Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.142 OF 2025

Reliance General Insurance Company Limited, Mumbai. …Appellant

Versus

Manorama Manohar Jambhale and ors. …Respondents

Ms. Shalini Shankar (through V.C.) with Mr. Himanshu Jha, for the Appellant.
Mr. T. J. Mendon with Mr. T. R. Kale, for the Respondent No.1.

CORAM: R. M. JOSHI, J.

DATED: 7th JANUARY, 2026.

PC:-

1. This Appeal is filed under Section 173 of Motor Vehicles Act takes exception to the Judgment and Award dated 11th June, 2024 passed by the learned Motor Accident Claims Tribunal, Mumbai (**the Tribunal**) in Application No. 847 of 2014 filed under Section 166 of the Act.

2. The Tribunal has allowed the injured claim and granted compensation of Rs.58,34,800/- to the Claimant with interest at the rate of 7.5% p.a. from the date of filing of the Petition till realization of the amount and it was directed to be paid jointly and severally by Opponent No.1 i.e. owner of the offending car and Insurer.

3. Claimant alongwith others was returning from Harihareshwar to Mumbai in motor-car bearing Registration No. MH-04-CJ-1828. According to the Claimant, the said car was driven by its driver in excessive speed and at the spot of accident the car dashed against the state transport bus bearing registration No.MH-20-D-5827. As a result of the said accident, Claimant sustained serious injuries and was required hospitalization. It is further claimed that on account of injuries caused in the accident, she lost vision partially as well as permanent disability is caused making her bed-ridden during her entire life-time. He therefore seeks complete loss of earning capacity. The offending car is owned by Opponent No.2 and is duly insured with Opponent No.3 in the original proceedings. Maharashtra State Road Transport Corporation (**MSRTC**) was made party for the reason that the bus is involved in the accident.

4. MSRTC filed written statement denying the allegations made in the Claim Petition. It is specifically claimed that there is no negligence on the part of the driver of the bus in the occurrence of the accident.

5. The owner of the offending car though was duly served with the notice, failed to remain present before the Tribunal and hence, the claim proceeded ex-parte against her. The Insurer, however, filed Written Statement admitting the Insurance Policy. However, it is claimed that the vehicle was carrying more than permissible number of passengers and there is breach of terms and conditions of the terms of the Policy. On this amongst other grounds, the claim is resisted.

6. After framing of the issues by the Tribunal, following witnesses were examined by the claimant:- i.e. AW1 Mr. Manohar Madhav Jambhale (Next Friend of Applicant) Ex.22 and Ex.23; AW2 Dr. Devanand More, Orthopedic Surgeon Ex.39; AW3 Chetan Sharma, M/s. Opthal Ex.41; AW4 Ashwini Vilas Gosawi (Attendant/Aaya) Ex.49; AW5 Dr. Sushil Tandel, Neurologist Ex.59; AW6 Sadashiv Krishna Kamat, Administrator NM Medical Ex.65; AW7 Mr. Rajiv Ramchandra Desai, Clerk of Sion Hospital Ex.69; AW8 Mayur Vasant Patil, Propretor of M/s. Shree Gajananprasad Chemist and General stores Ex.78; and AW9 Kamlesh Vasant Patil, Proprietor of above Chemist Ex.84.

7. He also relied upon following documentary evidence:- i.e. FIR Ex.24, Spot Panchanama Ex.25, Insurance Policy Ex.26, Disability Certificate from Shree Krishna Hospital Ex.40, Disability Certificate issued by Chetan Shah Ex.42, Discharge Card of Shree Samasta Parajiya Suvarana General Hospital Ex.44, MRI, CT Scan Report from Nariman and NM Ex.45, Bill of Suvarna Hospital of Rs.79,743/- Ex.46, Receipt issued by Ashwini Gosawi Ex.50, OPD Papers of KEM Hospital Ex.53, OPD Papers of Nair Hospital Ex.54, OPD Paper of Cooper Hospital Ex.55, Bills of Cooper Hospital of Ex.56, OPD papers of Nanawati Hospital Ex.57, Certificate of disability of Neurology Ex.60, Authority letter of AW6 Ex.66, Report of MRI Article 1 colly, Certified copies of treatment record of Sion Hospital Ex.70 colly., Authority letter of AW7 Ex.71, PAN Card of AW8 Ex.80, Aadhar Card of AW8 Ex.81, License of Gajananprasad Chemist and General Store Ex.82, Bills Ex.83 colly, PAN Card of AW9 Ex.86, Aadhaar Card of AW9 Ex.87, Copy of

Drug License of Shree Gajanan Medical General Store Ex.88, and Medical Bill of Rs.78,734/- Ex.89 colly."

8. MSRTC led evidence of the driver of the bus, whereas no evidence was led by the Insurer before the Tribunal.

9. Learned counsel for the Insurer apart from making oral submissions placed reliance on written notes of arguments filed on record. According to her, the Tribunal erred in not appreciating the facts and evidence on record in proper perspective. She submits that though the insurance coverage is admitted the Insurer is not liable to make payment of compensation for the reason that in place of sitting capacity of eight passengers, the car was carrying eleven passengers. It is thus contended that this amounts to breach of conditions of Policy, which absolves the liability of the Insurer to pay compensation. On the point of the quantum of the compensation granted by the Tribunal, it is contended that the Tribunal had failed to correctly appreciate the evidence on record and has wrongly held that there is 100% functional disability caused to the Claimant, so also erred in accepting income of the injured without any proof thereof. On these amongst other contentions, she seeks interference in the impugned Judgment and Award.

10. Learned counsel for the Claimant though supported the impugned Judgment and Award, it is his contention that inspite of proof of payment of attendant charges and evidence of doctor indicating that the Claimant would remain bed-ridden and will require attendant during her entire life-time, the compensation for the same has not been granted. It is his submission that the life expectancy is 70 years and therefore, for next 20 years the Claimant is entitled for the compensation for attendant's charges. He submits that even though no appeal or cross-objection is filed in view of the judgment of the Hon'ble Supreme Court in case of ***Pappu Deo Yadav Vs. Nareshkumar and ors. reported in AIR 2020 SC 4424*** the Claimant is entitled to seek enhancement of compensation. He further placed reliance on following judgments:-

1. ***Kajal Vs. Jagdish Chand and ors. reported in 2020 ACJ 1042.***
2. ***Master Ayush Vs. Reliance GIC***
3. ***R.D. Hattangadi Vs. Pest Control India Private Limited***
4. ***Sidram Vs. United India Insurance***
5. ***Rajkumar Vs. Ajaykumar reported in SC 343 (2011) 1 SCC(Civ) 164***
6. ***Baby Sakshhi greola Vs. Manzoor Ahmad Simon @ Ors. SC Judgment.***
7. ***S. N. Kenchanna Vs. Anitha and ors. reported in 2020 ACJ 1055.***
8. ***National Insurance Company Limited Vs. Ravi Dutt Sharma and anr. Reported in 2012 ACJ 2171.***
9. ***Kavita Vs. Deepak and ors. reported in 2012 ACJ 2161.***
10. ***United India Insurance Company Limited Vs. K.M. Poonam reported in 2011 AIR SCW 2802.***

11. From the evidence on record there is no dispute with regard to the fact that an accident occurred on 21st July, 2010 involving motor-car bearing registration No.MH-04-CJ-1828 and state transport bus having registration No.MH-20-D-5827. Record further indicates that offence came to be registered against the driver of the car for causing the accident by negligently driving his vehicle. The claimant also deposed accordingly before the Tribunal. The police-papers on record including copy of the charge-sheet indicates that there was negligence on the part of the driver of the car in causing of the accident. MSRTC examined driver of the bus who categorically stated about driving bus at moderate speed with care and caution and the accident having caused due to negligence of the driver of the car. Thus, there is evidence to show that the accident occurred solely on account of negligence of the driver of the car. Insurer did not lead any evidence to prove contrary. It is, therefore, held that the accident in question had occurred due to fault on the part of driver of the car.

12. There is no dispute made by the Insurer with regard to the coverage of the insured offending vehicle during the relevant period. It is sought to be contended that there is breach of condition of policy. Since the car was carrying eleven passengers in place permissible number of eight passengers. In this regard, it would be relevant to take note of the Judgment of the Hon'ble Supreme Court in the case of ***United India Insurance Vs. K.M. Poonam*** (supra). The Hon'ble Supreme Court in the said Judgment has held that even in a case of overloading, the Insurer is liable to pay compensation in respect the permissible number of passengers and in case compensation is granted over and above the said number, it is open for the Insurer to recover the same from the owner. Here in this case there is only one claim arising out of the said accident. Hence, it cannot be said that Insurer is not liable to compensation irrespective of the fact that the car was carrying more than permissible number of passengers.

13. In so far as the quantum of compensation as determined by the Tribunal, so also the permanent disability, the Claimant has led evidence of doctors who proved the sustainment of injuries to the Claimant and the same resulting into causing of permanent disability. The learned Tribunal has considered the evidence on record in detail and the findings recorded therein are in consonance with the material evidence placed before the Tribunal by the Claimant. The evidence of the doctors indicates that the Claimant has practically become bed-ridden with no possibility of any improvement in her physical condition in future. This Court, therefore, finds no reason to cause interference in the findings recorded by the Tribunal to that effect.

14. The Claimant has also succeeded in proving the expenses incurred on attendant by examining witness Ms. Ashwini Vilas Gosawi. She deposed about she being paid Rs.6,600/- per month and therefore, the said amount having records upto Rs.10,000/- per month, as rightly held by the Tribunal, considering the nature of the work of the attendant, the same need not have qualification as a Nurse. The evidence led by the Claimant is believable and it is also supported by the documentary evidence. Thus, the Tribunal has rightly granted compensation for attendant's charges. The Tribunal however ignored the fact that owing to the physical condition of the Claimant and she is going to remain bed-ridden for rest of her life and therefore, would need attendant till last breath and hence, the attendant's charges for future ought to have been granted.

15. Needless to say that, in view of the Judgment of the ***Pappu Deo Yadav Vs. Nareshkumar and ors.*** (supra), the Claimant can seek enhancement of compensation without filing cross-objection and appeal against the Judgment and Award, there will be no impediment to grant enhancement of compensation. Moreover, considering the judgments in case of ***Kajal Vs. Jagdish Chand and ors.*** (supra) and ***Kavita Vs. Deepak and ors.*** (supra), this Court finds no reason, not to accept the contention of the counsel for the Claimant about life expectancy of Claimant of 70 years and she being entitled to receive the attendant's charges for future period of 20 years. The attendant's charges are determined at the rate of Rs.10,000/- per month. Hence, the Claimant shall be entitled to receive enhanced compensation of Rs.24,00,000/-.

16. In view of the above, following order is passed:-

17. The Appeal, therefore, stands dismissed.

18. The Claimant, however, is entitled to receive additional sum of Rs.24,00,000/-. If the said amount of compensation is not paid during the period of six weeks, the same shall carry interest at the rate of 7% p.a. from the date of filing of the claim petition till realization of amount.

(R. M. JOSHI, J.)

The order is corrected pursuant to the Speaking to the Minutes of Order dated 10th January, 2026.