IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.504 OF 2024

Smt. Suman Rajendra Gupta and Ors. … Appellant
Vs.
Waste Care (jv) and Anr. ... Respondent

WITH
FIRST APPEAL NO.2288 OF 2025

Magma HDI General Insurance Co. Ltd., Mumbai … Appellant
Vs.
Smt. Suman Rajendra Gupta and Ors. ... Respondents

Mr. Jitendra Gor, Advocate for the Appellant in F.A. No.504 of 2024 and Respondent in F.A. No.2288 of 2025
Mr. Pandit Kasar, Advocate for the Appellant in F.A. No.2288 of 2025 and Respondent in F.A. No.504 of 2024

CORAM : R. M. JOSHI, J.

DATED : 26th FEBRUARY 2026.

<u>JUDGMENT</u> :-

1. Heard both appeals finally at the stage of admission. Appeal has been filed by the Appellant/Insurer takes exception to the Judgment and Award dated 14th September 2023 passed in M.A.C.P. No.1634 of 2021 whereby the claimants were directed to pay compensation of Rs.44,52,767/- with interest at the rate of 7% p.a.

2. The Appellant/Insurer has filed appeal to take exception to the Judgment on the ground that the accident in question has occurred solely on account of negligence of the deceased. It also contends that Tribunal has committed error in considering the gross income instead of net income for the purpose of determination of compensation amount.

3. On the other hand, Claimants filed appeal challenging the findings recorded by the Tribunal with regard to the contributory negligence on the part of the deceased to the extent of 30% in occurrence of the accident.

4. The learned Counsel for the Insurer submits that on the basis of the evidence on record, the Tribunal ought to have considered in fact negligence of the deceased in occurrence of accident. It is his contention that claimants have failed to lead evidence to show negligence on the part of driver of offending vehicle in occurrence of accident. According to him, Tribunal ought to have considered 50% negligence of deceased in occurrence of accident. On the point of quantum, learned Counsel for the Insurer submits that the Tribunal has not considered the average income of the deceased for last three years prior to his death, instead considered of income for last year.

5. Ld. Counsel for the Claimants submit that Tribunal has erred in considering negligence of deceased in occurrence of accident on

the ground that he was not wearing helmet. According to him, there is no evidence to show that deceased was not wearing helmet and in any case that would not lead to conclusion that he was negligent in causing accident. As far as income of deceased, he submits that determination of compensation towards loss of dependency would be decided on the basis of last drawn income of deceased and hence Tribunal committed no error in computation thereof.

6. There cannot be any dispute made with regard to observation made by the Ld. Tribunal that there is no evidence to indicate that the deceased was not wearing helmet. In any case non-wearing of helmet by itself would not lead to a conclusion that he has contributed to the occurrence of the accident. In order to hold so there must be a positive evidence led before the Tribunal. Admittedly, no such evidence was led in order to arrival to the conclusion that the deceased contributed to the accident to any extent. The findings recorded by the Tribunal in this regard therefore deserves importance.

7. In so far as the quantum of compensation is concerned, the Tribunal has considered the last drawn income of the deceased i.e. income of year and his death. No error is committed by Tribunal in accepting last income tax return. Further material on record to show that the Tribunal has rightly considered the income after deduction

towards the expenses for the claimant and computation is done by applying correct multiplier, so also adding future prospects, as per Judgment of Supreme Court in case of **National Insurance Co. Ltd. V/s. Pranay Sethi 2017(16) SCC 680**. The purpose of grant of compensation is to return the claimants to the position at the time of death of deceased. Hence consideration of last drawn income or income of last year as per income tax returns is correct, requiring no interference. The findings of Tribunal in respect of contributory negligence of deceased however can not sustain. In view of above discussion, appeal filed by Appellant/Insurer deserves to be dismissed. Hence, the following order.

: **ORDER** :

i) The appeal filed by the claimant stands allowed. Whereas appeal filed by Insurer stands dismissed.

ii) It is held that the claimant to be entitled to receive entire compensation of Rs.63,61,094.40.

iii) Original opponents are directed to pay balance amount of Rs.19,08,328.32 along with interest at the rate of 7% p.a. from the date of claim till realization of the amount.

iv) The claimants to pay additional court fees.

v) The statutory deposit be transferred to the Tribunal for disposal as per law within one month.

(R. M. JOSHI, J.)