Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL (ST) NO. 22359 OF 2025
WITH
INTERIM APPLICATION NO. 9583 OF 2025
IN
FIRST APPEAL (ST) NO. 22359 OF 2025
WITH
INTERIM APPLICATION NO. 9582 OF 2025
IN
FIRST APPEAL (ST) NO. 22359 OF 2025
WITH
INTERIM APPLICATION NO. 25 OF 2026
IN
FIRST APPEAL (ST) NO. 22359 OF 2025

Reliance General Insurance Co. Ltd …Appellant
Versus
Usha Shankarrao Pawar & Ors …Respondents

Mrs Kalpana Trivedi, for the Appellant.
Mr Vasant More, for the Respondents.

SHEPHALI SANJAY MORMARE

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Date: 2026.01.08 10:09:30 +0530

CORAM: R. M. JOSHI, J.

DATED: 6TH JANUARY 2026

PC:-

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

2. This Appeal preferred by the Insurer takes exception to the Judgment and Award dated 15th January 2025, passed in MACP

No. 297 of 2017, whereby the Tribunal allowed their claim and has granted compensation of Rs.63,35,474/- along with interest at the rate of 7% per annum from the date of filing of the Petition till realisation of the amount.

3. It is not in dispute that on 5th July 2015 the deceased was crossing Mankhurd-Ghatkopar Link Road by taking proper care and caution of the traffic. At that time, Motor Car bearing registration No. MH-06-W-8215 came in high speed and in rash and negligent manner gave forceful dash to the deceased. As a result of the said dash, deceased sustained serious injuries and though he was treated in hospitals, ultimately succumbed to the injuries on 16th August 2016. The Claimants contend that the deceased was serving as an ASI in the Police Department and was drawing salary of Rs. 42,651/- per month. On different heads, compensation of Rs. 1,50,00,000/- was sought.

4. The owner of offending vehicle, though duly served with the notice, failed to appear before the Tribunal and the Claim Petition proceed *ex-parte* against him. The Insurer, however, filed Written Statement at Exhibit-15 denying the contentions and claims of the Claimants. It is not disputed that the offending vehicle was insured during the relevant time. It is, however, claimed that the driver of the vehicle was not responsible for causing of the accident and it is on account of negligence of the deceased, accident occurred. It is also claimed that the driver of the offending vehicle was not holding a valid and effective license at the time of accident. The contentions of the Claimants with regard to the employment and income of the deceased were also denied by the Insurer.

5. After framing of issues vide Exhibit-16, the Claimants led evidence of Claimant No. 1, Usha and also examined Rajesh, Exhibit-53, Ashraf Ali, Exhibit-61, Swapnil, Exhibit-68 and Prashant, Exhibit-77 to prove the medical expenses incurred by the deceased. Evidence of Dr Niraj at Exhibit-84 and Mr Ashish at Exhibit-89 was also led. In addition to the oral evidence, the Claimants placed reliance on police papers, including charge-sheet and other documents such as medical certificate, copy of Insurance Policy, copy of Driving License of the driver of offending vehicle, discharge summaries and bills issued by the hospitals. Since the Tribunal has allowed the Claim Petition, this Appeal.

6. Learned counsel for the Appellant submits that the Trial Court has failed to take into consideration the police papers which, according to her, indicate negligence on the part of the deceased himself in occurrence of the accident. It is her further submission that the Tribunal has granted excessive compensation without considering the employment and income of the deceased. Amongst other submissions, it is also argued that in a case of a death claim, there was no justification for the Tribunal to grant special diet and conveyance.

7. The above contentions are opposed by the learned counsel for the Claimants on the ground that there is no negligence appearing from the documents on record which could be attributed in occurrence of the accident. It is further argued that the deceased was a police personnel and his employment and income is duly proved. In this regard, it is pointed out that the Income Tax Returns of three years were placed on record and as such there would be no justification to cause interference in the compensation granted by the Tribunal. In respect of the grant of compensation for the special diet and conveyance, it is submitted that the accident occurred on 5th July 2015 and the deceased died on 16th August 2016 and during the intervening period, he was admitted in different hospitals and, therefore, compensation granted for the same is justified.

8. There is no dispute about the fact about occurrence of accident on 5th July 2015 and deceased sustaining serious injuries then. The involvement of the offending vehicle and it being insured with the Insurer is also not in dispute. The Claimants were required to prove their contentions by leading evidence on preponderance of probability. The Claimant No. 1 apart from examining herself has also led evidence of the witnesses who has deposed about the admission of the deceased in different hospitals till the time of his death. Insofar as the income and employment of the deceased, no dispute is made during the trial with regard to the deceased being police personnel and appointed on the post of ASI in the Police Department. Moreover, the income has been proved with the aid of Income Tax Returns for three years. Having regard to the said evidence, it cannot be said that the Tribunal has committed any error in accepting the income of the deceased and the computation of compensation has also been done by keep in mind age of the deceased by adding future prospects.

9. As far as the grant of compensation for special diet and conveyance is concerned, the facts of the case and evidence on record indicates that the deceased though met with an accident on 5th July 2015, he died on 16th August 2016. In the intervening period, he was admitted in MGM Hospital, fortis Hospital and Vinamra Swaraj Hospital, Vashi. Needless to say that having regard to the nature of the injuries caused to the deceased and the period of hospitalisation, the Tribunal was fully justified in granting compensation for special diet as well as conveyance.

10. On the point of negligence, the Claimants by relying upon the police papers and charge-sheet has proved the factum of involvement of the offending motor vehicle in the accident, so also, negligence on the part of the driver of the said vehicle. The charge sheet has been filed against the said driver, which has not been challenged by him, at least there is no evidence on record to indicate so. The Claimants, therefore, have succeeded in proving on probability that in the occurrence of the accident, the driver of the offending vehicle was solely negligent and no negligence can be attributed to the deceased. To prove otherwise, there is no evidence led by the Insurer.

11. In view of the above discussion, there is no merit in the Appeal.

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

ORDER

(a) The Appeal is dismissed.

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

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

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

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

(R. M. JOSHI, J.)