Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1869 OF 2024

Bajaj Allianz General Insurance Co. Ltd.,
Having its office at-
Rustamji Aspire, Building 3rd Floor,
Edvard Nagar 2, Near Honda Showroom,
Priyadarshani Eastern Express Highway,
Sion Chunnabhati, Mumbai 400 022.
Policy No. OG-19-1904-1803-00000257
Valid From 26.04.2018 to 25.04.2019

...Appellant
(Org. Respondent No. 2)

~ versus ~

1. **Farheen Mauzammil Shaikh,**
   Aged about 38 years,
   Widow of Deceased.
2. **Shima Muzammil Shaikh,**
   Aged abut 11 years,
   Daughter of Deceased.
3. **Hatima Muzammil Shaikh,**
   Aged about 7 years,
   Daughter of Deceased.
4. **Mudashir Muzammil Shaikh,**
   Aged about 4 years,
   Son of Deceased.,
   Respondents Nos. 2 to 4 are minor therefore, through their natural guardian, i.e., mother, i.e., Farneen Mauzammil Shaikh
5. **Abdul Latif Haji Shamsuddin Shaikh,**
   Aged about 74 years, Father of Deceased.

First Appeal stands abated as against Respondent No. 5 vide order passed by the Registrar (Judicial-II) dated 10th March 2025.

6. **Raziya Abdul Latif Shaikh,**
Aged about 63 years,
Motor of Deceased.
All the Respondents are Residing at-
31st D Monte Street, Hill Road,
Bandra (W), Mumbai – 50
Mob. - 9323681045

7. **Mysore Ammomia Pvt. Ltd.,**
Having address at Plot No. J-53
MIDC Taloja, Taloja, Raigad-410208
Owner of Vehicle bearing
No. GJ-06-AZ-2641. **...Respondents**

APPEARANCES

For the Appellant	**Mr Sarthak Diwan.**
For The Respondents	**Mr Niketan Nakhawa.**

CORAM : R. M. JOSHI, J.

DATED : 6TH JANUARY 2026.

ORAL JUDGMENT:

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

2. This Appeal is under Section 173 of Motor Vehicles Act 1988 is preferred by the Insurer against the Judgment and Award dated 20th July 2024, passed in MACP No. 264 of 2019 , whereby the Tribunal has granted compensation of Rs. 36,99,000/- along with interest at the rate of 7 % per annum from the date of filing of the Petition till realisation of the amount.

3. The facts which led to the filing of this Appeal can be narrated in brief as under.

4. On 20th November 2018 at about 5.00 pm the deceased was Pillion rider on motorcycle bearing registration No. MH-04-GA-5674 with rider Abdul Shaikh. When they reached to the spot of the accident, a motor tanker bearing registration No. GJ-06-AZ-2641 came in high and excessive speed and dashed to the motorcycle from behind. As a result of the said dash, the deceased who was the pillion rider fell on the road and wheel of the tanker ran over his head. He sustained fatal injuries in the said accident. The Claimants claim that the accident in question occurred due the negligence of the driver of the tanker. They also claimed that the deceased was employed with Halims Enterprises and was earning Rs. 18,000/- per month.

5. The owner of the tanker filed Written Statement opposing the claim of the Claimants on all counts. The Insurer also filed Written Statement and denied the contention/averment of the

Claimants. Issue of non-joinder of parties was raised, so also, a specific plea was taken by the Insurer with regard to the driver of the offending vehicle not having valid and effective license to carry hazardous petroleum products. It was claimed by the Insurer that there was no valid and effective fitness and permit to ply the vehicle along with petroleum products. It was further claimed that there was contributory negligence on the part of the rider of the motorcycle in occurrence of the accident.

6. The Claimants examined Claimant No. 1 at Exhibit -17 and also led evidence of Abdul at Exhibit-41. Apart from the oral evidence, police papers were relied upon in order to substantiate the factum of occurrence of the accident and negligence of driver of offending vehicle. The Insurer examined Dushyant Singh and Hemant from RTO office at Exhibit -51 and 56 respectively. The Tribunal allowed the claim. Hence, this Appeal.

7. Learned counsel for the Appellant/Insurer submits that the Tribunal has committed an error in not considering the negligence of the rider of the motorcycle in occurrence of the accident. It is his further contention that the deceased and the rider were not wearing helmet and, therefore, have contributed to occurrence of the accident and accidental injuries. It is argued that the Insurer has not only alleged the breach of the terms of the policy but has led evidence in this regard by examining witnesses from RTO. On the point quantum, it is submitted that the Claimants have not proved the employment and income of the deceased and the evidence of Abdul is insufficient to prove the said contention. Thus, it is his contention that on these grounds, the impugned Judgment and Award deserves to be set aside.

8. Learned counsel for the Claimants supported the impugned Judgment and Award. It is his submission that the Insurer has failed to prove contributory negligence, so also, breach of the conditions of the policy. With regard to the arguments on quantum, it is contended that the Claimants were required to prove the employment and income of the deceased on probability and the evidence led by the Claimants makes their case probable.

9. There is no dispute about the fact that on 20th November 2018 accident occurred involving motorcycle bearing registration No. MH-04-GA-5674 and motor tanker registration No. GJ-06-AZ-2641, which is owned and insured by the original Opponents. In the said accident, the deceased who was a pillion rider on the motorcycle sustained grievous injuries and succumbed thereto. There is no serious dispute made with regard to the age of the deceased at the time of his death. The dispute is, however, made with regard to the occurrence of the accident and it is alleged that negligence of the rider of the motorcycle contributed in causing the accident, so also, the breach of the conditions of the policy and quantum of the compensation.

10. Insofar as the contributory negligence is concerned, the Insurer though has taken said defence but has failed to substantiate the same before the Tribunal. Apart from this, there is no merit in the contention of the Insurer with regard to the deceased and the rider of the vehicle not wearing helmets at the time of occurrence of the accident as non-wearing of the helmet by itself will not become a ground to prove contributory negligence. On the other hand by placing reliance on police papers, the Claimants succeeded in proving involvement of offending vehicle and negligence of driver of said vehicle in causing accident.

11. As far as the breach of condition of policy is concerned, though the Insurer examined two witnesses from RTO, perusal of their evidence indicates that the evidence of these witness do not support the case of the Insurer. On the contrary, the same favours the claim of the Claimants and the Opponent No. 1. Having regard to the evidence on record, this Court finds no substance in the challenge to the impugned Judgment and Award on this count.

12. Coming to the issue of quantum of compensation, the Claimants are required to prove employment and income of the deceased on preponderance of probability. Though the Claimants have examined witness, Abdul, who is the brother of the deceased, there is absolutely no evidence to indicate that he is even runs any business as claimed by him. The evidence raised by Claimant is, therefore, not probable to accept the employment and income of the deceased. Irrespective of the said fact, the notional income would have to be taken into consideration for the purpose of deciding the compensation. The deceased was staying in Mumbai and was maintaining his family consisting 6 persons. In such circumstances, this Court finds no impediment to accept the notional income at the rate of Rs. 15,000/- per month. The calculation of the compensation, therefore, needs modification.

13. The Claimants are entitled for following compensation:

Particulars	Rs.	Amount
Annual Income (Rs.15,000/- x 12)	**Rs.**	1,80,000.00
40% future prospects	**Rs.**	72,000.00
Total	**Rs.**	2,52,000.00
Deduction towards dependency ¼ of Rs. 2,52,000.00 (2,52,000-63,000 (¼)=	**Rs.**	1,89,000.00
Multiplier 15	**Rs.**	28,35,000.00
Consortium (Rs.2,40,000/- + 10% increase 10%=24,000. (Rs. 2,40,000+Rs.24,000)=	**Rs.**	2,64,000.00
Funeral Expenses	**Rs.**	27,000.00
Total Compensation	**Rs.**	**31,26,000.00**

14. Learned counsel for the Original Claimants submits that Claimant No. 5 has died during the pendency of the appeal. It is his submission that the amount, which would come to the share of Claimant No. 5 be distributed equally between Respondents Nos. 1 to 4 and 6.

15. Considering the fact that this proceeding is under the Motor Vehicle Act 1988, it would be0 appropriate to accept such prayer. It is relevant to note that the claim has been contested by the Claimant since 2019 and no one thereafter has come forward to claim to be LRs of deceased Claimant No. 5. Hence, the request is accepted. The amount, which would come to the share of Claimant

No. 5 be distributed equally between Respondents Nos. 1 to 4 and 6.

16. In view of above, I pass the following order:

ORDER

(a) The Appeal is partly allowed.

(b) The Claimants are entitled for compensation of Rs. 31,24,000/- @ 7% interest per annum from the date of filing claim Petition till realisation of the amount.

(c) The Claimants Nos. 1 to 4 and 6 would be entitled to receive compensation coming to share of deceased Claimant No. 5 equally.

(d) Record and Proceedings be sent back to the Tribunal.

17. In view of the above order, pending Applications, if any, stand disposed of.

(R. M. JOSHI, J.)