

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 222 of 2025**

The Reliance General Insurance Co.Ltd. ... Appellant
Thane Divisional Office,
Kalpataru Prime, Road No.-16,
Ashar Complex, Wagle Estate,
Thane,
(Insurer of Motor Tanker, bearing Registration
No.:MH-48-AY-7657).

Versus

1. Abdullah Mohd. Hadees Khan, Respondents
Aged about : 45 years,
Occupation : Business (presently nil)
R/at : Room No.403, 01, Wing,
Shama Apartment, Pipe Road, Kurla,
Mumbai – 400 070.
2. M/s. Purshottam Transport,
204, Min Apartment,
Tulinj Road, Taluka Vasai,
District :- Palghar 401102.
(Owner of motor tanker, bearing
Registration No: MH-48-AY-7657)

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Ms. Kalpana Trivedi, Advocate for the Appellant.
Ms. Rina Kundu, Advocate for Respondent No.1/Claimant.

CORAM : R. M. JOSHI, J.
DATE : 16th DECEMBER, 2025

Oral Judgment :

1. By consent of both sides, heard finally at the stage of admission.
2. This appeal takes exception to the judgment and award dated 12th November 2024 passed in M.A.C.P. No.401 of 2019, whereby the Tribunal granted compensation of Rs.26,38,318/- to the claimant in injury claim.
3. This appeal is filed essentially on the ground that the negligence of the claimant himself has not been considered by the Tribunal, so also the disability has not been proved with cogent evidence. It is contended by the learned counsel for the appellant that the perusal of the FIR as well as statement of the eye witness so also admission of the claimant about he chit-chatting with his friend and thereby has ignored the on coming vehicle. He contended that having regard to the said evidence on record, it be held that the claimant has also contributed in the occurrence of the accident. On the point of quantum of compensation, it is argued that without proving the occupational disability, the learned Tribunal has granted compensation of Rs.26,38,318/- to the claimant. It is submitted that as per the case of the claimant himself, he was running a business of selling and purchasing steel pipes. Thus, it is her contention that having regard to the nature of injury which is fracture to the right lower half of fibula, it cannot be said that any occupational disability has

been caused to the claimant. It is further argued that the claimant himself in his affidavit-in-lieu of examination-in-chief stated about he being unable to attend his business for three to four months and hence, at least, he would be entitled for compensation for loss of income during this period.

4. Learned counsel for the claimant opposed the appeal by contending that the evidence on record does not indicate any negligence on the part of the claimant in occurrence of the accident. According to her, since no evidence was led by the insurer or the owner of the offending vehicle before the Tribunal, the issue of negligence as determined by the Tribunal deserves acceptance. On the point of disability and compensation, it is submitted that the claimant has examined Dr.Lokare who assessed the disability of the claimant to the extent of 23%. It is pointed out that learned Tribunal has accepted the disability to the extent of 20% and in the facts of the case, the said disability is not assessed on higher side. In respect of the calculation of compensation, it is argued that since the disability has been proved, the Tribunal was bound to apply formula of multiplier to determine the compensation. Attention of the Court is drawn to the evidence of the claimant, more particularly, paragraphs 7, 8 and 9, which according to her indicate that there is loss of income of the claimant on account of the accidental injuries caused to him which has resulted into permanent partial disability to the extent of 20%.

5. On the point of negligence, the owner or the insurer has not led any evidence before the Tribunal. In the cross-examination, though the claimant admits that at the time of occurrence of the accident, he was chit-chatting with his friend and therefore, did not notice the oncoming vehicle, that admission itself is not sufficient to show that he was negligent. There is nothing on record to indicate that the claimant was negligently standing on the road, which has resulted into causing of the accident. He, therefore, cannot be held responsible for the occurrence of the accident in any manner whatsoever. The evidence on record is sufficient to probabalise case of claimant of accident being caused due to the negligence of the driver of offending vehicle.

6. On the point of disability, the claimant has examined Dr.Lokare who though is not a treating doctor but has assessed the disability to the extent of 23%. During the cross-examination, it was suggested to him that the disability assessed by him is on higher side. This cross-examination implies that the disability caused to the claimant is not in dispute. Now question arises as to whether there is functional/occupational disability caused to the claimant in order to compensate him for loss of any income other than actual loss of income. As far as the actual loss of income is concerned, though in his affidavit, the claimant says that he was unable to attend the business for 3 to 4 months, the cross-examination of Dr.Lokare indicates that the period for

healing of injury is six months. This Court, therefore, finds no hesitation to hold that for the period of six months he was unable to attend his business and, therefore, he needs to be compensated for loss of income for this period. Learned Tribunal has accepted the income of the claimant @ Rs.63,557/- per month. He would be entitled to receive compensation of Rs.3,81,348/- for actual loss of income.

7. In so far as compensation granted by the Tribunal for future loss of income, it is pertinent to note that the claimant has sustained single fracture injury caused to lower half of his right leg which would heal in six months as per the opinion of expert witness i.e. Doctor. There is evidence on record to indicate that the claimant is in the business of selling and purchasing of steel pipes. There is no claim that any physical activities are involved therein. Though in paragraph 9 of the examination-in-chief, he states about he requiring to visit various places and after the causing of the accidental injury, he stopped long journey, there is nothing on record to indicate that the income of the claimant is reduced on that account. Since the claimant has filed Income Tax Returns for Assessment Year 2018-2019, non-submission of the ITR for future period will only lead to drawing adverse inference against him that since the income of the claimant has increased, the said returns were not filed before Tribunal. Suffice it to say that for want of proof of any functional disability, the claimant would not be entitled to receive compensation for the same.

8. Rest of the compensation granted under other heads is reasonable in view of the nature of injury caused to the claimant. The claimant shall be entitled to receive following compensation :

Actual loss of income	Rs.3,81,348.00
Total Medical Expenses	Rs. 47,729.00
Pain and suffering	Rs. 50,000.00
Special diet and conveyance	Rs. 50,000.00
Loss of amenities and enjoyment of life	Rs. 50,000.00
Total	Rs. 5,79,077. 00

The Tribunal has awarded Rs.26,38,318/-. If the amount of Rs.5,79,077/- is deducted from Rs.26,38,318/-, it comes to Rs.20,59,241/-.The appellant-Insurance Company is entitled to receive excess amount. If it is deposited in the Court, the appellant is permitted to withdraw the same.

9. As a result of above discussion, the appeal deserves to be partly allowed, hence the following order :

ORDER

1. The appeal is partly allowed.
2. Claimant/Respondent No.1 is permitted to withdraw the balance amount of Rs. 5,79,077/- along with proportionate interest thereon.

3. The appellant/Insurance Company is permitted to withdraw Rs.20,59,241- along with proportionate interest thereon out of the deposited amount.
 4. Any amount paid to the claimant over and above compensation granted by this Court, would be returned by the claimant to Insurance Company within eight weeks from today. In case, amount is not returned within the stipulated period, it shall carry interest @ 8 % p.a..
 4. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.
- The first appeal stands disposed of in above terms.
11. Pending applications, if any, stand disposed of.

(R. M. JOSHI, J.)