IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 793 OF 2025
WITH IA/7026/2025 WITH IA/12966/2025

Shriram General Insurance Co. Ltd
Office No.106, Excelsia Lodha
Suprums-2, Wagle Estate
Near New Passport Office
Thane West 400604 ...Appellant

Versus

1. Dashrath Shantaram Ganve,
   Age-50 Years, Occu-Nil

2. Darshana Dashrath Ganve
   Age-45 Years, Occu- Housewife
   Both Are Resident At 230, Chavkuteechawal
   21 Road Dandpada, Khar (W)
   Mumbai-400052 ...Original Applicants

3. Taufiq Shah Muhammad Khan
   Aman Co-Op Housing Society
   Busy Tower-2 R.No.504, Sector-5
   Kalamboli Nod, Kalamboli
   Dist-Raigad Maharashtra-410218

4. Bajaj Allianz Gen. Insurance Co.Ltd
   Rustamji Aspire, 3rd Mala
   Everad Nagar, Priyadarshani Circle
   Near Eastern Express Highway
   Chunabhatti, Sion Mumbai-22

5. Dattareya Balkrishna Patil
   At Targhar, Post Ulva
   Tal.Panvel, Dist Raigad ... Respondents

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Ms. Shalini Shankar, Advocate for the Appellant
Mr. T. J. Mendon, Advocate for Respondent Nos. 1 and 2 /Claimants
Mr. Sarthak Diwan, Advocate for Respondent No. 4

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CORAM : R.M. JOSHI, J.
DATE : DECEMBER 05, 2025

JUDGMENT:

1. This Appeal filed under Section 173 of the Motor Vehicles Act, 1988, takes exception to the judgment and award dated 29.11.2024 passed in M.A.C.P No. 23/2018, whereby the learned Tribunal accepted the claim of claimants and directed payment of compensation of Rs. 49,37,000/- along with interest @ 8% p.a..

2. Insurer has challenged the said judgment and award on the ground that the claim allowed by the Tribunal is excessive. In this regard, it is contended by Counsel for the Insurer that before Tribunal the claimants have not proved that the deceased was also working as a pigmy agent and earning Rs. 18,000/- per month. It her contention that once the full time employment of deceased is accepted as a clerk in Stemekor Company, it is practically impossible that he would have done any other work and second employment is ruled out. It is her submission that in such circumstances unless there is sufficient evidence to indicate the second employment, Tribunal ought not to have accepted the claim of the claimants. It is also argued that merely on the basis of a certificate, which is not supported by any other document, the said claim should have been rejected.

3. Learned Counsel for the Claimants supported the impugned judgment and award. In this regard, it is his contention that the claim have not only led oral evidence of claimant no. 1 in support of the employment and income of deceased, but also examined witnesses to support the same. It is submitted that time and again

it is held by Hon'ble Supreme Court that on the basis of statement on oath and supported by salary certificate, the claim of the claimants about income and employment deserves to be accepted.

4. There cannot be any dispute made with regard to the position of law that in case a person claims on oath about employment and income of the deceased and it is supported with the examination of the employer, ordinarily Tribunal is expected to accept said evidence. However, in this case, claimants have claimed dual employment by stating that deceased was working as a Clerk in Stemekor Company and earning Rs. 12,000/- per month and also working as pigmy agent and earning Rs. 18,000/- per month. The burden would always be on claimants to prove their claim including employment and income of deceased, of course on preponderance of probabilities. When the claimants have claimed dual employment of the deceased, the burden would be on the claimants to substantiate the said fact and proof thereof cannot be dispensed with.

5. In order to accept the contention of the claimants with regard to dual employment, particulars with regard to timing of work in both establishments needs to be pleaded. This will become necessary when there is specific claim of claimants about employment being part time. The claimants, therefore, have to show that there was sufficient time left out for the deceased to get engaged in second employment. There is absence of such pleadings as well as evidence. In such circumstances, it would not be possible for the Court to accept the second

employment unless there is substantive evidence led in this regard. Moreover, from the cross-examination of the witness from the Co-operative Credit Society, it is clear that except for the salary certificate, no other evidence is placed before the Tribunal to indicate payment of salary @ Rs. 18,000/- per month. There is no appointment order nor any other evidence indicating any amount being paid to deceased. It was very much possible for claimants to bring such evidence as a credit society would certainly maintain record of respondent made to agent. Adverse inference needs to be drawn for non production of relevant records showing payments to deceased. On the basis of said evidence, Tribunal ought not to have accepted the case of dual employment.

6. In such circumstances, this Court finds substance in the challenge to the impugned judgment and award of Tribunal and the claim of the claimants with regard to amount of Rs. 18,000/- per month deserves to be rejected. In view of this, income of the deceased needs to be considered @ Rs. 12,000/- per month. There is no dispute about age, marital status of deceased and multiplier applicable. In view of judgment of **<u>National Insurance Company Limited vs. Pranay Sethi</u>**, AIR 2017 SC 5157, future prospects are added.

7. On the basis of it, following calculations are made:

Sr No.	Header	Calculation in Rs.
1.	Income of Rs 1,44,000 per annum x 18 (multiplier) = Rs. 25,92,000 (+) 50% future prospects = Rs. 38,88,000/- (-) 1/2 deductions towards personal and living expenses = Rs.19,44,000/-	19,44,000/-

2.	Loss of Filial Consortium	44,000/-
3.	Loss of Estate	16,500/-
4.	Expenses of Funeral	16,500/-
	Hence, claimants are entitled for total Compensation of Rs. (19,44,000+ 44,000 + 16,500+16,500)	**20,21,000/-**

8. In view of above, following order is passed:

ORDER

(a) First Appeal is partly allowed. Impugned judgment and award dated 29.11.2024 passed in M.A.C.P No. 23/2018 is modified. Total compensation is determined to the tune of Rs. 20,21,000/- along with interest at 8% per annum.

(b) Rest of judgment and award to remain unchanged.

(c) Modified award be prepared accordingly.

(d) Original claimants are permitted to withdraw remaining amount, if any.

(e) Appellant – Insurance Company is permitted to recover the difference amount from claimants, if any, as per law.

(f) In view of disposal of Appeal, pending applications, if any, stands disposed of.

(g) The difference of compensation be deposited within a period of six weeks.

(R. M. JOSHI, J.)

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