

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1312 OF 2025

Bajaj Allianz General Insurance Company Ltd., ...Appellant
Mumbai

Versus

Kanchan Ramesh @ Chandrama Pal and Ors. ...Respondents

Mr. Sarthak S Diwan, for the Appellant.

Mr. T.J. Mendon, for the Respondents.

CORAM: R. M. JOSHI, J.

DATED: 22nd JANUARY, 2026.

PC:-

1. By consent of both the sides, heard finally at the stage of admission.
2. This appeal under Section 173 of the Vehicles Act takes exception to the judgment and award dated 07.07.2022 passed in M.A.C.P. No. 2101 of 2017, whereby the Tribunal has granted compensation of Rs.41,02,000/- inclusive of the NFL amount to the claimants with interest @7% p.a. from the date of application till realization.
3. The present appeal filed by the Insurer take exception to the judgment and award on the ground that the Tribunal has erred in not considering the negligence on the part of the deceased in occurrence of the accident so also on defence of the driver of the offending vehicle not holding valid and effective driving license at the relevant time. Similarly, the quantum of compensation is challenged on the ground that the claimants have failed to prove income of the deceased.

4. Learned counsel for the Appellant/Insurer submits that in the written statement, specific plea is taken of negligence of the deceased in occurrence of the accident and on the basis of police papers and the record it can be said that he was negligent in the accident or at least contributed to the occurrence thereof. It is his further submitted that the issue of driving license was specifically raised and ought to have been considered by the Tribunal. On the point of quantum, he drew attention of the Court to the evidence of Pravin Vishwakarma (AW2), accepted in his cross-examination that he neither appointed the deceased nor has prepared the salary certificate. It is his contention that on the basis of this evidence, the Tribunal ought not to have failed income of the deceased at the rate of Rs.20,000/- per month.

5. Though learned counsel for the Respondents-original claimants supported the impugned judgment and award, it is his contention that the Tribunal ought to have granted consortium to four claimants and in view of the judgment in case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*¹ and *Pappu Deo Yadav Vs. Naresh Kumar*², the claimants are entitled for enhancement of compensation.

6. The claimants are required to prove their contention on preponderance of probability and insofar as the occurrence of accident is concerned, the same is sought to be proved on the basis of police papers. A perusal of police papers indicate no negligence on the part of the deceased in occurrence of accident. The learned Tribunal, therefore, has rightly held so.

1 2018 ACJ 2782 (SC).

2 2020 AIR 4424 (SC).

7. It was not sufficient for the Insurer to take defence in respect of driver of the offending vehicle not holding valid and effective license during the relevant period but the same ought to have been proved by leading evidence which is absent herein.

8. As far as determination of quantum of compensation is concerned, the claimants not only stated about the employment of the deceased with Gayatri Roadlines Pvt. Ltd., but examined account of the said establishment. In his cross-examination there is no suggestion that the deceased was not working with the said establishment or was not paid salary of Rs.20,000/- per month. Having regard to the same, it can be said that the claimants have succeeded in proving the employment and income of the deceased and the Tribunal committed no error in accepting the same.

9. The Tribunal, however, ought to have granted consortium to four claimants in view of the judgment in the case of ***Magma General Insurance Co. Ltd. (supra)***. It is open for the claimants to seek enhancement of compensation without filing appeal or cross-objection as per the judgment in case of ***Pappu Deo Yadav (supra)***.

10. Hence, appeal is dismissed.

11. It is held that the claimants are entitled to receive additional compensation of Rs.48,000/- X 4 = Rs. 1,92,000/- with interest @7.5% per annum from the date of application till realization of the amount.

12. The Statutory amount along with accrued interest be transferred to the Tribunal. The parties are at liberty to withdraw it.

13. Pending applications, if any, stands disposed of.

14. Claimants to pay additional Court fee, if any.
15. R & P be sent back to the Tribunal.

(R. M. JOSHI, J.)