Ajit Pathrikar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.87 OF 2015
WITH
INTERIM APPLICATION NO.12472 OF 2025

Royal Sundaram Alliance Insurance Co. Ltd. …**Appellant**
Versus
Shri. Nathu Babu Zore and Ors. …**Respondents**

Mr. Abhijit P. Kulkarni a/w Abhishek Roy and Sweta Shah*, for the Appellant.*
Mr. Uday B. Nighot*, for the Respondent Nos.1 and 2.*

CORAM DR. NEELA GOKHALE, J.
RESERVED ON: 12TH DECEMBER 2025
PRONOUNCED ON: 24TH DECEMBER 2025

JUDGMENT:-

1. The Appellant/Original Insurer (‘**Appellant**’) assails the Judgment and Order dated 31st January 2014, passed by the Motor Accident Claims Tribunal, Pune (‘**Tribunal**’) in MACP Application No. 1126 of 2010. The Respondent Nos. 1 and 2/Original Claimants (‘**Claimants**’), are the parents of the deceased, namely, Dattatray Nathu Zore. The Respondent No. 3, Mr. Harishchandra Maruti Mankar, is the owner of the offending vehicle. By the impugned Judgment and Order, the Tribunal held the Appellant and the Respondent No. 3, jointly and severally, liable to pay total compensation of Rs.3,49,000/- (inclusive of NFL amount) to the Claimants with simple interest at the rate of 8% p.a. from the date of the application till realisation.

2. The facts of the case, in brief, are as under: -

2.1 On 29th May 2010, at about 6 p.m. the deceased, Dattatray Zore, was returning to his house at village Tambatmal, from Ambavane by Mahindra Jeep bearing No. MH 20 AT 653. The driver of the Jeep was driving in a rash and negligent manner. On account of excessive speed, the driver of the Jeep lost control and the Jeep dashed a tree beside the road. The deceased sustained multiple severe injuries. The deceased was initially taken to Parmar Hospital, Lonavala. After preliminary treatment, he was shifted to Gandhi Hospital, Panvel and lastly shifted to Mahatma Gandi Memorial Hospital, Kalamboli. The deceased, however, succumbed to his injuries in the said hospital.

2.2 At the time of death, the deceased was 23 years old and he was working as a driver in Venus Wire Industries Ltd., Khopoli and was earning Rs. 5,000/- per month by way of salary. The deceased was the only earning member of the family. The Claimants i.e. the parents of the deceased, were completely dependent on him. The Claimants incurred costs of Rs. 25,000/- towards hospital and medical expenses and Rs. 10,000/- towards travelling and other expenses. The Claimants submitted that the jeep driver ran away from the spot of the accident without giving any medical aid to the deceased.

2.3 The police registered an FIR under Sections 279, 304(A), of the Indian Penal Code, 1860 and under Sections 184, 137, 177 of the Motor Vehicles Act, 1988 against the driver of the Mahindra jeep. The Claimants filed their claim before the MACT, Pune. The Opponents resisted their claim by filing their respective written submissions. The Tribunal framed issues, heard the matter and finally passed an award, partly allowing the claim with proportionate costs. Feeling aggrieved by the final Judgment and Order and the Award, the Appellant has filed the present Appeal.

3. Mr. Abhijit Kulkarni, learned counsel, appeared for the Appellant, and Mr. Uday Nighot, learned counsel, appeared for the Respondent Nos. 1 and 2. None appeared for the Respondent No.3 despite notice being served. By order dated 8th August 2019, the Appeal was admitted.

4. Mr. Kulkarni submitted that there is an infirmity in the impugned Judgment and Order inasmuch as the Tribunal erred in holding that the deceased died in the motor accident due to rash and negligent driving by the driver. The burden of proving rash and negligent driving is on the Claimant, which they have failed to discharge. The notional income theory applied by the Tribunal is erroneous; the law officer's evidence is incorrectly appreciated; and the finding of the policy document being genuine is incorrect. Mr. Kulkarni also submitted that the burden of proving existence of a valid insurance policy is on the Claimant which they failed to discharge. On these grounds, Mr. Kulkarni submitted that the Judgment and Order, impugned herein, is untenable and deserves to be set aside.

5. Mr. Nighot defended the impugned Judgment and Order. He submitted that it is an admitted fact that the Mahindra jeep was being driven at an excessive speed, in a rash and negligent manner, without observing traffic rules and regulation. The police also investigated the accident and during investigation, it was revealed that the accident took place because of the rash and negligent driving by the driver. He is charge-sheeted, pending trial. Mr. Nighot gave details of the deceased and his earnings, etc. He thus submitted that the Judgment and Order, impugned herein, is sustainable and prayed that the Appeal be rejected.

6. I have heard the parties and gone through the evidence and the proceedings with their assistance.

7. From the record, it is clear that the death of the 23 year-old, Dattatray Zore, was due to the rash and negligent driving of the Mahindra jeep. The Claimant No.1 father of the deceased, has clearly deposed that his son died in a road accident due to the rash and negligent driving by the Respondent No.3. The Tribunal has correctly refused to rely on the statement of the father since, the father was not an eye-witness to the incident. However, his deposition has not been rebutted in cross-examination. Nothing was elicited from the cross examination of the Respondent No. 1 father of the deceased. The Claimants also relied on the postmortem report which was proved before the Tribunal. The postmortem report clearly notes that the deceased died on account of a shock due to head injury with a fractured skull. Thus, it is proved that the deceased died on account of injuries incurred in the car accident.

8. The Tribunal has also correctly analyzed the evidence on record that the accident was caused on account of the rash and negligent driving by the driver. The Spot Panchanama demonstrates the same. The tree on which the offending vehicle dashed, shows that the driver went to the wrong side and hit the tree. Hence, the circumstances are brought out clearly by the Spot Panchanama.

9. The Tribunal has correctly assessed the amount to be awarded to the Claimants on the basis of the relevant aspects such as the age of the deceased, his dependents, etc. The computation is in conformity with the settled principles of law.

10. Most importantly, the Appellant had raised the defense that the vehicle was never insured with it. The insurer claimed that the policy is a fake policy. In these circumstances, the burden shifts on the Appellant to establish that the policy was fake. However, the evidence adduced of the law officer of the Appellant stood demolished by the Claimants. The law officer having stated that the policy was fake, when cross-examined, admitted that he had no personal knowledge of the policy since the issuance of policy is the task of the sales department. He also admitted that there was no criminal complaint registered with the police alleging that the policy was fake. Thus, the Appellant was unable to prove its defense that the policy was fake. I have also gone through the decision relied upon by the Tribunal in the matter of ***Retu and Others Vs. Dharmveer and Others***[1]. The Tribunal has correctly applied the ratio of the decision and has granted the compensation as per its order assailed herein.

11. As a result, the present Appeal fails. The Appellant and the Respondent No.3 are directed to pay the amount of compensation as directed by the MACT, Pune with interest as directed from the date of filing of Claim Application till the same is realised. If the entire amount is not deposited as yet, the same to be deposited as per the directions of the Tribunal issued in the Judgment and Order impugned herein, within a period of two weeks from today. The statutory deposit to be transferred to the Tribunal and permitted to be withdrawn by the Claimants.

1 2012 ACJ 569

12. The First Appeal is thus, dismissed and accordingly, disposed off.

13. In view of the aforesaid, the Interim Application is also disposed off.

14. No orders as to costs.

(DR. NEELA GOKHALE, J)