IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1935 OF 2025
WITH
CROSS OBJECTION (ST) NO. 2300 OF 2026

Reliance General Insurance Co. Ltd. Reliance Centre, 4th Floor, Chintamani Avenue, Near Off Western Express Highway, In front of Virwani Industrial, Goregaon (East) Mumbai 400 063.	...Appellant(Org. Respondent No.2)

Versus

1. Usha Sahebrao Gaikwad, Age : 52 Years, Occ. Household, 2. Rushikesh Sahebrao Gaikwad, Age: 27 years, Occ. Service, 3. Harshvardhan Sahebrao Gaikwad, Age: 27 years, Occ. Service, 4. Dipeeka Sahebrao Gaikwad, Age: 25 years, Occ. Service, All are R/o Radhai Niwas, Jeevanjyot Care Centre, Karjat Murbad Road, Kashele, Tal. Karjat, Dist.Raigad 410 201. 5. Suresh Nago Shende, AddressL Shilarwardi, Po. Pathraj, Tal. Karjat, Dist. Raigad, Maharashtra	... Respondents (Nos. 1 to 4 are Orig. Claimants & No.5 is Orig. Respondent No.1)

****

Mr. Akshay A. Kulkarni, Advocate for the Appellant.

Mr. T.J. Mendon, Advocate for Respondent Nos. 1 to 4.

****

CORAM : R.M. JOSHI, J.

JUDGMENT. :- **DATE : 13th FEBRUARY, 2026**

1. This Appeal is filed under Section 173 of Motor Vehicles Act takes exception to the judgment and award dated 14.09.2023 passed in M.A.C.P No. 58 of 2021 granting compensation of Rs. 54,07,820/- along with interest @ 9% per annum from the date of filing of claim petition till realization of the amount. On the other hand claimants filed cross objection seeking enhancement of compensation.

2. This Appellant/Insurer takes exception to the impugned judgment and award on the ground that Tribunal could not have fastened the liability of payment of compensation upon insurer when admittedly there is a breach of condition of policy is proved, it was not open for the Tribunal even to pass pay and recover order against the insurer. On the point of quantum it is the case of the Appellant that the Tribunal has accepted the income of the deceased on higher side without considering the deductions towards professional tax etc. Lastly the exception is taken to the interest awarded @ 9% per annum on the amount of compensation by the Tribunal.

3. Learned counsel for the Appellant submits that the insurer has taken specific plea in the written statement with regard to the breach of terms and conditions of the policy by the insured as the driver of the offending vehicle was not having valid and effective license at the time of occurrence of the accident. It is specifically contended that the rider of the motorcycle was aged about 70 years and obviously was riding the motorcycle without license. It is his submission that said contention raised in the written statement has been duly proved by examining witness at Exhibit 43. According to him by ignoring the said evidence on record, Tribunal directed payment of compensation by the insurer first and then to recover the same from insured. On the point of contempt and interest on the compensation it is his submission that the Tribunal

ought to have taken into consideration the evidence on record which does not justify the income of the deceased to be taken at Rs. 68,495/- per month and that the interest awarded @ 9% is excessive.

4. Learned counsel for the claimants supported the impugned judgment and award. It is his submission that it is not sufficient for the insurer to prove the breach of the condition of policy to deny the liability of payment of compensation. It is his submission that in case of claimant/deceased is third party, the insurer shall still be liable to pay compensation with right to recover the compensation from the insured. On the point of quantum it is his submission that the Tribunal as recorded in paragraph No. 16 of the judgment has rightly taken into consideration evidence on record and accepted the income of the deceased at the rate of Rs. 68,495/- per month. He further drew attention of the Court to the other facts indicating that the calculations of compensation being done keeping in mind the position of law in that regard. In so far as the interest @ 9% is concerned, it is his contention that recently Hon'ble Supreme Court has held that uniformly 9% interest needs to be awarded.

5. Here in this case, there is no dispute with regard to the fact that the owner of the offending vehicle was duly insured under the valid policy of insurer issued by the Appellant/insurer. Further it is not in dispute that the deceased is third party. It would be relevant to take note of provisions of Section 149 (4) the Motor Vehicles Act which provides that except for ground under clause (b) i.e. the policy is valid on the ground that it is obtained by non disclosure of material facts or false representation in some material particular, there would be liability of insurer towards third party to pay compensation in case of breach covered by clause (a) of sub Section 2 of Section 149 of the Act and the

same shall be recoverable from the insured. Once, there is valid insurance policy and the claimants is third party and where the case is not recovered by Section 149(4) of the Act, question of discharging the liability of the insurer to pay compensation does not arise. In so far as third party is concerned, even in case where the insurer succeeds in showing that there is breach of condition of policy, it is open for the Tribunal to direct insurer to pay the amount of compensation to the third party with liberty to the insurer to recover the same from insured since breach is not the one as contemplated in the said provision. In view of the same. this Court finds no justification to cause interference in the order passed by the Tribunal of pay and recover.

6. As far as the quantum of compensation is concerned, evidence on record indicates that the deceased was aged about 54 years at the time of his death. He was employed as Headmaster in Zilla Parishad school. Form No. 16 (Exhibit 30) so also the salary certificate for the financial year 2020-2021 indicates that the net income of the deceased was 68,495/- per month. The Tribunal after rightly taken into consideration the age of the deceased added future prospects by 15%. Since there was only one dependent upon deceased, half income is deducted towards his personal expenses. Similarly, the compensation has been rightly granted on other heads by following judgment of the Hon'ble Supreme Court in case of ***Magma General Insurance Company Vs. Nanu Ram Alias Chuhru Ram and Others, (2019) 4 Mh.L.J. 01.***

7. The Tribunal has granted interest @ 9% per annum. It is needless to say that unless the order of the Tribunal is perverse, it cannot be interfered with. Hence, Appeal deserves to be dismissed.

8. In so far as the Cross Objection filed by the claimants is concerned, it is contended on behalf of the claimants that the Tribunal

committed error in considering the personal expenses of the deceased to the extent of 1/2 instead of 1/3 which contrary to the judgment of Hon'ble Supreme Court in case of ***Sarla Verma Vs. Delhi Transport Corporation, (2009) 6 SCC 121.*** This contention is opposed by the learned counsel for the Appellant on the ground that since there was only one dependent upon the deceased. Tribunal committed no error in considering the personal expenses of the deceased to the extent of 1/2.

9. It is settled position of law by the judgment of the Hon'ble Supreme Court in case of ***Sarla Verma*** (supra) that ordinarily in case of unmarried person, since he/she is expected to spend more on own, 1/2 of his income is treated as personal expenses of the deceased. However, the same cannot be considered so in case of married person. Here in this case, deceased was married and hence it was not open for the Tribunal to deduct 1/2 amount without recording any reason that the deceased used to spent the said amount on his personal expenses. This Court, therefore, finds substance in the Cross Objection. The Cross Objection, therefore, requires to be partly allowed.

10. The claimants would be entitled to compensation as detailed herein below:

Sr. No.	**Particulars**	**Amount (in Rs.)**
1.	Monthly Income	68,495/-
2.	Future Prospects (15%) [68,495 + (15% of 68,495]	78,769/-
3.	1/3rd Personal expenses (dependency)[78,769 – (1/3rd of 78,769)]	52,513/-
4.	Loss of Income [52,513 x 12x 11]	69,31,716/-

5.	**Add:** Funeral expenses	18,000/-
6.	**Add:** Loss of estate	18,000/-
7.	**Add:** Loss of consortium [48,000 x 4]	1,92,000/-
8.	Total Compensation (4 + 5 + 6 + 7)	**71,59,716/-**
9.	**Less:** Tribunal Amount (8 – 9)	54,07,820/-
10.	**Enhanced Amount**	**17,51,896/-**

11. In view of the above discussion following order is passed.

i) Appeal filed by the insurer stands dismissed.

ii) Cross Objection of claimants stands partly allowed.

iii) The claimants shall be entitled to receive additional amount of Rs. 17,51,896/- as compensation with interest as granted by Tribunal.

iv) Claimants to pay additional Court fees as per rule.

v) Statutory deposit be transferred to Tribunal for disposal as per law.

(R.M. JOSHI, J.)