IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.738 OF 2025

Executive Engineer TR City	}	
Municipal Corporation of	}	
Greater Mumbai	}	
Dr. E. Moses Road, Worli,	}	**....Appellant**
Mumbai 400 018	}	**(Original Opp. Party)**

Versus

NILAM SANTOSH KAMBLE
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Date: 2025.11.11 11:44:46 +0530

1. Smt. Kalpana Rajendra Roka,	}
Aged about 29 years,	}
Widow of the deceased	}
2. Kum. Sushant Rajendra Roka,	}
Aged about 12 years,	}
Son of the deceased	}
3. Mr. Dnyanbahadur Roka,	}
Aged about 60 years,	}
Father of the deceased	}
4. Mrs. Maiya Dnyanbahadur Roka,	}
Aged about 55 years,	}
Mother of the deceased	}
(Applicant No. 2 is minor through	}
his mother and next friend,	}
Smt. Kalpana Rajendra Roka)	}
All residing at:	}
Room No.1, Chawl No.16,	}
Tata Compound Chawl,	}
Near Beru Guest House,	}

Parel, Mumbai 400 012	}	...Respondents
Permanent Address – at Gonganpani,	}	(Original Applicants)
Dist. Danding, Nepal.	}	
	}	

Adv. Dhrupad Patil a/w Adv. Pradeep M. Patil i/by Komal Punjabi for Appellant BMC.

Adv. T. J. Mendon for Respondent No.1 to 4.

CORAM : R.M. JOSHI, J.

DATE : 06/11/2025

ORAL JUDGMENT :-

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 takes exception to the Judgment and Award dated 28.04.2023 passed in Application filed under Section 166 of the Motor Vehicles Act, 1988 Act bearing No.2022 of 2019, whereby Tribunal granted compensation of Rs.50,47,400/- to the original Claimants.

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

3. This appeal is hereby heard and decided by consent of both sides on the basis of statements made by them that calling of record and proceedings is not necessary as the entire evidence before the Tribunal alongwith the pleadings is placed before this Court for its consideration.

4. Claimants are widow, daughter and parents of deceased Rajendra who died in motor vehicular accident occurred on 19.09.2019. As per the case of the Claimants, at the relevant time deceased was riding a bicycle on bridge opposite elphinstone station and at that time offending Motor Vehicle bearing No. MH-01-AN-0750 (garbage collection dumper of Municipal Corporation) came in high speed and dashed to the deceased. As a result of the said dash, deceased fell down on road and sustained serious injuries. Though he was taken to KEM Hospital, he was declared dead before admission. F.I.R. came to be lodged by Crime No.305 of 2019 with N. M. Joshi Marg Police Station against the driver of offending vehicle for the offences under Section 279 and 304(A) of the Indian Penal Code, 1860. Investigation came to be done and charge-sheet is filed against

the driver of the said vehicle.

5. Claimants further contended about deceased working as a Cook on a Chinese Food Stall of Mr. Raju Majkoti and earning Rs.24,000/- per month. Thus, a claim of total compensation of Rs.50,00,000/- came to be raised against the Opponents.

6. Opponent MCGM filed Written Statement denying the averments and contentions of the Claimants. It is specifically denied that the accident has occurred due to the rash and negligent driving of the vehicle in question. It is further claimed that the said vehicle is not involved in the occurrence of the accident.

7. Tribunal framed issues. Claimant No. 1 examined herself at (Exhibit – 14) and placed reliance on police papers, including FIR (Exhibit – 15), Spot Panchanama (Exhibit-16), Inquest Panchnama (Exhibit – 17), Cause of Death Certificate (Exhibit-18), R.C. Book of the vehicle in question (Exhibit -19) and other documents to substantiate the case. On behalf of the Claimants

Mr. Raju Nabraj @ Raju Majakoti came to be examined at Exhibit – 30 to prove the employment and income of the deceased. MCGM examined driver of the vehicle in question Mr. Amod Satpute at Exhibit-33. Tribunal allowed the application and directed Opponent to pay compensation of Rs.50,47,400/- alongwith interest @ 7% p.a. from the date of filing of claim till realization of the amount.

8. Ld. Counsel for MCGM submits that the impugned Judgment and Award is sought to be taken exception on two counts i.e. firstly the non-involvement of the vehicle in question in the occurrence of the accident and secondly, failure on the part of the Claimants to prove the employment and income of the deceased. In this regard he drew attention of the Court to the pleadings in the written statement filed before the Tribunal raising the said issues and referred to the evidence of the driver of the vehicle who has deposed about non-involvement of the vehicle in the accident in question. On the point of employment and income of the deceased it is his submission that the burden is upon the Claimants to prove atleast on preponderance of

probability the employment and income which in the present case Claimants have failed to establish. It is his statement that the Tribunal has committed error in accepting the case of the Claimants with regard to the employment not on the basis of evidence on record but on surmises and conjunctures, to support his submission he placed reliance on following Judgments :

1. Future General India Insurance Company Limited Vs. Mumtaz Begum and Others; 2020 SCC OnLine Mad15431 :(2020) 2 TN MAC 398;
2. Sh. Ashok Kumar Vs. Sh. Suraj Pal and Others; 2009 SCC OnLine Del 681;
3. Sahana Khatoon and Others Vs. New India Assurance Co. Ltd., Through its Branch Manager and Others; 2021 SCC OnLine Bom 3695.

9. Ld. Counsel for the Claimants supported the impugned Judgment. It is his submission that the MCGM has failed to prove that the vehicle in question was not involved in the accident. In this regard reference is made to the cross-examination of the witness examined by MCGM. On the point of income, it is sought to be argued on behalf of the Claimant that there is no cross-examination of the employer with regard to the quantum of income of the deceased and therefore, said

quantum accepted by the Trial Court deserves no interference. To support his submission, he has placed reliance on Judgment of the Division Bench of this Court in Sakharibai Hasanali Mkani and others Vs. Girish Kumar Rupchand Gadia and others; 1997 ACJ 95 and Sushila and another Vs. National Insurance Co. Ltd. and others; 2018 ACJ 2820. Without prejudice to these submissions he sought to rely upon Judgments of Hon'ble Supreme Court in case of Maheshwari and others Vs. Ramachandran and others; 2023 ACJ 1210 to argue that in any case the notional income of the deceased could not be less than Rs.15,000/- per month.

10. Perusal of the evidence on record indicates that the dispute has not been made before the Tribunal with regard to the death of the deceased in a motor vehicular accident occurred on 19.09.2009. MCGM has sought to contend that the vehicle in question belonging to it is not involved in the accident. Perusal of the Police Papers, more particularly First Information Report indicates that offence has been registered against the driver of the said vehicle causing accident in question and after investigation

charge-sheet has been filed against him. Claimants on the basis of the said documentary evidence have proved the involvement of the vehicle in question in the occurrence of the accident. The burden therefore, shifted upon MCGM to prove otherwise. Though the driver was examined at (Exhibit - 33), the Police Papers indicate that the vehicle was seized from the spot and that not only First Information Report was lodged against the driver of the said vehicle but on conclusion of the investigation charge-sheet came to be filed against him. At this stage it would be relevant to take note of the cross-examination of this witness, wherein he admits of FIR being lodged against him and he not taking any exception to the same. Even otherwise from the perusal of the evidence on record of this witness, it cannot be said that MCGM was in a position to disprove the facts established by the Claimants regarding involvement of offending vehicle in the accident.

11. There is evidence on record to indicate that the age of the deceased was 32 years at the time of occurrence of the accident.

Similarly, there is no serious dispute made with regard to the dependency of the Claimants upon the deceased. The Claimants have come out with the case that the deceased was working as a Cook on a Chinese Food Stall of Mr. Raju Majakoti and earning Rs.24,000/- per month. Though Claimant No. 1 in her testimony has stated so, during the cross-examination she has admitted that there is no evidence to indicate that her husband has done any course in cooking. Claimants examined Mr. Raju Majakoti who claimed to have engaged deceased as a Cook and he being paid Rs.24,000/- per month. In the cross-examination however, it has come on record that he does not have license to run the stall nor has any evidence in the form of receipt / record to prove the payment of salary to the deceased. No doubt, the Claimants are required to prove the employment and income of the deceased on preponderance of probability. However, the said proof cannot be dispensed with and cogent and reliable material needs to be placed on record for accepting case sought to be made out by the Claimants regarding employment and income.

12. Evidence on record more particularly, cross-examination of Mr. Raju shows that there is absolutely no evidence to indicate that he was running any Chinese Food Stall or was employing deceased and paying Rs.24,000/- per month. Ld. Tribunal went on to observe that it is commonly known that the Food Stalls are run without licence and record of cash transaction are not maintained. These observations are not based on the evidence on record but clearly are surmises and conjunctures. If such findings are accepted, no Claimants would not be required to bring any cogent evidence to prove the employment and income. Though the Claimants cannot be called upon to substantiate the said claim strictly, it should be a probable claim atleast. In facts of the case this Court finds no hesitation to hold that the Claimants have failed to prove employment with Mr. Raju and income of the deceased @ Rs.24,000/- p.m.

13. Now question arises as to what would be the income to be considered for the purpose of computation of compensation. In the cross-examination of the Claimant No. 1 it is suggested that

Claimants were not dependent upon the income of the deceased. This suggestion implies that the deceased had his independent income. Now question arises as to what would be the amount considered by way of notional income of the deceased. In this regard, reference can be made to the Judgment of the Hon'ble Supreme Court in case of Maheshwari & Ors. (supra) wherein the notional income was accepted as Rs.15,000/- per month. The deceased was staying at Mumbai and had 4 dependents upon him. It would be just and reasonable to hold that he was atleast earning Rs.500/- per day and hence his income is considered as Rs.15,000/- per month. There is no dispute about the correctness of the other factors considered by the Tribunal while determining the amount of compensation. Thus the amount of compensation is determined as under :

Sr. No.	Heads	Calculation in Rs.
1.	Monthly income of the deceased Rs.15,000/- X 12 + 40% Future Prospects = (Rs.1,80,000/- + 72,000/-)	Rs.2,52,000/-
2.	1/4 of the income of the deceased for the personal and living expenses of deceased (as per the judgment of Pranay Sethi's	Rs.1,89,000/-

	Case (Supra) (Rs.2,52,000/- divided by 04 Rs.63,000/-) Actual income	
3.	Deceased was 32 years old, hence, multiplier '16' is applicable. Rs.1,89,000/- X 16 = 30,24,000	Rs.30,24,000/-
4.	Spousal Consortium for wife (applicant No.1-Rs,40,000/- + 10%), Parental Consortium for children (applicant No.2-Rs,40,000/- + 10%) Filial Consortium for mother (applicant Nos.3 and 4-Rs.40,000/- + 10%)	Rs.1,76,000/-
5.	Loss of Estate (Rs.15,000/- + 10%)	Rs.16,500/-
6.	Funeral Expenses (Rs.15,000/- + 10%)	Rs.16,500/-
	TOTAL	Rs.32,33,000/-

Thus, the Claimants are entitled to compensation amount of Rs.32,33,000 /- alongwith interest as directed by Tribunal.

14. In view of the above discussion, appeal deserves to be partly allowed. The Application No. 2022 of 2019 stands partly allowed. The impugned award is modified to the extent of computation of compensation. Rest of the award to remain unchanged.

(R.M. JOSHI, J.)