

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO.892 OF 2025
WITH
INTERIM APPLICATION NO.15231 OF 2024
IN
FIRST APPEAL NO.892 OF 2025**

Liberty General Insurance Ltd.
Office No.601 ABC & 602 AB,
10th Floor, Tower A,
Peninsula Business Park,
Ganpatrao Kadam Marg,
Mumbai 400 013

..... Appellant

v/s.

1. Rajesh Kiran Bhagat
Age 19 years, Occ. Nil,
presently residing at
Shree Shakti Society,
Colony No.3, Gatha Mandir Road,
Dehugaon, Yelwadi, Taluka Haveli
District Pune

.....

2. Ramesh Tukaram Kalokhe
Adult, Occ. Owner
R/at Dehu Alandi Road,
Near Vithal Mandir, Vithalwadi,
Dehugaon, Taluka Haveli,
District Pune 412 109

..... Respondents

**WITH
INTERIM APPLICATION NO.6983 OF 2025
IN
FIRST APPEAL NO.892 OF 2025**

Rajesh Kiran Bhagat

..... Applicant

In the matter between :-

Liberty General Insurance Ltd.
Office No.601 ABC & 602 AB,
10th Floor, Tower A,
Peninsula Business Park,
Ganpatrao Kadam Marg,
Mumbai 400 013

..... Appellant

v/s.

1. Rajesh Kiran Bhagat
Age 19 years, Occ. Nil,
presently residing at
Shree Shakti Society,
Colony No.3, Gatha Mandir Road,
Dehugaon, Yelwadi, Taluka Haveli
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2. Ramesh Tukaram Kalokhe
Adult, Occ. Owner
R/at Dehu Alandi Road,
Near Vithal Mandir, Vithalwadi,
Dehugaon, Taluka Haveli,
District Pune 412 109

..... Respondents

Mr. Rajesh Kanojia i/b Res Juris for the Appellant.
Mr. D. R. Chavan for Respondent No.1 and for the Applicant in IA
No.6983/2025.

CORAM : SHYAM C. CHANDAK, J.

DATE : 22nd APRIL, 2025

JUDGMENT :-

. Present Appeal is filed by the Insurance Company aggrieved by the Judgment and Award dated 06/05/2024, in M.A.C.P. No.27 of 2021, (“**Claim**”), passed by the Motor Accident Claims Tribunal, Pune thereby said claim filed under Section 166 of the Motor Vehicles Act, 1988

(“**the Act**”) was partly allowed and Respondent No.2 and the Appellant (Original Opponent Nos.1-owner and 2-insurer, respectively) held jointly and severally liable to pay a sum of Rs.12,84,500/- as compensation to Respondent No.1 (“**Original Claimant**”) alongwith interest at the rate of 9% per annum from the date of filing of the claim.

2) The Appellant has no statutory defence against Respondent No.2. Therefore, the learned Advocate for the parties submitted that the Appeal may be taken up for final hearing at the stage of admission itself by dispensing notice to Respondent No.2. For this purpose, compilation of documents is also filed by Mr. Kanojia, the learned Advocate for the Appellant. Hence, and considering the facts of the case, the Appeal is taken up for final hearing.

3) Heard Mr.Kanojia, the learned Advocate for the Appellant and Mr.Chavan, the learned Advocate for Respondent No.1. Perused the record.

4) The claimant filed the said claim therein it was averred that, on 13/10/2020, at about 11.30 p.m., opposite Kulvadhu Sadi Depot Building, on *Dehu* to *Alandi* Road, when the claimant was riding his motor cycle bearing no. MH-14-CA-9085 (**‘M/cycle’**), a motor car bearing no. MH-14-JA-6007 (**‘Car’**) came from the opposite direction, driven in a rash and negligent manner and dashed to his M/cycle. As a result, the claimant suffered grievous injury. Immediately, the claimant was

removed to Pawana hospital. On receiving information of the accident, police registered an FIR bearing C.R.No.734 of 2020, under Sections 279 and 338 of I.P.C. and under Sections 184, 134 and 177 of the Act.

4.1) The claimant incurred a considerable amount on his medical treatment. However, the injury caused him disability. At the time of the accident, the claimant was serving as a machine operator with M/s. Krishna Enterprises, *Dehugaon* on a monthly salary of Rs.18,117/-, but the claimant is unable to work and earn as before due to the disability. Therefore, the claimant prayed to award a compensation of Rs.5,00,000/- with interest at the rate of 15% per annum.

5) Respondent No.2 and the Appellant opposed the claim with their written statement (Exhs.16 and 22 respectively). They both have not admitted and specifically denied that the accident occurred due to rash and negligent driving of the car. They denied that the claimant was working and earning as above. They contended that, the accident occurred due to rash and negligent riding of the M/cycle by the claimant himself. The claim was exorbitant. Therefore, they submitted to reject the claim with costs.

6) In the backdrop, the Tribunal framed the issues. The claimant adduced his evidence on Affidavit (Exh.25) and relied upon various documents in the evidence. No evidence was presented by Respondent No.2 and the Appellant.

6.1) On appraisal of the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the car. The claimant had sustained 'Severe Head Injury, Diffused Axonal injury, SDH/Frontal contusion', on account of the accident. His gait was unsteady. There was Ataxia Grade-I, which caused him 25% permanent partial disability and it resulted in the loss of 20% of his income capacity. However, for the reason of not examining the employer, the Tribunal declined to accept that the claimant was working as a machine operator and thereby earning Rs.18,117/- per month. Yet, the Tribunal treated the notional income of the claimant as Rs.15,000/- per month and awarded the compensation as under :-

Sr. No.	Head	Compensation awarded
a	Medical & Hospital expenses	Rs.2,02,224/-
b	Pain and suffering	Rs. 50,000/-
c	Special diet	Rs. 5,000/-
d	Conveyance and attendance	Rs. 20,000/-
e	Permanent disability	Rs. 25,000/-
f	Loss of enjoyment of life	Rs. 75,000/-
g	Loss of future income	Rs.9,07,200/-
	Total compensation	Rs.12,84,424/-
		<i>Rounded off</i>
		<i>Rs.12,84,500/-</i>

7) Mr. Kanojia, learned Advocate for the Appellant submitted that the claimant was aged only 19 years at the time of accident. There was no evidence to show that the claimant had undergone some training or course to work as a machine operator. As such, the notional monthly

income of Rs.15,000/- held by the Tribunal, has been on the higher side. He submitted that the claimant did not examine the medical practitioner who treated him. As such, the claimant failed to prove that he has suffered 25% permanent partial disability. Therefore, he submitted that the award of Rs.9,07,200/- towards the loss of the future income is not justifiable and urged that the award be modified.

8) In contrast, Mr. Chavan, the learned Advocate for Respondent No.1, on the other hand, submitted that there is ample evidence which has established that the claimant has suffered the aforesaid injury due to the rash and negligent driving of the car. Said injury resulted in the 25% permanent partial disability. Several attempts were made by the claimant to summon his employer and present his evidence. However, the claimant could not secure his presence. Consequently, the Tribunal held the notional monthly income of the claimant on the lower side, i.e., Rs.15,000/-. This ultimately led to award less compensation towards the loss of the disability and the future income. Mr. Chavan emphatically submitted that still the claimant has not fully recovered from the injury as he has been finding it difficult to balance his body during certain actions. However, the claimant could not prove this fact and recover adequate compensation towards the pain and suffering, disability and the loss of the enjoyment of life. As such, there is no substance in the Appeal.

9) It is not necessary to deal with the aspect of negligence as

there is sufficient oral and documentary evidence by the claimant which has proved that the accident occurred due to the rash and negligent driving of the car. Therefore, the only issue which survives for consideration is regarding the quantum of the compensation.

10) The evidence of the claimant is that he has sustained the aforesaid injury due to the accident. This evidence is corroborated with the Discharge Summaries (Exh.34 and Exh.35) and Disability Certificate (Exh. 37). There is nothing in the cross-examination of the claimant to doubt the aforesaid medical documents. Therefore, there is not hurdle to accept the said injury.

11) The claimant stated that he has sustained 25% permanent partial disability on account of the said injury. In this regard, the Disability Certificate (Exh. 37) mentions that the Claimant had sustained 'Severe Head Injury, Diffused Axonal injury SDH/Frontal contusion'. Consequently, he has been suffering from a very unsteady Gait and Ataxia Grade-I and the disability is 25%.

12) The aforesaid oral and documentary evidence completely went unchallenged in the cross examination. There is nothing on record to doubt the disability certificate. Hence, I am in agreement with the finding recorded by the Tribunal that the claimant has suffered 25% permanent partial functional disability and it resulted in the loss of 20% of his income capacity.

13) Admittedly, the claimant failed to prove that he was employed with M/s. Krishna Enterprises. There is no evidence on record to show that the claimant has done some mechanical course to work as a machine operator. However, it cannot be ignored that the accident occurred in October 2020. The claimant was maintaining the motor cycle. Pune is a big city where various employment opportunities are available. As such, it is probable that the claimant was working as a machine operator and considering the minimum wages and the inflation rate prevailing at the time of the accident, there was no hurdle to treat his notional monthly income as Rs.15,000/-. In the backdrop, I hold that the award of Rs.9,07,200/- towards the loss of the future income, is justifiable. The compensation awarded for the medical expenses is supported with medical documents and bills. Looking at the injury and the disability it caused, the compensation granted under the remaining heads is also reasonable.

14) However, considering the banking rate of interest prevailing at the time of the accident, the grant of interest at the rate of 9% per annum is a little on the higher side and instead it should be 7.5% per annum. The impugned awards needs to be modified, accordingly. Thus, the Appeal partly succeeds.

15) Hence, following Order is passed :-

(i) First Appeal is partly allowed.

(ii) The parties to bear their own costs.

(iii) The impugned Judgment and Award dated 06/05/2024, in M.A.C.P. No.27 of 2021, passed by the Motor Accident Claims Tribunal, Pune is modified.

(iv) Appellant and Respondent No.2 shall jointly and severally pay the compensation of Rs.12,84,500/- (inclusive of NFL amount) together with interest thereon at the rate of 7.50 % per annum from the date of the Claim Petition till realisation of the amount.

(v) The Appellant and Respondent No.2 are directed to comply with this Judgment and Order within a period of four months from today, by depositing the amount in the Tribunal.

(vi) On deposit of the amount the Tribunal shall immediately inform about the deposit to Respondent No.1.

(vii) The Appellant/Insurance Company will be entitled to the adjustment of the amount against the already paid under the impugned Award.

16) Interim Application Nos.15231 of 2024 and 6983/2025 stands disposed of in view of disposal of the Appeal.

PREETI
HEERO
JAYANI

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(SHYAM C. CHANDAK, J.)