specifically for the transport vehicle class.

- (d) The licensing regime under the Motor Vehicle Act and Motor Vehicle Rules when read as a whole does not provide for a separate endorsement for operating a transport vehicle, if driver already holds a light motor vehicle license (Para-125).

25. In view of the above discussion, I do not find that the Tribunal has committed any error in negating the contentions of the Insurance Company about breach of policy, about V.R.S. and about mediclaim. Hence, there is no merit in the appeal. Hence, the following order:-

ORDER

- 1) The Appeal is dismissed.
- 2) Statutory deposit alongwith interest be transferred to Tribunal, Mumbai.
- 3) The Appellant is directed to deposit remaining amount, if any, alongwith interest within three weeks from the date of uploading the order.
- 4) The Tribunal to disburse the amount to the claimant as per the original award.

(S.M. MODAK, J.)