Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1252 OF 2024

1. Sanjay Sadashiv Mohite
   Age-54, Occ-Service.

2. Vanita Sanjay Mohite
   Age – 51, Occ- Housewife
   R/o. House No. 969, Rohidas Wada
   M.G. Road, Near Samaj Mandir,
   Tapal Naka, Old Panvel, Taluka Panvel
   District Raigad, Maharashtra 410 206. …Appellants

Versus

1. I.C.I.C.I Lombard General Insurance Co. Ltd.
   I.C.I.C.I Lombard Manager
   2nd Floor, Office No. 203, Meher House No.15
   Kavaji Patel Road, Opp Akbar Ali Furniture
   Fort, Mumbai – 400 001.

2. Dadabhau Anand Zhanjad
   Flat No.1, Ground Floor,
   Ajinkya Residency, Yashwant Nagar,
   Near Indrayani English School,
   Talegaon Dabhade, Dist Pune-410 507. …Respondents

Mr. Yogesh Pande with Himanshu Jha, for the Appellants.
Mr. Nikhil Mehta i/b KMC Legal Venture, for the Respondent No.1.

CORAM	:	**R. M. JOSHI, J.**
RESERVED ON	:	**21st JANUARY, 2026.**
PRONOUNCED ON	:	**11th FEBRUARY, 2026.**

JUDGMENT:

1. This Appeal, filed for enhancement, takes exception to the Judgment and Award dated 16th February, 2024 passed by Motor Accident Claim Petition No. 90 of 2021, whereby death claim filed by the claimants came to be allowed by directing original opponent Nos. 1 and 2 to pay compensation of Rs.37,02,000/- with interest at the rate of 9% per annum.

2. The original claimants in the present appeal seek enhancement of the compensation on the ground that the Tribunal has committed an error in not considering the entire income earned by the deceased for the purpose of computation of loss of dependency and that the Tribunal ought not to have considered the income of the deceased to the extent of the managerial loss.

3. Learned Counsel for the appellant submits that the deceased was conducting business of ambulance and cable and after his death and even though his legal representatives have continued the said business, it cannot be said that the compensation could be granted only towards the managerial loss caused and not the actual income of the deceased. In support of his submission, he placed reliance on the following judgments.

(a) **Halimabai and Ors. vs. Rakesh Kumar Kukhasia and Ors. (2004 ACJ 374).**

(b) **Kirti and Ors. vs. Oriental Insurance Co. Ltd. (2021 ACJ 1).**

(c) HDFC Ergo General Insurance Co. Ltd. vs. Adil Lutfi Peters & Anr. (Bombay High Court -First Appeal No. 1763 of 2025 and connected matters).

(d) S. Vishnu Ganga & Ors. vs. M/s. Oriental Insurance Company Limited and Ors. (Supreme Court- Civil Appeal Nos. 1162-1163 of 2025).

(e) United India Insurance Co. Ltd. vs. Sugra Riyaz Varawalla and Ors. (2014 ACJ 1944).

(f) K. Ramya and Ors. vs. National Insurance Co. Ltd. & Anr. (2022 LiveLaw (SC) 816).

(g) Malarvizhi & Ors. vs. United India Insurance Company Limited & Anr. (Supreme Court – Civil Appeal Nos. 9196-97 of 2019 @ SLP (C) Nos. 9630-31 of 2019.

(h) National Insurance Co. Ltd. vs. Birender and Ors. (2020 ACJ 759).

(i) Royal Sundaram Alliance Ins. Co. Ltd. vs. Vinaya Udaybabu Shah and Ors. (2022 ACJ 2122).

(j) Smt. Anjali & Ors. vs. Lokendra Rathod & Ors. (2022 LiveLaw (SC) 1012).

4. He relied upon the judgment in the case of **Halimabai & Ors. (supra)** to contend the fact that a widow took over the reins of the shop would not justify the inference that she was not entitled to compensation or that she derived income to the same extent, as the deceased in the conduct of the business. He also placed reliance on the judgment in the case of **Kirti & Ors. (supra)** to argue that the claims and legal liabilities crystallized at the time of accident itself and changes post thereto ought not to ordinarily affect pending proceedings. Just as appellants-claimants cannot rely upon subsequent increases in minimum wages, the respondent/insurer too cannot seek the benefit of the subsequent death of a dependent during the pendency of legal proceedings. He also made reference to the judgment of this Court in the case of **HDFC Ergo General Insurance Co. Ltd.(supra)** to support the general position of law that the strict proof of the income cannot be insisted upon by the Tribunal and the Tribunal is required to take special care that the victims and their dependents do not suffer merely because of some doubts here or some obscurity there. He took aid of the judgment of the Supreme Court in the case of **S. Vishnu Ganga & Ors. (supra)** to submit that the income of the deceased irrespective of the fact that the business is continued by the legal representatives ought to be considered for the purpose of computation of compensation for loss of dependency. Relying upon the judgment of the Division Bench of this Court in the case of **United India Insurance Co. Ltd. (supra),** it is submitted that the Tribunal was required to assess the loss of actual dependency income, which otherwise would have been earned by the family, if the deceased had been alive. He finally relied upon the judgment in the case of **K. Ramya & Ors. (supra)** to submit that the mere fact of the deceased's share of ownership in the businesse ventures was transferred to the deceased's minor children just before his death or to the dependents after his death is not a sufficient justification to conclude that the benefits of these businesses continue to accrue to his dependents.

5. Learned Counsel for the insurer opposes the said contention by submitting that the judgments cited supra were in the facts of the case before the Supreme Court and in the instant case it could be seen from the admission given by the claimant in the cross-examination that the deceased also was conducting the business of ambulance by engaging a driver and never claimed to have driven the ambulance himself. It is submitted that admittedly, now also the same practice is continued by engaging drivers. In such circumstances, according to him, there is no justification to take the entire income of the deceased into consideration for the purpose of computation of the compensation for loss of dependency as the same would amount to creating an artificial income in respect of one business which earns actual income so also, income by virtue of the order of the Court .

6. There cannot be any dispute made with regard to the position of law sought to be canvassed by the learned Counsel for the claimants that the claimants have a right to receive just and fair compensation. However, at the same time the compensation cannot become a bonanza. A careful perusal of the judgments cited supra indicate that Hon'ble Supreme Court as well as this Court while deciding the said cases dealt with the facts of each case and then arrived at the conclusion that a mere transfer or continuation of the business of the deceased could not be sufficient to deny compensation to the legal representatives only to the extent of managerial loss. In the case of **Halimabai (supra)** this Court has taken into consideration the fact that after the death of the husband, a widow was left behind with 11 children and in such circumstances, it was held that she cannot be denied fair compensation for herself and children.

7. In the case of **Kirti (supra),** the Hon'ble Supreme Court held that the claim and legal liabilities crystallize at the time of accident itself and changes post thereto ought not to **ordinarily** (**emphasis supplied)** affect pending proceedings. Pertinently, the Supreme Court was dealing with the issue with regard to the deduction of personal expenses in view of the fact of subsequent death of one of the dependent during pendency of legal proceedings. The Division Bench of this Court in **HDFC Ergo (supra)** has dealt with the general principles which are required to be considered while deciding the compensation claim and that there cannot be any dispute made with regard to the same. In the case of **S. Vishnu Ganga (supra),** it was held that what was considered to be relevant is, whether due to lack of experience and maturity of the legal representatives of the deceased, there is real /expected down fall in the profitability of the firm or the business would ensue. Similarly, the Division Bench of this Court dealing with an issue with regard to the amount received by the legal heirs of the deceased for profit earned or assets held by the deceased while working as partner in firm was under consideration. In the case of **K. Ramya (supra)** it was held that the mere fact of the deceased's share of ownership in the businesse was transferred to the deceased's minor children just before his death or to the dependents after his death is not sufficient justification to conclude that the benefits of these businesses continued to accrue to his dependents. It is thus clear that the order passed therein was taking into consideration peculiar facts of the said cases.

8. In the instant case, though there was claim of the claimants that deceased was doing business of ambulance and cable network. Tribunal on the basis of evidence led by them held business of cable not being proved. Considering material evidence on record, it cannot be said that claimants were able to substantiate the said claim. However, there is categoric evidence on record to indicate that the deceased was conducting business of ambulance by engaging drivers and the said businesses continued by the claimants with no reduction in the profits of the business. In the facts of the case, therefore, it cannot be said that the said business required any special skill for its conduct and the deceased was possessing such special skill which claimants do not. No specific case is made out by the claimants in this regard before the Tribunal.

9. This court is of the considered view that a case will have to be made out by claimants that the business done by the deceased required special skills and claimants lack the same or that the sustainment and profitability of business is affected by the inexperienced claimants, inspite succeeding business of deceased. If no such case is made out, unlike in case of a salaried deceased, the income from his business would not cease to exist. Any business would not only require management but also capital/ investment and the returns from and cumulative effect thereof would result yielding income therefrom. Needless to say that actual loss to the business on account of death of deceased would have to be considered for determination of loss of dependency which is crucial for computation of compensation. Without making out any case to what extent the loss has been caused, determination of actual earnings of the deceased would lead to creation of double income from one business, i.e., actual income earned by the claimants and income created by the order of Tribunal and hence, would be bonanza and not just and fair compensation.

10. This Court in the instant case, thus finds substance in the contention of respondent insurer that unless a specific case is made out by the claimants with regard to the loss of income/earning capacity from the business inherited by them from the deceased for requirement of special knowledge or lack of experience, there cannot be an order of direction to pay compensation accepting the entire income arising out of the same. The reason, therefore is that it will become an additional income by virtue of order of Court on one hand, and the business will continue to fetch the income on the other.

11. Consequently, this Court finds no substance in the Appeal seeking enhancement of the compensation. Learned Tribunal has rightly taken into consideration evidence on record to determine the compensation, which is fair and just in the facts of the case.

12. The Appeal stands dismissed accordingly.

(R. M. JOSHI, J.)