Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO. 6682 OF 2024
WITH
INTERIM APPLICATION NO. 7097 OF 2024
IN
FIRST APPEAL (ST) NO. 6682 OF 2024

WITH
FIRST APPEAL (ST) NO. 6684 OF 2024
WITH
INTERIM APPLICATION NO. 7078 OF 2024
IN
FIRST APPEAL (ST) NO. 6684 OF 2024

Akhtari Begum Akil Ahmed Qureshi And Ors. …Appellants
Versus
Prasad M. Shetty And Anr. …Respondents

WITH
FIRST APPEAL NO. 759 OF 2025
WITH
FIRST APPEAL NO. 760 OF 2025

The Oriental Insurance Co. Ltd. …Appellant
Versus
Akhtari Begum Akil Ahmed Qureshi And Ors. …Respondents

Mr. Mayank Tripathi i/b Preeti Walimbe, for the Appellant in FAST/6682/2024 & FAST/6684/2024 and for Respondents in FA/759/2025 & FA/760/2025.
Mr. Devendra Joshi, for the Respondent in FAST/6682/2024 & FAST/6684/2024 and for the Appellant in FA/759/2025 & FA/760/2025.

CORAM: R. M. JOSHI, J.

DATED: 29th JANUARY 2026

PC:-

1. These appeals are preferred by the insurer and original claimants against the Judgment and Award dated 17th August, 2013 passed in MACP No. 6 of 2010 and MACP No. 6 of 2010. The insurer challenges the Judgment and Award seeking setting aside of the said Judgment and Award, whereas the claimants want enhancement of compensation.

2. The respondent/owner of the offending vehicles, is duly served with notice but failed to remain present and hence, appeal proceeded *ex-parte* against him.

3. The insurer had filed the appeals bearing First Appeal Nos. 759 of 2025 and 760 of 2025 in the year 2013 itself, whereas the appeals for enhancement of the compensation came to be filed by the claimants in the year 2024. In view of the settled position of law as per the judgment of the Hon'ble Supreme Court in the case of **Surekha w/o Rajendra Nakhate Vs. Santosh s/o Namdeo Jadhav & Ors.**[1], the claimants can seek enhancement of compensation even without filing appeal or cross-objection. Hence, it becomes immaterial as to the time when the claimants filed appeal for enhancement. In any event while deciding the appeal filed by the insurer, it would be open for the claimants to make a prayer for enhancement for the compensation.

1 2021(16) SCC 467

4. At this stage, it needs to be recorded that there is no dispute made by the parties with regard the accident. The deceased and his wife were travelling on a bike at around 7.55 p.m. on 16th November, 2009, when they reached Kala Nagar Junction, Bandra (East), the accident occurred involving motorcycle bearing registration No. MH-01-UA-2364 and motor truck bearing registration No.MH-04-CP-7849. The deceased Noor Mohd.was rider of the motorcycle whereas his wife Heena Noor Mohd. was a pillion rider, when they reached to the spot of accident the offending truck came from behind and gave forceful dash to the motorcycle, as a result of which, rider died immediately, whereas the pillion rider i.e. wife of rider succumbed to the injuries later on. It is however, not in dispute that the offending vehicle was owned by respondent No.1 and duly insured with the insurer-original respondent No.2, at the relevant time.

5. The claimants in both the appeals claimed that the deceased Noor Mohammad was doing business of a fruit vendor and that the claimants being dependents on his income lost dependency. Similarly, in respect of deceased Heena, it is claimed that she was taking tuitions and was earning therefrom. Learned Tribunal allowed the claim partly by accepting the income of the deceased Noor Mohd. at the rate of Rs.3,000/- per month.

6. Learned Counsel for the appellant submits that the appellant/insurer has specifically raised a plea with regard to the driver of the offending vehicle not holding valid and effective licence at the relevant time. In fact, a specific case has been made out about the licence of the driver being fake. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Pappu and Ors. vs. Vinod Kumar Lamba and Anr.**[2] which according to him applies to the present case. It is his submission that the burden would be upon the owner of the offending vehicle to show that the driver of the vehicle for holding effective and valid licence at the relevant time and once the same has not been established, the onus would not shift upon the appellant/insurer to prove its contention. It is his submission at the first instance that there is no liability of payment of any compensation by the insurer and in view of the settled position of law that in respect of the third party, the insurer would be liable to pay compensation first and then to recover from the owner. He further argued that in absence of any evidence being led by the claimants about income of the deceased, the Tribunal was not justifying in granting compensation.

7. No one caused appearance on behalf of the respondent / original owner of the offending vehicle and contentions sought to be raised by the insurer went unopposed.

8. Learned Counsel for the claimants, however, opposed the said contention by submitting that since the deceased were third party, the question of examine of the insurer for the liability of payment of compensation does not arise. On the quantum of compensation, it is his submission that the Tribunal has erred in considering the notional income of the deceased on the lower

2 (2018) 3 Supreme Court Cases 208

side. By relying upon the minimum wages during the relevant period, it is his submission that the Tribunal ought to have taken the same into account for the determination of the payment of compensation.

9. At the outset, this Court would like to deal with regard to the claim of insurance of the fake driving licence. Herein this case in written statement specific plea was raised by the insurer in this regard. On the other hand, the owner has failed to cause appearance before the Tribunal and to rebutt the contention of the claimants as well as insurer. In the light of these facts it is pertinent to take note in the case of **Pappu and Ors. (supra).** In the said judgment, the Hon'ble Supreme Court has held that it is open for the insurance company entitled to take a defence that offending vehicle was driven by a person having no valid driving licence and in such a case, onus would shift on insurer company only after the owner of offending vehicle pleads and proves basic facts within his knowledge that driver of offending vehicle was authorized by him to drive vehicle and was having a valid driving licence at relevant time.

10. It is appearing from the record that the owner has failed to cause appearance before the Tribunal. As such, there is no pleading of the owner with regard to the effect that vehicle being driven by the driver, holding valid and effective driving licence. The contention of the insurer made in this regard is not rebutted. Similarly, for want of appearance on behalf of the owner of vehicle, in this appeal the submissions made by counsel for insurer relying upon judgment in case of **Pappu and Ors. (supra)** are gone unchallanged.

11. By relying upon the judgment in case of **Pappu and Ors. (supra)**, this Court has no hesitation to hold that since the owner has failed to discharge initial burden of showing that driver of vehicle not holding valid and effective license, this is a fit case wherein the impugned Judgment and Award passed by the Tribunal requires modification by directing the insurer to pay the amount of compensation to the claimants in the first instance and thereafter recover the same from the owner.

12. Insofar as, the quantum of compensation is concerned, the evidence on record shows that the deceased Noor Mohd. was working as a fruit vendor and his wife Heena was taking tuition. Even though, there is no documentary evidence placed on record indicating their income. The Tribunal ought to have accepted the notional income atleast at the rate of minimum wages payable during the relevant time. On the basis the Notification placed before this Court, the minimum wages at the relevant time being Rs.4,600/-, the same as accepted for determination of the claim of compensation in both proceedings in both proceedings.

13. Learned Counsel for the insurer took exception to the impugned Judgment and Award contending that only dependent of the deceased was mother of Noor Mohammad and mother-in-law of Heena and therefore, according to him, 50% amount ought to have been deducted towards their personal expenses. Herein this case, admittedly, the deceased were husband and wife, therefore, in view of Judgment in the case of **Sarla Verma & Ors vs Delhi Transport Corp.& Anr.**[3] **,** 1/3rd income towards the personal income has been rightly deducted by the Tribunal. There is no error committed by the Tribunal in impugned Judgment and Award on this ground.

14. As a result of above discussion, the claimants in First Appeal (ST) No. 6684 of 2024 would be entitled to receive following compensation.

Heads	Trial Court Granted	Particulars of this court
Multiplier	17	17
Deduction towards personal expenses	1/3rd	1/3rd as there were three dependents.
Multiplicand		Annual salary of Rs.55,200/- after considering notional income at Rs.4,600/- per month.
Future expenses	Not considered	At the rate of 40% of the annual income, which comes to Rs.22,080/-. Thus, total income is Rs.55,200/- + Rs.22,080/- = Rs.77,280/-.
Deduction towards personal expenses	1/3rd	1/3rd of total income 1/3rd of Rs.77,200/- = Rs.25,760/-.
Loss of income		Rs.77,280/- (-) Rs.25,760/- =Rs.51,520/-. Rs. 51,520 x 17 = Rs.8,75,840/-
Funeral Expenses		Rs.15,000/-

3 AIR 2009 SC 3104

Loss of consortium		Rs.40,000/-
Medical Expenses	Nil	Nil
Loss of estate		Rs.15,000/-
Loss of love and affection		Nil
Total compensation	Rs.3,00,000/-	**Rs.9,45,840/-**
Enhanced compensation		**Rs.6,45,840/-**

15. The claimants in First Appeal (ST) No. 6682 of 2024 would be entitled to receive following compensation.

	Trial Court Granted	Actually should be granted
Multiplier	17	17
Deduction towards personal expenses	1/3rd	1/3rd as there were three dependents.
Multiplicand	Determined annual salary as Rs. 36,000/-	Annual salary of Rs.55,200/- after considering notional income at Rs.4,600/- per month.
Future expenses	Not considered	At the rate of 40% of the annual income, which comes to Rs.22,080/-. Thus, total income is Rs.55,200/- + Rs.22,080/- = Rs.77,280/-.
Deduction towards personal expenses	1/3rd	1/3rd of total income 1/3rd of Rs.77,200/- = Rs.25,760/-.
Loss of income	Rs 4,08,000	Rs.77,280/- (-) Rs.25,760/- =Rs.51,520/-. Rs. 51,520 x 17 = Rs.8,75,840/-
Funeral Expenses	Rs 5,000/-	Rs.15,000/-

Loss of consortium	Rs 10,000/-	Rs.40,000/-
Medical Expenses	Nil	Nil
Loss of estate	Rs 10,000/-	Rs.15,000/-
Loss of love and affection	Rs 1,00,000/-	Nil
Total compensation	Rs.5,48,000/-	**Rs.9,45,840/-**
Difference		**Rs.3,97,840/-**

16. In view of the above, the following order.

ORDER

(a) Appeals by claimants are partly allowed.

(b) Appeal by insurer stands dismissed.

(c) The claimants in MACP No. 5 of 2010 are entitled to receive enhanced amount of Rs.6,45,840/- at the rate of 7.5% interest per annum and the claimants in MACP No. 6 of 2010 are entitled to receive enhanced amount of Rs.3,97,840 /- at the rate of 7.5% interest per annum from the date of filing claim petition till realization.

(d) The insurer in both the Appeals would liable to pay an amount of enhanced compensation along with accrued interest therein before the Tribunal within six weeks from the date of receipt of this order, in the first instance and thereafter recover the same from the owner, in accordance with law.

(e) The claimants are permitted to withdraw the amount deposited by the Insurance Company along with accrued interest thereon.

(f) The Claimants shall pay deficit Court fees on enhanced amount, if any.

17. All the Appeals stand disposed of accordingly.

18. In view of disposal of the Appeals, pending applications, if any, also stand disposed of.

(R. M. JOSHI, J.)