IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1993 OF 2024

Reliance General Insurance Co. Ltd. Chintamani Avenue, 4th Floor, Opp Western Express Highway, Next to Virwani Industrial Estate, Goregaon (East), Mumba-400063 (Insurer of M/Taxi No.MH-01-BD-1063)	}	**Appellant**

Versus

1. Shri.Pinto Kallu Sharma Age-36 years, R/at Dwarkadas Mansion, Gala No.57, Vegetable Market, SVP Road, Prarthana Samaj, Girgaon, Mumbai-400004	}	
2. Mr. Sabir Husain Baig Khan Building Room No.1, Sant Sewa Marg, Victoria Road, Byculla, Mumbai-27	}	
3. Mr.Rajkaran Ramlakhan Singh 68/2, Ramwadi Kavel Cross Lane No.3, Kalbhadevi, Mumbai-400002 (Owner of M/Taxi No.MH-01-AT-1477)	}	**….Respondents**

Mrs.Shalini Shankar, for the Appellant.
Mr.S.R. Gupta, for the Respondents.

CORAM : R.M. JOSHI, J.

DATE : 11th NOVEMBER 2025

ORAL JUDGMENT :-

. By consent of both sides heard finally.

2. This Appeal filed under Section 173 of the Motor Vehicle Act, 1988 ('M.V. Act.' for short) takes exception to the judgment and award dated 24th November 2023 passed by Motor Accident Claims Tribunal, Mumbai ('MACT' for short) in Application No.197 of 2018 whereby the Claimant in the injury claim was granted compensation of sum of Rs.11,46,972/- with interest @ 7% per annum from the date of the Application till realization of the amount

3. The parties are referred to as per nomenclature in the original proceedings for the sake of convenience.

4. The Claimant filed claim with the contention that on 9th July 2017 at about 7.00 a.m. he was was standing at the signal of opera house square for crossing a SVP road, at that time, a taxi No.MH-01-BD-1063 came in high speed from Girgaon Chowpaty side, was proceeding towards Prathana Samaj, it dashed against another taxi bearing No.MH-01-AT-1477. As as result of the said dash the said vehicle became turtle and fell on

the Claimant resultantely he sustained serious injuries. He was admitted in JJ hospital for treatment. He claims to have sustained permanent physical disability, which was assessed by Dr.Khanna who issued Disability Certificate certifying permanent partial disability at 56%. The Claimant further claimed to have spend on medical treatment. Under various heads he claimed compensation of Rs.10 lakhs.

5. The owner of taxi bearing No.MH-BD-1063 as well as MH-01-AT-1477 failed to appear before the Tribunal and claim proceeded ex-party against them. The Insurer filed whether statement denying the contentions of the Claimant. It is the case of the Insurer that, the accident occurred due to the negligence of the Claimant and that the claim is not maintainable for non-joinder of the driver of the taxies to the proceedings. It is also alleged that, there is breach of terms of policy issued in respect of vehicle bearing registration No.MH-01-BD-1063 on the ground of the driver of the said vehicle not having effective license during the relevant time. There is however, no dispute made with regard to the fact that, both vehicles involved in the

accident were duly insured with the Appellant-Insurer at the relevant time.

6. The Tribunal framed issued at Exhibit-16. Claimant examined himself at Exhibit-18 and also led evidence of Dr.Naresh Khanna at Exhibit-27. Insurer on the other hand examined Akshada Myana at Exhibit-31 and also led evidence of Mr.Sachin Nair at Exhibit-35. The Tribunal allowed the claim. Hence, this Appeal.

7. The learned counsel for the Appellant submits that the Tribunal has committed error in not considering the negligence on the part of the Claimant while standing on the road. She further argued that, the Insurer has substantiated its contention by leading evidence in respect of breach of conditions of policy and as such there ought to have been an order of pay and recover. She also took exception to the assessment of disability of the Claimant and computation of compensation on the ground that the employment and income has not been proved by the Claimant so also there is excessive medical bills granted by the Court.

8. The learned counsel for the Claimant supported the impugned order and award. It is his submission that, the Claimant by examined himself and relying upon Police papers as proved that there is no negligence on his part in the occurrence of the accident, and there is no contrary evidence led by the opponents to prove otherwise. It is his further submission that from the testimony of the Claimants and more particularly from the cross-examination it can be seen that, the Tribunal has accepted reasonable amount of Rs.8,000/- per month towards the income of the Claimant, which is reasonable and there is no reason and justification to cause interference in the compensation computed by the Tribunal. In response to argument of Appellant about pay and recover order, he drew attention of the Court to the finding recorded by the Tribunal in Paragraph 22 of the award. It is his submission that since, both vehicles were insured with the Appellant Insurer, there is no question of passing any order of the pay and recover, as the owners of both vehicles were jointly severally liable to pay the compensation.

9. Perusal of the pleading and evidence on record indicates that the Claimant was standing on the road. The Police papers indicate about there being occurrence of an incident of dashed given by one taxi to another which has ultimately resulted into causing of injuries to the Claimant. Having regard to the evidence on record, it can not be said that, the Claimant was negligent and contributed in the occurrence of the accident in any manner whatsoever.

10. Insofar as age, employment and income of the Claimant, he led specific evidence to that effect that, he was working as a driver and was drawing Rs.18,000/- per month as salary. In the cross-examination it is suggested to the Claimant that now he works in a Courier company and earns Rs.12,000/- per month. In the light of this fact, it can held that the acceptance of the income of the Claimant at Rs.8,000/- per month by the Tribunal is reasonable requiring no interference therein.

11. As far as the permanent disability is concerned apart from the evidence of Claimant himself, there is testimony of

Dr.Khanna, who is orthopedic surgeon and examined the Claimant on 10th November 2018. He assessed partial permanent disability of the Claimant to the extent of 56%. During the cross-examination it is not brought on record that Dr.Khanna is not competent to assessed the disability. Merely because he is not treating doctor, his assessment cannot be discarded. In absence of any material brought on record to discard the testimony of the doctor, this Courts finds that acceptance of the disability of 56% by Tribunal to be proper.

12. There is no dispute about the fact that, considering the age and income of the Claimant, appropriate multiplier has been applied for the purpose of the determination of compensation after considering the future prospects. The computation of compensation as done by the Tribunal is inconsonance with the evidence on record so also settled position of law.

13. Finally coming to the issue sought to be raised by the counsel for the Appellant about order is being required to be passed of pay and recover, the Insurer had led evidence in order

to indicate that the driver of the offending vehicle was not having license during the relevant time. However, it is undisputed fact that, both the vehicle involved in the accident were duly insured with the Appellant-Insurer. Since, the Claimant is third party, it is open for him to claim compensation from both or any of the Opponents. The learned Tribunal has dealt with the said issue and has held that since, the Appellant-Insurer is liable to pay compensation having insured both vehicles, there is no proprietary in passing any order of pay and recover. In the facts of the case, this Court finds no perversity in the said order in order to cause interference.

14. As a result of above discussion, the Appeal stands dismissed.

15. All pending Civil and Interim Applications are disposed of.

(R.M. JOSHI, J.)