Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 242 OF 2025

Kavita Ananta Maghe & Ors …Appellants
Versus
Rahul Vilas Kokate & Anr …Respondents

Mrs Rina Kundu, for the Appellants.
Mr Uday Nighot, for Respondent No. 1.
Mr AR Avachat, with SH Deshpande, for Respondent-Insurance Co.

CORAM: R. M. JOSHI, J.

DATED: 16TH FEBRUARY 2026

PC:-

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

2. This Appeal takes exception to the Judgment and Order dated 2nd September 2024 passed in MACP No. 648 of 2020, whereby the death claim came to be allowed partly by directing the Opponents to pay Rs. 25,90,000/- with interest at the rate of 7.5% per annum on an amount of Rs. 18,70,000/- from the date of Petition till realisation.

3. The Appellants are Claimants. They have grievance with regard to the quantum of compensation. Learned counsel for the Appellants submits that the Tribunal has committed error in not considering the evidence led by the Claimants with regard to the income of the deceased, which is supported by the Income Tax Returns. It is her further submission that the Tribunal though exhibited medical bills, but failed to take the same into consideration at the time of determination of amount of compensation. She further argues that the evidence of Claimant is sufficient to prove that for about 15 days' the deceased was in private hospital and the claim made by the Claimants with regard to the medical expenses being reasonable deserves acceptance. She has further grievance about the consortium not being paid to the Claimants, except for one.

4. Learned counsel for the Insurer opposed the said contention. It is his submission that the Tribunal committed no error in considering notional income at the rate of Rs. 15,000/- per month in view of the fact that except for one Income Tax Return for the financial year 2017-18, there is no other evidence to show income of the deceased. It is his further submission that medical bills since not proved before the Tribunal, they were rightly kept out of consideration for the purpose of determination of compensation. Finally, he argues that this is the case wherein doubt created with regard to the involvement of offending vehicle in the accident as the First Information Report came to be lodged after 15 day's of the occurrence thereof.

5. At the outset, it needs to be recorded that there is no challenge raised by the Insurer or owner of the offending vehicle to the impugned Judgment and Order passed by the Tribunal. Thus, it is not open for the Insurer to take exception to the findings recorded by the Tribunal with regard to the involvement of the vehicle in occurrence of the accident.

6. In sofar as the claim of the Claimants with regard to the occupation/business and income of the deceased, Claimant No. 1 examined herself and relied upon the evidence in the form of Income Tax Returns for financial year 2017-18. Apart from this, the bank statements were relied upon to indicate the income received by the deceased. Most pertinently, the cross-examination of the Claimant No. 1 does not bring anything on record to discard her evidence in this regard. The Claimants were required to prove income of the deceased on preponderance of probability. The evidence on record is sufficient to hold that the deceased was earning at least Rs.3,49,450/- per annum on the basis of the Income Tax Reruns filed on record. Moreover, there is no cross-examination of this witness indicating that in the subsequent year, the income of the deceased was reduced to any extent. The computation of compensation as done by the learned Tribunal with regard to the loss of dependency, therefore, deserves modification.

7. As far as the medical expenses incurred on the treatment of the deceased is concerned, Claimant No. 1 gives details with regard to the hospitalisation of the deceased in two different hospitals. She has also placed on record medical bills, which were duly exhibited by the Tribunal. There seems no objection raised by the Opponents to the exhibiting of the said document. Moreover, considering the period of hospitalisation in private hospitals, claim made by the Claimants with regard to the medical expenses is reasonable and, hence, deserves acceptance.

8. Tribunal has not granted consortium to others except for the widow of the deceased. In view of the Judgment in case of ***Magma General Insurance Co. Ltd., vs Nanu Ram alias Chuhru Ram & Ors.***[1] the filial consortium is required to be paid to the other Claimants too.

9. In view of the above, the Claimants succeed in seeking enhancement of the compensation, which is calculated as follows:

Sr. No.	**Particulars**	**Amount in Rs.**
1.	Dependency [3,22,654 pa x15 (multiplier)]	48,39,810/-
2.	Consortium (48,000 x 3)	1,44,000/-
3.	Funeral Expenses	18,000/-
4.	Loss of Estate	18,000/-
5.	Aayush Hospital Bill	1,95,020/-
6.	Criticare Hospital Bill	2,00,000/-
7.	Oher Bills	1,11,834/-
8.	Total Amount	**55,26,664/-**
9.	Compensation awarded by Tribunal	25,90,000/-
10.	Enhanced amount	**29,36,664/-**

10. In view of this, I pass the following order:

ORDER

1 AIR OnLine 2018 SC 1249.

(a) The Appeal stands allowed.

(b) The Claimants would be entitled to receive enhanced compensation of Rs. 29,36,664/- with interest at the rate of 7.5% from the date of filing of the claim petition till realization of amount.

(c) The Claimants shall pay additional court fees as per rule.

(d) The Claimants are permitted to withdraw the deposited amount along with accrued interest thereon.

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

(f) R & P be sent back to the Tribunal.

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

(R. M. JOSHI, J.)