

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 712 OF 2024

Reliance General Insurance Co. Ltd.]
 Chintamani Avenue, 4th Floor,]
 Opp. Western Express Highway, Next to Virwani]
 Industrial Estate, Near Oberoi Tower, Goregaon]
 (East), Mumbai-400 063.] Appellant

versus

1. Shri.Tushar Arvind Raje]
 Age about 28 years,]
 R/at 4/34 Pragati Society, Mahavir Nagar,]
 Kandivali (W), Mumbai-400 067]
 2. Mr.D.Kumar Naidu]
 R/at 101, Sethi Shopping Centre, NH No.8, Vasai]
 Phatam Vasai Thane, Vasai Road (East),]
 Thane - 401202] Respondents

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Mr. Himanshu Jha i/b. Ms.Shalini Shankar, for the Appellant.
 Mr. T.J. Mendon, for Respondent No.1-claimant.

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CORAM : R. M. JOSHI, J.

DATE : 24th DECEMBER, 2025.

ORAL JUDGMENT :

1. This appeal filed by the insurer under Section 173 of the Motor Vehicles Act takes exception to the Judgment and Award dated 20.01.2024 passed in M.A.C.P.No. 261 of 2017 whereby the injury claimed by the claimant / respondent No.1 was allowed with direction to the opponent to pay Rs.25,99,000/- with interest @7.5% p.a. from the date of filing claim

petition till realisation of the amount.

2. The facts which led to the filing of the present appeal can be narrated in brief as under.

3. On 15.12.2016 the claimant was proceeding on Vasant Complex Signal, Link Road near Kandivli (W) and when he reached to the spot of the accident offending vehicle bearing No. MH-04-EL-1035 came from behind in speed and in negligent manner and gave forceful dash to the claimant. He sustained injuries in the said accident. He was required hospitalisation and medical treatment. He claims to have been employed with M/s. Lodha Developers, Mumbai and earning Rs.50,000/- per month. He also claimed to be student of final year C.A.

4. The owner of the offending vehicle failed to remain present before the Tribunal and hence claim proceeded ex-parte against him. The insurer contested the claim by filing the written statement denying contentions and averments of the claimant. It is denied that the accident occurred due to the negligence on the part of the driver of the offending vehicle and in fact negligence is alleged against the claimant.

5. The claimant examined himself and led evidence on Dr. Desai (Exhibit-27), Dr. Tirvir (Exhibit-32), Anil Thakar (Exhibit-40). In addition thereto he placed reliance on documentary evidence specified by the Tribunal in the impugned Judgment and Award. The Tribunal accepted

the case of the claimant and passed the Award, hence this appeal.

6. Learned counsel for the appellant submits that the Tribunal has committed error in accepting the disability of the claimant to be occupational disability and granting compensation on that count. It is his further submission that the Tribunal erred in not considering the evidence on record which according to him does not indicate that the claimant was earning Rs.50,000/- per month. He placed reliance on the evidence that the claimant had lost the job on account of the injury caused but for preparation for the final examination of CA. It is his submission that the compensation granted by the Tribunal is excessive, so also interest.

7. Learned counsel for the claimant supported the impugned Judgment and Award.

8. Perusal of record indicates that there is no dispute made by the insurer with regard to the involvement of the motor vehicle duly insured with it in the accident in question. Similarly, the claimant has led evidence indicating that he sustained injuries in the said accident and which had resulted into causing of permanent physical disability to the extent of 15%. The said claim of the claimant is duly proved through Dr. Desai (Exhibit-27). There is no challenge to expertise of witness to assess disability of claimant. In the cross examination of this witness nothing is elicited by the other side in order to discard his assessment of the

disability. The assessment done by the Tribunal with regard to the occupational disability of the claimant @15% is duly supported by the expert's evidence.

9. Similarly, the claimant led evidence in order to show the medical expenses incurred by him with examination of Dr.Tirvir (Exhibit 32). Finally, the claimant has discharged the burden of proving of income by examining Anil Thakar (Exhibit-40). The Court has to see as to whether the claimant has succeeded in proving his claim on probability. The evidence on record indicates that nothing is brought on record filed by the insurer to hold otherwise. Thus, the evidence on record justifies the income of the deceased accepted @Rs. 50,000/- per month. The calculation of compensation has been done by keeping in mind age of claimant and other relevant factors for determination of the same. In the result this Court finds no error committed by the Tribunal in allowing the claim Petition. Hence following order:

ORDER

- (i) The appeal stands dismissed.
- (ii) The Statutory amount along with accrued interest be transferred to the Tribunal. The parties are at liberty to withdraw it.
- (iii) The claimant/respondent No.1 shall be entitled to withdraw

amount of compensation with interest accrued.

(vi) Pending applications, if any, stands disposed of.

(vii) R & P be sent back to the Tribunal.

(R. M. JOSHI, J.)