

Ajit Pathrikar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 591 OF 2025
WITH
INTERIM APPLICATION NO. 9511 OF 2025
WITH
INTERIM APPLICATION NO. 3540 OF 2025
IN
FIRST APPEAL NO. 591 OF 2025**

M/s. Cholamandalam
Ms. General Insurance Co. Ltd. ...Appellant
Versus
Malati Markandey And Ors. ...Respondents

**WITH
FIRST APPEAL NO. 538 OF 2025
WITH
INTERIM APPLICATION NO. 9512 OF 2025
WITH
INTERIM APPLICATION NO. 3462 OF 2025
IN
FIRST APPEAL NO. 538 OF 2025**

M/s. Cholamandalam
Ms. General Insurance Co. Ltd. ...Appellant
Versus
Virendra Singh Ram Nath Singh And Ors. ...Respondents

Mr. Pandit Kasar, for the Appellant.
Ms. Rina Kundu, for the Respondents.

CORAM R. M. JOSHI, J.
DATED: 19th JANUARY 2026

PC:-

1. Both these Appeals arise out of one accident. Since most of the facts are common, by consent of both the sides, they are heard and decided together.

2. The Insurer has filed these Appeals taking exception to the Judgment and Award dated 29th November 2024 passed in M.A.C.P. No. 484 of 2020, wherein the death claim filed by the Claimants on account of the death of a passenger in auto-rickshaw was allowed. The First Appeal No. 538 of 2025 came to be filed by the Claimants on account of the death of the driver of the auto-rickshaw involved in the occurrence of the accident. Both the claim petitions were allowed by the Tribunal. Hence, these Appeals.

3. Learned counsel for the Applicant, at the outset, drew attention of this Court to the impugned Judgment and Award which according to him, lacks reasons. It is his submission that being a Court of first instance, the learned presiding

officer ought to have discussed the evidence on record and findings were expected to be recorded while deciding the claim petitions. It is his submission that there are no reasons recorded for allowing the claim petitions and as such, on this account itself, the impugned Judgment and Award cannot sustain.

4. Without prejudice to the above submission, it is his argument that the Appellant/Insurer had specifically raised issues with regard to the non-involvement of the offending truck in the occurrence of the accident. It is his submission that there was delay in lodging of the First Information Report so also, at the first instance, altogether different version of the accident was given to the police. He further argued that since the owner of the auto-rickshaw was closely related to the driver as well as the persons occupying the auto-rickshaw, there is false implication of the truck. He also drew attention of this Court to the record indicating that the Claimants had filed application before the Tribunal for joining the Insurer of

the auto-rickshaw as a party Opponent, which was subsequently was not pressed. It is his contention that the filing of the said application clearly indicates that there was contributory negligence of the driver of the auto-rickshaw in occurrence of the accident.

5. On the point of employment and income of the deceased, it is submitted that there is no evidence led by the Claimants with regard to the income of the deceased. However, the Tribunal accepted the notional income at the rate of Rs.8,000/- per month in First Appeal No. 591 of 2025, whereas it accepted the income of the deceased at the rate of Rs.10,000/- per month. In First Appeal No. 538 of 2025, without any proof thereof. He also argued that in absence of evidence showing that the deceased persons were in permanent employment, the Tribunal was not justified in granting future prospects to the extent of 50%. On these amongst other submissions, he seeks challenge to the impugned Judgment and Award.

6. Learned counsel for the Respondents/Original Claimants supported the impugned Judgment and Award. However, according to her, in First Appeal No. 591 of 2025, the Tribunal has not granted consortium to two Claimants, which is required to be granted. In addition, in First Appeal No. 538 of 2025, consortium is denied to one of the Claimants, which needs to be allowed.

7. No doubt, the Insurer has taken plea with regard to the non-involvement of the offending truck in question in the occurrence of the accident. The Claimants on other hand relied upon the charge-sheet and other papers in order to substantiate their contentions with regard to the negligence on the part of the driver of the truck in occurrence of the accident. From the charge-sheet, it can be seen that the offence came to be registered against the driver of the truck and he was charge-sheeted.

8. Perusal of the record further indicates that the First Information Report came to be lodged by a person who has

not seen the occurrence of the accident and has lodged the report based on hearsay information. However, it is pertinent to note that there are statements of eyewitnesses which were recorded during the investigation, to indicate the presence of the truck at the spot of the accident and that the auto-rickshaw dashed the said truck from behind. Thus, merely because some information was reported by a person, who had no personal knowledge of the occurrence of the accident, it cannot be held that it is a case of false implication of the truck or the owner and Insurer in these claim petitions. There is no evidence that truck was parked to side of road with tail light on. Thus, negligence of the driver of the truck in accident is proved.

9. The learned Tribunal has observed that there was not even a suggestion made to the Claimants with regard to the false implication of the truck in this case. Apart from this, Insurer had not led any evidence, much less examined the driver of the truck in order to substantiate its contention.

10. No doubt, the Judgment and Award passed by the learned Tribunal is short, however, it cannot be said that it lack reasons. The length of reasoning is immaterial. Nothing is shown from the record in order to take exception to the reasons and conclusions drawn by the Tribunal.

11. As far as the evidence of income of the deceased is concerned, in First Appeal No. 591 of 2025, the Tribunal has accepted the income of the deceased by way of notional income at the rate of Rs.8,000/- per month. Having regard to the fact that the accident occurred in the year 2020 and considering the dependency of the Claimants on the deceased, the said notional income accepted by the Tribunal does not deserve any interference.

12. Insofar as First Appeal No. 538 of 2025 is concerned, the evidence on record is sufficient to show that the deceased was driving an auto-rickshaw. In this backdrop, the claim of the Claimants with regard to his occupation as a driver deserves acceptance. In such case, the notional income of a

driver would obviously be higher than that of a labourer. In the facts of the case, the notional income of the deceased, driver of the auto-rickshaw, taken at Rs.10,000/- per month is not excessive.

13. The Tribunal, however, failed to take into consideration the fact that the Claimants have failed to prove the permanent nature of employment of deceased persons. In that case, the Tribunal was not justified in granting future prospects to the extent of 50%. In view of the Judgment in *National Insurance Company Ltd. Vs. Pranay Sethi and Others*¹, the future prospects are required to be granted at the rate of 40%.

14. The Appeals, therefore, deserve to be partly allowed to that extent.

15. As far as the payment of consortium is concerned, the Tribunal has not granted consortium to two Claimants in First Appeal No. 591 of 2025 and to one Claimant in First Appeal

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No. 538 of 2025. The said Claimants are entitled to receive the consortium amount.

16. The Claimants shall be entitled to receive the following compensation in First Appeal No. 591 of 2025:

First Appeal No. 591 of 2025		
Sr. No.	Particulars	Amount (in Rs.)
1.	Notional Income Rs.8,000 (8,000 x 12)	96,000
2.	Future Prospects 40% (96,000 + 38,400)	1,34,400
3.	Deduction (1/2) (1,34,400 – 67,200)	67,200
4.	Multiplier (18) (67,200 x 18)	12,09,600
5.	Loss of Estate	15,000
6.	Loss of Consortium	1,20,000
7.	Funeral expenses	15,000
	Total	13,59,600

17. The Claimants shall be entitled to receive the following compensation in First Appeal No. 538 of 2025:

FIRST APPEAL NO. 538 OF 2025		
Sr. No.	Particulars	Amount (in Rs.)

1.	Notional Income Rs.10,000 (10,000 x 12)	1,20,000
2.	Future Prospects 40% (1,20,000 + 48,000)	1,68,000
3.	Deduction (1/2) (1,68,000 – 84,000)	84,000
4.	Multiplier (18) (84,000 x 18)	15,12,000
5.	Loss of Estate	15,000
6.	Loss of Consortium	80,000
7.	Funeral expenses	15,000
	Total	16,22,000

18. In view of above, I pass following order:

ORDER

- (a) Both the Appeals stand partly allowed.
- (b) Appellants in First Appeal No. 591 of 2025 would be entitled to receive a sum of Rs.13,59,600/- with interest at 7.5% from the date of filing of the claim petition till realization of amount.
- (c) Appellants in First Appeal No. 538 of 2025 would be entitled to receive a sum of Rs.16,22,000/- with

interest at 7.5% from the date of filing of the claim petition till realization of amount.

- (d) Except for the amount of compensation, rest of the Judgment of the Tribunal to remain unaltered.
- (e) Claimants to pay deficit court fees, if any.
- (f) The statutory deposit of Rs.25,000/- paid by the Appellant be transferred to the Tribunal.
- (g) R & P be sent back to the Tribunal.
- (h) All pending applications, if any, stand disposed of.

(R. M. JOSHI, J.)