

Prasad

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1664 OF 2025
WITH
INTERIM APPLICATION NO. 11067 OF 2025
IN
FIRST APPEAL NO. 1664 OF 2025

Tata AIG Insurance Co. Ltd. ...Appellant
Versus
1. Dipika Jagannath Koli
2. Akhilesh Pal ...Respondents

WITH
FIRST APPEAL NO. 1666 OF 2025
WITH
INTERIM APPLICATION NO. 11072 OF 2025
IN
FIRST APPEAL NO. 1666 OF 2025

Tata AIG Insurance Co. Ltd. ...Appellant
Versus
1. Dipika Jagannath Koli
2. Suchita Jagannath Koli
3. Siddhesh Jagannath Koli
4. Akhilesh Pal _____ ...Respondents

Mr. Rajesh Kanojia a/w Prachi Pawar i/by Res Juris, for the
Appellant.

Ms. Rina Kundu, for the Respondents.

CORAM: R. M. JOSHI, J.

DATED: 20th JANUARY, 2026.

PC:-

1. Learned counsel for the Respondents has tendered
compilation of documents. The same is taken on record.

2. Learned counsel for the Appellant submits that First Appeal No.1666 of 2025 and Interim Application No.11072 of 2025 be heard along with the present Appeal. By consent of both the parties First Appeal No.1666 of 2025 and Interim Application No.11072 of 2025 are taken on Board.

3. Both the appeals involve similar question of fact and by consent of both the sides heard finally at the stage of admission.

4. The learned Tribunal passed judgment and award dated 17th April, 2025 in M.A.C.P No.753/2018 allowing injury claim of the claimant and granting her compensation of Rs.20,72,250/- with interest @8% per annum. In M.A.C.P No.754/2018 by judgment and award dated 17th April, 2018 death claim filed by the claimant was allowed with compensation of Rs.20,10,040/- with interest @8% per annum from the date of petition till realization of the said amount.

5. There is no dispute between the parties with regard to the fact that on 12.08.2018 at about 04:00 p.m., an accident occurred involving an auto rickshaw bearing registration No.MH-04-GN-3317 and motor jeep bearing No.MH-05-DH-9702. The deceased was proceeding with his wife in the auto rickshaw. In the said accident they sustained injuries. Husband died whereas the wife sustained serious injuries in the accident.

6. The Appellant/Insurer takes exception to the judgment and award passed by the Tribunal essentially on the ground that the Tribunal committed an error in accepting the income of deceased

at the rate of Rs.25,000/- per month and injured earning Rs.10,000/- per month.

7. Learned counsel for the Appellant/Insurer submits that there is absolutely no evidence on record to indicate income of the deceased as well as of the injured in both claims. It is his submission that the Tribunal has accepted the notional income of the deceased as well as the injured on higher side and hence the impugned judgment and award deserves interference.

8. Learned counsel for the claimants opposed the said submissions by drawing attention of the Court to the fact that there is evidence to show that the deceased was doing business of selling fish and was issued with the notice by the Corporation for vacating the premises allotted to him. This according to her clearly shows that the deceased as well as the injured were in the business of selling of fish and hence the income accepted by the Tribunal is not excessive. There is evidence on record to indicate that the deceased was doing the business in the fish market. The said contention of the claimants is supported by the notice issued by the corporation calling upon deceased to vacate the said premises for development purpose. This, therefore, indicates that there is evidence to show that the deceased was doing business of selling fish and obviously he would have earned substantial income. The learned Tribunal accepted the income of the deceased at the rate of Rs.25,000/- per month. In the facts of the case, the said acceptance of income is not excessive in order to cause interference therein.

9. Insofar as the claim of injured is concerned, she deposes on oath that she was selling fish by visiting the customers door to

door obviously on account of injuries/disability her earning capacity would get affected as she won't be able to sell fish, as done prior to the accident. Having regard to the fact that the family was engaged in the business of selling fish, her evidence regarding selling of fish does not deserve discardance. The notional income of the injured at the rate of Rs.10,000/- per month cannot be considered to be on higher side.

10. Learned counsel for the claimants submits that in First Appeal No.1666/2025 the Tribunal has not granted consortium to any of the claimants. She seeks enhancement of compensation on that ground by referring to the judgment of Supreme Court in the case of *Pappu Deo Yadav Vs. Naresh Kumar*¹. This contention is opposed by the learned counsel for the opponent.

11. In view of the judgment in the case of *Magma General Insurance Co. Ltd. vs. Nanu Ram*² the claimants who are wife and children are entitled to the consortium. Hence, in view of the judgment in case of *Pappu* (*supra*) the claimants are entitled to receive enhancement of compensation i.e. Rs.1,44,000/- with interest at the rate of 8% per annum.

12. As a result of our discussions, following order.

ORDER

(i) Appeals stand dismissed.

¹ 2020 AIR 4424 (SC).

² AIROnline 2018 SC 1249

- (ii) Claimants / Respondents in Appeal No.1666/2025 shall be entitled to receive a sum of Rs.1,44,000/- along with interest @8% per annum over and above compensation granted by the Tribunal.
- (iii) The statutory deposit along with interest, if any, be transferred to the Tribunal. The said amount be adjusted towards the compensation.
- (iv) All pending applications, if any, stands disposed of.
- (v) R & P be sent back to the Tribunal.

(R. M. JOSHI, J.)