IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1079 OF 2023

Division Officer	}	
Bajaj Allianz General Insurance Co. Ltd.	}	
3rd Floor, Sumangal, Business Court, Plot No.39, Yeolekar Mala, Near Shraddha Petrol Pump, Behind 3 M Car Mall, Nashik-244005.	}	**Appellant**

Versus

1. Samina Ilias Sayyed	}	
Age-55 years, Occ: Nil	}	
R/at House No.3969, Naikwadi Pura, Old Nashik, Nashik.	}	
2. Devidas Dinkar Talekar	}	
Age-Adult, Occ: Vehicle Owner	}	
R/at Jyoti Niwas, H/01/0555, Ambad Link Road, Sanjiv Nagar, Mahadev Mandir, Chunchale, Ambad-422010	}	**....Respondents**

WITH
FIRST APPEAL NO.1080 OF 2023
WITH
CROSS OBJECTION (ST) NO.33691 OF 2024

Division Officer	}	....Appellant
Bajaj Allianz General Insurance Co. Ltd.	}	
3rd Floor, Sumangal, Business Court, Plot No.39, Yeolekar Mala, Near Shraddha Petrol Pump, Behind 3 M Car Mall, Nashik-244005.	}	

Versus

1. Noorjahan Hajimalang Shaikh Age-38 years, Occ : Nil	} }	
2. Sameer Hajimalang Shaikh Age-17 years, Occ: Eduction	} }	
3. Suhana Hajimalang Shaikh Age-13 years, Occ: Edcuation	} }	
4. Saifan Mashaq Sahab Bagwan Age-61 years, Occ: Nil	} }	
5. Salima B. Saifan Bhagwan Age-55 years, Occ: Nil All R/at 3986/320, Old Kumbhar Near Bhandari Baba, Nashik	} } } }	
6. Devidas Dinkar Talekar Age-Adult, Occ: Vehicle Owner R/at Jyoti Niwas, H/01/0555 Ambad Link Road, Sanjiv Nagar, Mahadev Mandir, Chunchale, Ambad-422 010.	} } } } }	**....Respondents**

Mr.Sarthak Diwan, for the Appellants.
Mr.Rajan Pawar, for the Respondents.

CORAM : R.M. JOSHI, J.

DATE : 1st DECEMBER 2025

ORAL JUDGMENT :-

. Since both Appeals and Cross Objection involve similar questions of facts and law, by consent of both sides, they are heard finally at stage of admission and decided by this common judgment.

2. The Insurer has filed Appeal under Section 173 of the Motor Vehicle Act, 198 ('M.V. Act' for short) taking exception to the judgment and award dated 27th July 2023 passed in MACP No.632 of 2020 and 633 of 2020, whereby the Tribunal has granted compensation of Rs.16,07,000/- and Rs.43,03,000/- alongwith interest @ 6% per annum to the Claimants. Cross-objection is filed by the Claimants for seeking enhancement of the compensation.

3. The facts which led to the filing of the Appeal and Cross objection can be narrated in brief as under:-

It is case of Claimants before the Tribunal that, on 20th December 2019 at about 21.30 hours son of the Claimant was going along with Hajimalang Shaikh on Activa bearing No.MH-15-GW-7991 from Ozar towards Nashik. It is claimed that, deceased Azar was a pillion rider. It is alleged that, at Adgaon truck bearing No.MH-16-AE-3545 came in high speed without taking note of the condition of the road and dashed the rider and pillion rider of the two wheeler from behind. As a result of the said accident both sustained serious injuries. Azar was admitted in hospital but was declared dead. It is claimed that, Azar was working in Universal Services, Nashik and earning Rs.22,000/- per month. He was age 29 years and he was the only earning member of the family. The Applicant was dependent upon him. Owner was duly served, however failed to appear before the Tribunal however, the claim proceeded ex-party against him. Insurer filed written statement at Exhibit-14 denying the contentions of Claimants. It is specifically contended that, from the police papers it reflects that, the deceased himself was negligent in driving the two wheeler and after having lost control over it and fell down which resulted into occurrence of the accident. It is claimed that, the First Information Report indicates that, the two wheeler was allegedly dashed by unknown vehicle. It is claimed that, the said vehicle bearing No.MH-16-AE-3545 was not involved in the accident and has been falsely implicated for the purpose of the claiming compensation. It is however, not in dispute that, the vehicle was duly insured during the relevant period. It is however, claimed that, the driver of the vehicle was not having valid and effective license and as such the Terms and Conditions of the policy are breached.

4. The Claimant No.1 examined herself before the Tribunal and placed reliance on the police papers. The Claimant also examined Mr.Sanjay Bidkar to prove employment and income of the deceased. The learned Tribunal accepted the case of the Claimant and rejected the defense sought to be made out of false implication of the vehicle and passed impugned judgment and award.

5. The learned counsel for the Appellant-Insurer submits that, the Tribunal has committed error in not appreciating the evidence on record in proper perspective. It is his submission that, there is specific plea raised in the written statement with regard to the false implication of the offending vehicle in the claim. It is his further submission that, the First Information Report came to be lodged against unknown vehicle, whereas at later point of time, on the basis of the statement of the

Sharad Labadhe it is claimed that, the accident has occurred due to rash and negligence driving of the offending truck. By drawing attention of the Court to the evidence of Sharad it is argued he does not state any reason as to why he did not go to the Police Station immediately as he had witnessed the accident more particularly when he was friend of deceased. It is his submission that, non-reporting of the accident showing involvement of the offending truck indicates that this is a false case. He also takes exception to the award on the basis of the driver of the vehicle not having valid and effective license and therefore there is breach of condition of policy. It is also claimed that, the deceased was plying the two wheeler without wearing helmet and therefore he has contributed negligently in the occurrence of the accident. The learned counsel for the Appellant submits that, the contract of employment indicates about the deceased not being entitled to receive the incentives and bonus as the same was linked with the performance of the deceased so also performance of the company.

6. On these amongst other submissions exception is

taken to the impugned judgment and award.

7. The learned counsel for the Claimants supported the impugned judgment and award however it is claimed that, the Tribunal has committed error in not considering the income of the deceased at least to the extent of Rs.32,000/- per month. To support his submission he placed reliance on the salary slips produced on record indicating that, the income of the deceased except for the Professional Tax ought to have been considered for the purpose of computation of computation. To support his submission he placed reliance on judgment of the Hon'ble Supreme Court in the case of ***Manasvi Jain V/s. Delhi Transport Corporation Ltd & Ors.***[1] ***and Meenakshi V/s. The Oriental Insurance Co. Ltd.***[2] It is his submission that, the income of the deceased needs to be taken at Rs.32,000/- per month and hence the Claimant is entitled for the enhancement of the compensation.

8. At the outset, this Court would like to deal with the issue sought to be raised about the involvement of the offending

1 (2014) 13 SCC 22

2 Civil Appeal No(s). of 2024 (Arising out of Petition for Special Leave to Appeal (Civil) Diary No. 39746 of 2018) dated 23rd July 2024

truck in the accident. No doubt the initial report was lodged indicating involvement of unknown vehicle in the accident. Witness Sharad however, claimed that, he has seen the occurrence of the accident. However, as he was in shock, he did not go to the Police Station and report the same to the Police. Herein this case it is pertinent to note that, the witness explained the reason for which he did not go to the Police Station. Needless to say that, each person has different reaction to a single situation. In absences of any material on record to indicate that, this could be case of false involvement of the offending vehicle, the contention of the insurer does not deserves acceptance. It is pertinent to note that, the owner has not caused appearance before the Trial Court nor the Insurer led any evidence to substantiate its case. The learned Tribunal has dealt with the evidence on record and came to the conclusion about involvement of the offending truck in the occurrence of the accident. The said findings are in consonance with the evidence on record and by stretch of imagination would be termed as perverse.

9. As far as the claim of the Insurer about breach of

policy and the deceased not wearing helmet, no evidence is led by the Insurer to substantiate the same. In any case, non wearing of the helmet cannot become a reason for causing of accident itself. Thus, rider of motorcycle cannot be said to have contributed in occurrence of accident.

10. As far as the employment and income of the deceased is concerned, the Claimant has placed on record the contract of the employment of the deceased with Bajaj Finance Ltd. The Claimant examined the witness in order to prove the said contract as well as the salary slips. During the cross-examination it was never suggested to the witness that, no salaries were paid as indicated in the salary certificate. The only contention which is required consideration is to whether the deceased could have earned monthly incentives as well as bonus as of right or it was linked with his individual performance and also performance of the company. The terms of the contract clearly indicate that, incentive was entitled by the deceased depending upon his own performance and it was also linked with the performance of the company. There is no evidence on record to hold that, he would

be entitled to receive the incentives in any circumstances. However, at the same time, this Court find substance in the contention of the counsel for the Appellant that, except for the Professional tax, no other deduction would have been considered by the Tribunal. Having regard to the fact that, the basic salary, house rent allowance, special allowance and statutory bonus, since the same was not dependent upon the performance, there is no hesitation to consider the same for determination of compensation. It is therefore held that, the deceased was earning Rs.32,000/- per month as claimed by the counsel for the Claimant.

11. Having regard to the said fact, the compensation granted by the Tribunal in MACP No.632 of 2020 deserves modification.

Income Per Month	Rs.32,000.00
Add : 50% future prospects	Rs.32,000.00 + Rs.16,000.00
 ½ Dependency	Rs.48,000.00 Rs.24,000.00
Net Income Rs.24,000 x 12	Rs.2,88,000.00
Multiplier of 17	Rs.48,96,000.00
Add: Funeral Expenses	Rs.16,500.00
Loss of Estate	Rs.16,500.00

Loss of consortium	Rs.44,000.00
Enhanced Amount	Rs.49,73,000.00

ORDER

(i) Both Appeals are dismissed.

(ii) Cross-objection Stamp No.33691 of 2024 is partly allowed. The Claimants in MACP No.632 of 2020 are entitled to receive compensation of Rs.49,73,000/- alongwith interest @ 7% per annum from date of Claim Petition till realization, jointly and severally from Original Opponents.

12. All pending Applications are disposed of.

(R.M. JOSHI, J.)