**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 1718 OF 2025**

Smt. Dharmishta Sanat Gandhi And Ors. …Appellant

***Versus***

Deputy Commissioner Of Police …Respondent

---

**Ms. Varsha Chavan** for the Appellant.
**Mrs Shilpa Talar AGP** for the State/Respondent

---

**CORAM: R. M. JOSHI, J.**

**DATED: 20$^{TH}$ FEBRUARY, 2026**

**PC:-**

**1.** This appeal is filed by the Original Claimants under Section 173 of the Motor Vehicles Act,1988 taking exception to the judgment and award dated 23$^{rd}$ October 2018 passed in MACT Mumbai claim petition No. 834 of 2013. Whereby, death claim came to be allowed by the Tribunal partly, directing payment of compensation of Rs. 13,76,800/- to the original claimant alongwith interest at the rate of 7.5% per annum from date of claim petition till realisation of amount.

**2.** The accident in question had occurred on 23.03.2023 at New Link Road, Dahisar West to East Lane, Anand Nagar Junction Dahisar (W) Mumbai, when offending vehicle i.e. Tochan Van bearing No. MH-01-YA 3550, came in high speed in a rash and negligent manner and dashed the two-wheeler (scooter) which deceased was riding. As a result of the same he fell down on the road and sustained grievous injuries. He was taken to Bhagvati Hospital, Borivali, Mumbai where he was declared as dead. It is the case of the claimants that deceased was aged about 52 years doing business in the name and style of M/s P.B. Sales Corporation, Mahavir Nagar, Kandivali (W) Mumbai. It is claimed that he was receiving annual income of Rs. 9,00,000/-. With these averment the claimants, have claimed final compensation total of Rs. 75,00,000/- under various heads.

**3.** Opponent i.e. Deputy Commissioner of Police, Motor Transport Section Shepherd Road, Nagpada, Mumbai 400 008, filed written statement at Exhibit-13 resisting claim. All contentions of the claimants in respect of negligence on the part of driver of the offending vehicle and income of the deceased etc were denied.

**4.** The Claimants led evidence of claimant no.1 Smt. Dharmishta Gandhi and relied upon documentary evidence including police papers and income tax returns of the deceased. The opponent on the other hand examined police constable Mr. Sandip Mahadik. Tribunal partly allowed the claim. The present Appeal is filed by the claimants for enhancement of the compensation.

**5.** Learned counsel for the claimants submit that the claimants have succeeded in proving income of the deceased to be 9,00,000/- p.a. and the Tribunal ought to have accepted the same for the purpose of computation of compensation amount towards the loss of dependency. By drawing attention of the Court to the evidence on record it is her submission that the Tribunal committed error in not accepting the entire amount earned by the deceased for the purpose of computation of compensation. According to her irrespective of the fact as to whether the business run by the deceased is continued or not by his legal representative, the entire amount earned by the deceased is required to be accepted for the purpose of loss of dependency. By drawing attention to cross-examination of Claimant No.1, it is argued that there is no suggestion made to this women that claimants receive any income from business of deceased which is now run by his nephew. To support her submission reliance is placed on judgment of Honble Supreme Court in the case of ***K. Ramya and Ors Vs. National Insurance Co. Ltd. And Anr., 2022 SCC Online SC 1338*** and ***S. Vishnu Ganga and ors. Vs. Oriental Insurance Company Limited 2025 SCC Online SC 182.*** Without prejudice to these submissions it is argued that the tribunal ought not to have deducted income tax from Rs. 1,80,000 p.a., which was considered to be the income of the deceased for the purpose of computation of compensation amount.

**6.** In addition to the earlier submissions, learned counsel for the Claimants has placed reliance on the judgment of the Supreme Court in the case of ***Rukmani Devi and Ors. Versus Om Prakash and Ors ( 1991 ACJ 3)*** and the judgment delivered by this Court in ***Royal Sundaram Alliance Insurance Co. Ltd Versus Vinaya Udaybabu Shah and Ors.*** ( 2022 ACJ 2122).

**7.** Learned counsel for the respondent/ original opponent supports impugned judgment and award. It is her contention that the claimants have failed to make out a case before the Tribunal that after death of the deceased business was required to be closed down. It is her further submission that claimant suppressed fact of continuation of business of deceased and it is only by way of cross examination opponent brought said fact on record. Thus according to her on the ground of support of the material fact from Tribunal claimants are entitled to seek any compensation.

**8.** Perusal of the claim filed before the Tribunal, indicates that it was a case of the claimants that deceased was conducting business in the name and style of M/s P. B. Sales Corporation, Mahavir Nagar, Kandivali (W) Mumbai and was earning Rs.9,00,000/- p.a., The claimants however are conspicuously silent about the said business being still conducted or closed down. It is not case of the claimants that they are not in a position to conduct the same for want of any expertise or experience. In fact even during the evidence on oath before the tribunal, Claimant No.1 has not made any whisper anything about status of the business. It is only in the cross-examination, it has come on record that the said business is still being run. Though, as per the voluntary statement of the claimant no.1 that business run by her nephew, she never further claims that claimants are not earning income therefrom. It is only during oral arguments for the first time it is sought to be claimed that business is still being run but income from the same is not received by claimants. There is however no evidence to indicate so.

**9.** The aforesaid facts clearly indicate that the claimants have suppressed material fact with regard to the status of the business of the deceased. Moreover, it was not claimed that business was required to be closed down and the income arising from the said business has completely stopped. On the other hand there is admission of the claimant no.1 that for first time in her cross-examination that the said business is still running. This admission of claimants shows that the business of deceased was not totally dependent upon his personal skills, since it continued even after his death. It is pertinent to note that the business of the deceased was not dependent of his individual skill but he had a complete set up which could be seen from the balance-sheet and profit and loss account of the deceased, which indicate about expenses incurred on various head, including payment of rent of premises. In the light of the these facts the position of the present condition of business assumes importance. As per the undisputable fact the business runs and income is earned/derived therefrom. Needless to say that it was incumbent on the part of the claimants to bring the said fact to the notice of Tribunal

**10.** Perusal of the judgment of the Hon'ble Supreme Court in the Case of ***K. Ramya*** *(supra)*, the fact is recorded in para no.

16 of the said judgment indicates that the deceased wife in her testimony before the tribunal has specifically deposed:

> "*which were utilised in the transport business because they were not able to take care of the vehicle on account of the demise of the deceased and even the export business was shut down due to the same reason.*"

**11.** It is in the light of the this fact the Hon'ble Supreme Court has held that the entire amount of income earned by the deceased was required to be take for the purpose of computation of loss of dependency. Further in the same judgment in paragraph 22 it is observed that:

> "*As rule of prudence, computation of any individual's managerial skills should lie between 10 to 15 per cent of the total rental income but the acceptable range can be increased in the light of specific circumstances.*"

**12.** In the case of ***S.Vishnu Ganga*** *(Supra)* in paragraph 11 of the judgment, it is observed by the Hon'ble Supreme Court that:

> *" It would be of relevance as to whether due to their lack of experience and maturity, real/expected downfall in the profitability of the firm or the business would ensue. Such factor, while considering a claim pertaining to loss of future income/earnings, would have to be dealt with."*

**13.** Perusal of the above judgments clearly inculcates that the claimant is required to substantiate before the tribunal, that after death of deceased on account of lack of experience or expertise business either could be continued or cannot yield same income. Leave apart making out such case before tribunal, in the instant case, in fact claimants have supported the fact of continuation of the business of the deceased even after his death. the claimants therefore cannot get support from the said judgments.

**14.** Needless to say that any business would not only require management but also capital/ investments and cumulative effect thereof is ultimate returns yield therefrom. Thus, the actual loss to the business on account of death of the deceased would have to be considered for the determination of the loss of dependency in absence of any such case being made out, the determination of loss of dependency on income earned by deceased is done, then it would lead to creation of artificial and double income from one business i.e. the actual income derived from conduct of business and income created by order of the tribunal.

**15.** This Court therefore, finds no substance in the contention of the claimants that, the entire income of the deceased from business should be taken for the purpose of computation of loss of dependency. An amount to the extent of 10% to 15% and even more in appropriate cases can be considered as the managerial loss on account of death of the deceased. This loss is rightly estimated by the tribunal to the extent of Rs. 1,80,000/- p.a. The tribunal however, was not justified in deducting 10% amount towards income tax. An amount of 1,80,000/- therefore, needs to be taken into consideration for the purpose of computation of loss of dependency. By following dictum in case of ***National Insurance Company Ltd. Vs. Pranay Sethi & Anr., 2017 SCC Online SC 1270*** an addition of 10% would have to be given towards future prospects. The deceased was aged 52 years, the appropriate multiplier as per ***Sarla Verma*** judgment is '11'. There were 3 dependents on the deceased and hence 1/3rd income deserves deduction towards personal expenses of deceased. According to judgment in case of ***Pranay Sethi,*** all claimants would also be entitled to receive Rs. 40,000/- each towards consortium, apart from compensation towards loss of estate and funeral expense.

| Sr. No. | Particulars | Amount ( in Rs.) |
|---|---|---|
| 1 | Income (per annum) | 1,80,000/- |
| 2 | Add: Future Prospect (10%) | 18,000/- |
| | **Total** | **1,98,000/-** |
| 3 | Less personal expenses (1/3rd) | 66,000/- |
| 4 | Multiplier ( 1,32,000/- X 11) | 14,52,000/- |
| 5 | Add. Consortium | 1,20,000/- |
| 6 | Loss of estate | 15,000/- |
| 7 | Funeral Expenses | 15,000/- |
| | **Total** | 1,50,000/- |
| | **Grand Total** (14,52,000/- + 1,50,000/-) | **16,02,000/-** |

**16.** The compensation granted by Tribunal therefrom require modification accordingly. The rate of interest granted by Tribunal being reasonable does not need any modification.

**17.** Hence, the following order:-

**ORDER**

a) Appeal stands partly allowed.

b) The original claimants shall be entitled to receive a sum of Rs. 16,02,000/- (Sixteen Lacs Two Thousand only) with interest at the rate of 7.5% per annum from the date of the filing petition to till realization of the amount. This amount of compensation be deposited/ paid to the claimants within 8 weeks from the date of uploading of this order.

c) Claimants to pay additional fee as per rules.

**(R. M. JOSHI, J.)**