Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1182 OF 2024

Bajaj Allianz General Insurance Co. Ltd, Thane ...Appellant
Through its Divisional Manager

Versus

Geetanjali Santosh Kharat & Ors ...Respondents

Mr Sarthak Diwan, for the Appellant.
Mrs Rina Kundu, for Respondents Nos. 1 to 3.
Ms Priyanka Dable, with Sacchidanand Singh, for Respondent No. 4.

CORAM: R. M. JOSHI, J.

DATED: 9TH JANUARY 2026

PC:-

1. By consent of both sides, heard finally at the stage of admission.

2. This Appeal filed by the Insurer under Section 173 of Motor Vehicles Act 1988 takes exception to the Judgment and Award dated 9th February 2023, passed in MACP No. 641 of 2018, whereby the Tribunal has allowed a death claim and granted compensation of Rs. 15,65,000/- along with interest at the rate of 7% per annum with penal interest at 8%.

3. It is the case of the Claimant before the Tribunal that on 13th April 2018, deceased Santosh was working as a Cleaner on Truck bearing registration No. MH-48-A-3181, which was driven by Dadaso Kharat. The truck met with an accident on account of rash and negligent driving thereof by the driver. In the said accident deceased sustained injuries and succumbed thereto on 23rd April 2018. On different counts, compensation is claimed by the Claimants.

4. The owner of the offending vehicle resisted the claim on the ground of maintainability and denied the liability for payment of compensation as the vehicle in question is insured with Opponent No. 2.

5. Opponent No. 2 resisted the Claim Petition by filing the Written Statement at Exhibit-17 denying the averments and contentions of the Claimants. It is, however, not in dispute that the vehicle was duly covered under policy issued by the Insurer. Since Tribunal allowed the claim, present Appeal.

6. Learned counsel for the Appellant/insurer submits that a plea was raised in the Written Statement with regard to the deceased driving the truck and not Dadaso as claimed by the Claimants. In this regard, he drew attention of the Court to police papers placed on record, more particularly, the report dated 23rd April 2018 which, according to him, indicates that the deceased was driving the vehicle and not the other person. It is his submission that on the basis of this evidence, the claim deserves to be dismissed.

7. Learned counsel for the Appellant/insurer submits that the Tribunal ought not to have granted penal interest, which is wholly impermissible in law as held by the Division Bench in the case of ***New India Assurance Co. Ltd vs Saira Imtiaz Lambe.***[1]

8. The learned counsel for the Appellant/insurer submits that it is the case of insurer before the Tribunal that the investigation carried out reveals that the deceased was driving the vehicle in question.

9. Though it is argued that the investigation carried out by the Insurer reveals about the vehicle being driven by the deceased, the report for the same is not placed on record nor evidence was led to that effect.

10. Learned counsel for the Claimants submits that in absence of any ground being made in this regard, penal interest cannot be set aside.

11. Learned counsel for the Claimants supported the impugned Judgment and Award, however, sought enhancement on the ground that the Tribunal has failed to consider future prospects and owing to the age of the deceased, the Claimants would be entitled for additional 40% of compensation.

12. Insofar as the occurrence of the accident and death of the deceased therein is not in dispute. The disputed fact with regard to who was driving the vehicle in question at the time of

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1 FA.NO. 783 of 2015 with CA.NO. 3563 of 2015.

occurrence of the accident. The Claimants were required to prove the manner in which the accident occurred, so also, causing of death of the deceased on probability. Claimants apart from relying upon police papers and chargesheet, led evidence of Dadaso Kharat, who was driving the vehicle in question at the relevant time. During the cross-examination of this witness it was not suggested to him that he was not driving the vehicle. Apart from this, there is chargesheet filed against the driver of the vehicle and the evidence on record is sufficient to prove that the vehicle was being driven by Dadaso and not by the deceased as claimed by the Insurer. This Court, therefore, finds no justification in causing interference in the findings recorded by the Tribunal on the point of accident and negligence on the part of the driver of the truck.

13. Insofar as the compensation is concerned, the Tribunal has considered a notional income at the rate of Rs. 9,000/- per month. In the facts of the case, with the place of residence and also the responsibilities of the Claimant, the said determination is correct. The Tribunal also has not granted compensation for the future prospects in accordance with the Judgment of the Supreme Court in the case of ***National Insurance Co Ltd., vs Pranay Sethi***.[2] Since future prospects are not granted, as rightly argued by the counsel for the Claimants that the Claimants are entitled for receiving compensation even without filing Appeal or Cross-Objections in view of the Judgment of the Supreme Court in the case of ***Pappu Deo Yadav vs Naresh Kumar.***[3] the said prayer stands allowed. The

2 2017 ACJ 2700 (SC).

3 AIR 2020 SC 4424.

Tribunal has also not granted consortium to two Claimants out of three. They would be entitled to receive the same.

14. In sofar as grant of penal interest is concerned, even though no specific ground has been raised as prayed by the Appellant in this regard, in view of the Judgment of the Division Bench of this Court in the case of ***Saira Imtiaz Lambe*** (Supra), the grant of penal interest is wholly unjustified. Hence, the same deserves to be set aside.

15. The claimants therefore would be entitled to receive the following amount:

Head	**Amount (in Rupees)**
Dependency (Rs. 8,400 x 12 months x 17 multiplier)	17,13,600/-
Hon'ble Tribunal awarded	12,24,000/-
Enhanced amount	4,89,600/-
Enhanced consortium for parents Rs. 48,000/- each (x2)	96,000/-
Total enhanced amount after adding future prospect consortium (Rs. 4,89,600 + Rs. 96,000)	**5,85,600/-**

16. As a result of above discussion, I pass the following order:

ORDER

(a) The Appeal is partly allowed.

(b) The penal interest of 8% levied by the Tribunal stands set aside.

(c) The Claimants would be entitled to receive additional compensation of Rs. 5,85,600/-.

(d) The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it as per Rule.

(e) The claimants are permitted to withdraw the additional compensation amount along with accrued interest thereon.

(f) The claimants shall pay deficit court fees on enhanced amount, if any, as per Rule.

(g) Record & Proceedings be sent back to the Tribunal.

17. In view of dismissal of the Appeal, pending Applications, if any, stand disposed of.

(R. M. JOSHI, J.)