

(2025) 12 BOM CK 1662
In the Bombay High Court
Case No : First Appeal No.1660 Of 2025

Reliance General Insurance Co.Ltd

APPELLANT

Vs

Rajashri Pramanik Sable

RESPONDENT

Date of Decision : 02-12-2025

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 163(A), 170

Citation : (2025) 12 BOM CK 1662

Hon'ble Judges : Aarti Sathe, J

Bench : Single Bench

Advocate : Kalpana Trivedi, Rajlaxmi Shettigar, Bharat Gadhavi

Final Decision : Dismissed

Judgement

Aarti Sathe, J

1. This Appeal challenges the judgment and award dated 11th December 2024 (hereinafter referred to as the 'impugned judgment and award') passed by the Motor Accident Claims Tribunal, Mumbai (hereinafter referred to 'MACT') whereby the applicant (Respondent No. 1 herein) has been awarded an amount of Rs.35,92,000/- along with interest at the rate of 7.5% per annum from the date of filing of the MACT petition/application till its realization.

2. Brief facts of the case are as follows:-

i. Neil Pramanik Sable (hereinafter referred to as 'deceased minor child') son of Respondent No.1 met with an accident on 8th November 2019 at about 1:40 pm when he was riding pillion on a motorcycle bearing no. MH-04-GL-4039 along with his father at a moderate speed with proper care and caution of the traffic. The motorcycle of the deceased was dashed from behind by a negligent and rash motor truck bearing no. NL- 03-A-8696 (hereinafter referred to as the 'offending vehicle') at Mauje near Ghodbandar Gaon, Varsova Naka, Mumbai-Ahmednagar Highway Road. Due to this unfortunate accident the deceased minor child and his father fell on the road and sustained serious injuries. The deceased minor child

sustained fracture of right radius and right meta carpal, injury to right upper and lower limb, right forearm complete transaction of right radial rotary ligation of right rodinal of distal forearm and other multiple serious injuries. The deceased minor child was taken to Orbit Hospital for medical treatment and was admitted there from 8th November 2019 to 12th November 2019. Thereafter he was shifted to Infinity Medisurge Centre Speciality Hospital, Majiwada, Thane and admitted there, from 12th November 2019. However, he succumbed to his serious injuries on 6th January 2020 while undergoing medical treatment.

ii. A FIR was lodged in the year 2019 prior to the death of the deceased minor child at Kashimira Police Station District Thane.

iii. On 18th February 2020 Respondent No.1 filed Petition No. MACP No. 564 of 2020 before the MACT claiming an amount of Rs. 30,00,000/-towards medical expenses and Rs. 40,00,000/- along with interest as compensation from the date of application till realisation.

iv. The impugned judgment and award was passed on the aforesaid MACP No. 564 of 2020 in favour of Respondent No. 1, awarding a sum of Rs. 35,92,000/-, inclusive of compensation amount granted under section 140 of the Motor Vehicles Act, 1988 on the basis of no-fault liability which was to be jointly and severally payable by the Appellant and Respondent no. 2 in the present appeal.

v. Further the impugned judgment and award also awarded interest at the rate of 7.5 % on the amount of compensation to Respondent No.1 from the date of registration of the claim application till realization of the said amount which was also to be paid jointly and severally by the Appellant and Respondent No. 2.

3. It is in the backdrop of the above facts that I proceed to decide the present appeal.

4. Heard learned counsel on behalf of the Appellant and Respondent. Learned counsel on behalf of the Appellant Ms. Kalpana Trividei along with Ms. Rajlaxmi Shettigar have submitted that the impugned judgment and award has been passed without appreciating the facts and law and the quantum of compensation which has been awarded by way of the aforesaid impugned judgment and award is excessive and arbitrary. They has further contended that the impugned judgment and award has erroneously assessed the notional income of the deceased minor child at Rs. 8,000/- per month, without any cogent proof of his actual earnings. It has been submitted that there was no documentary evidence such as academic record of the deceased minor child or any other document proving that the deceased minor child is entitled for notional income and hence the 40% increase for future prospects and the notional income was against the mandate of the Apex Court in National Insurance Co. Ltd Vs. Pranay Sethi 2017 (16) SCC 680. It was further submitted that there was a gross error in assessing the notional income of the deceased to the tune of Rs. 8000 per annum, which was not proved, as the deceased minor child was aged only 13 years.

5. Insofar as the medical expenses claimed by Respondent No. 1, the Learned Counsel on behalf of the Appellant contended that the same has been awarded without any basis to prove that the medicine was purchased as per the prescription given by the treating doctor. It was further contended that the principle of contributory negligence also has not been applied to reduce the liability, inasmuch as no evidence had been provided regarding compliance of traffic rules by the deceased minor child or his father, such as wearing a helmet on a bike/cycle in which the deceased was riding pillion with his father. It was also submitted that the impugned judgment and award did not take into consideration the multiplier method as envisaged in the case of Sarla Verma & Ors Vs. Delhi Transport Corp.& Anr 2009 (2) SCC (CRI) 1002 for selecting the appropriate multiplier and loss of income. It was therefore again submitted that the total compensation to the tune of Rs 35,92,000/- on the basis of loss of income of Rs. 8,000/- per month, which was not proved at all, was exorbitant and had been arrived at a higher side. In view thereof learned counsel on behalf of the Appellant submitted that the impugned judgment and award needs to be set aside, and the appeal be allowed. It is pertinent to note that at the time of the proceedings before the MACT Respondent No. 2 in the present appeal, who was the owner of the offending vehicle did not appear and the Impugned judgment and award against him was passed ex-parte.

6. Learned Counsel on behalf of Respondent No. 1, Mr. Bharat Gadhavi submitted that the impugned judgment and award passed by the MACT was a well-reasoned judgment and award and did not suffer from any infirmity and therefore had to be upheld. It was his submission that the claim amount awarded by the MACT was a correct amount and was justifiable in the facts of the present case. He also submitted that the component of medical compensation was in fact supported by cogent medical bills and evidence in respect thereof was led before the MACT.

7. Learned counsel on behalf of Respondent No. 1 further submitted that it was evident from the FIR, the Spot Panchnama, MLC, and medical records that the offending vehicle had hit the motorcycle from behind. It was further contended that despite the Appellant having been granted leave under Section 170 of the Motor Vehicles Act, 1988, they did not examine a single witness to establish that Respondent No. 2 was not driving negligently. It was further contended that the plea of contributory negligence as raised by the Appellant was merely an afterthought and was against the established position of law, that instances of rear-end collisions raise a presumption of negligence by the offending vehicle. Learned Counsel on behalf of Respondent No. 1 further submitted that the MACT had rightly considered the fact that the deceased minor child was 13 years old, and hence it was his submission that the issue in the present case is squarely covered by the decision in Kishan Gopal Vs. Lala 2014 (1) SCC (CRI) 241. It was further his contention that the ruling of the Apex Court in the aforesaid decision stipulated that lumpsum payment in instances of the death of a minor was mandatory. He further submitted that interest awarded at the rate of 7.5%

was correct as per the settled position in respect thereof.

8. I have gone through the records and the impugned judgment and award and also considered the submissions made by the Learned Counsel on behalf of the Appellant and the Respondents, and am of the view that the impugned judgment and award is a well-reasoned award, passed after taking into consideration all the facts and evidence led before the MACT. Further the settled legal position in respect of compensation claimed insofar a minor child is concerned has also been appreciated by the MACT. I come to the aforesaid decision on the basis of the following reasons-

i. The MACT has, in the impugned judgment and award recorded that Respondent No. 1 had placed on record certified copies of the FIR, Spot Panchnama, Insurance policy, cause of death of the deceased minor child, loan settlement letter, death certificate, and medical bills of Anand Medical Stores, various other blood bank bills, and also a case summary of Infinity Medisurge Centre Hospital, wherein all the amounts of the medical expenses incurred by Respondent No. 1 for the treatment of the deceased minor child have been placed on record. It is not in dispute that the deceased minor child had been hospitalized for medical treatment in Orbit Hospital from 8th November 2019 to 12th November 2019. Further, it is not disputed that he was shifted to Infinity Medisurge Centre Hospital, Majiwada, Thane, and admitted there from 12th November 2019 till he succumbed to his serious injuries on 6th January 2020 while under medical treatment. The Appellant has not disputed the aforesaid facts and also not controverted or disputed any of the medical bills which have been provided by Respondent No. 1 in support of her claim of Rs, 30,00,000/- towards medical treatment of the deceased minor child. In fact the MACT has recorded a finding that employees of Orbit Superspeciality Hospital and Research Centre, Sun Medical System at Vikhroli, Infinity Medisurge Centre Speciality Hospital Thane, and also employees working at different medical stores, from where the medicines were procured for the treatment of the deceased minor child have deposed that the deceased minor child had undergone treatment at these various hospitals and had incurred considerable expenses towards medicines and treatment. Further the Appellant could not bring on record anything to the contrary and in fact chose not to examine any witnesses before the MACT. On the basis of the aforesaid the MACT has correctly come to the finding that the medical claim was not inflated and further the amount was rightly claimed by Respondent No. 1.

ii. In so far as the contention of the Appellant that the accident had occurred due to the negligence of Respondent No. 1's husband and not only on account of Respondent No. 2, the MACT has categorically held that the Appellant could not bring on record any evidence contrary to the claim made by Respondent No. 1. It also held that the contention of the Appellant that Respondent No. 2 did not have a valid driving license and hence there was a breach of the terms and

conditions of the insurance policy which Respondent No. 2 held with the

Appellant could not be accepted as the Appellant had not brought on record any evidence to establish this. In fact, the MACT held that the insurance policy of Respondent No. 2 was valid from 6th October 2019 to 5th October 2020, and since the accident occurred on 8th November 2019, the same was validly covered under the aforesaid insurance policy. The MACT also held that the accident had occurred on account of the negligence of Respondent No. 2 and nothing to the contrary could be brought on record by the Appellant.

iii. In so far as the compensation of Rs. 5,00,000/- is concerned, considering that the age of the deceased minor child was 13 years, the MACT by relying on the decision of the Apex court in *Kishan Gopal Vs. Lala* (supra) came to the compensation figure of Rs. 5,00,000/- under all permissible heads. It is to be noted that in the aforesaid decision the Apex court after relying on the case of *Lata Wadhwa Vs. State of Bihar* 2001 (8) SCC 197 has categorically held that in so far as compensation to be determined for children of all age groups, the same would be double considering that the loss of children is irrecoupable and no amount of money could compensate the parents. The relevant observations of the Apex Court are reproduced below-

"34. Since we have set aside the findings and reasons recorded by both the Tribunal and the High Court on the contentious Issues 1 and 2 by recording our reasons in the preceding paragraphs of this judgment and we have answered the point in favour of the appellants and also examined the claim of the appellants to award just and reasonable compensation in favour of the appellants as they have lost their affectionate 10-year-old son. For this purpose, it would be necessary for us to refer to the Second Schedule under Section 163-A of the MV Act, at Clause 6 which refers to notional income for compensation to those persons who had no income prior to the accident.

35. The relevant portion of Clause 6 states as under:

"6. Notional income for compensation to those who had no income prior to accident-

(a) Non-earning persons -Rs 15,000 p.a."

The aforesaid clause of the Second Schedule to Section 163-A of the MV Act, is considered by this Court in *Lata Wadhwa v. State of Bihar* while examining the tortious liability of the tortfeasor has examined the criteria for awarding compensation for death of children in accidents between the age group of 10 to 15 years and held in the above case that the compensation shall be awarded taking the contribution of the children to the family at Rs 12,000 p.a. and multiplier 11 has been applied taking the age of the father and then under the conventional heads the compensation of Rs 25,000 was awarded. Thus, a total sum of Rs 1,57,000 was awarded in that case.

36. After noting the submission made on behalf of TISCO in *Lata Wadhwa* case that the compensation determined for the children of all age groups could be

double as in its view the determination made was grossly inadequate and the observation was further made that loss of children is irrecoupable and no amount of money could compensate the parents. Having regard to the environment from which the children referred to in that case were brought up, their parents being reasonably well-placed officials of TISCO, it was directed that the compensation amount for the children between the age group of 5 to 10 years should be three times, In other words, it should be Rs 1.5 lakhs to which under the conventional heads a sum of Rs 50,000 should be added and thus total amount in each case would be Rs 2 lakhs.

37. Further, in Lata Wadhwa case it was observed that insofar as the children of age group between 10 to 15 years are concerned, they are all students of Class VI to Class X and are children of employees of TISCO and one of the children was employed in the Company in the said case having regard to the fact the contribution of the deceased child was taken Rs 12,00 p.a. appears to be on the lower side and held that the contribution of such children should be Rs 24,000 p.a.

38. In our considered view, the aforesaid legal principle laid down Lata Wadhwa case with all fours is applicable to the facts and circumstances of the case in hand having regard to the fact that the deceased was 10 years old, who was assisting the appellants in their agricultural occupation which is an undisputed fact. We have also considered the fact that the rupee value has come down drastically from the year 1994, when the notional income of the non-earning member prior to the date of accident was fixed at Rs 15,000. Further, the deceased boy, had he been alive would have certainly contributed substantially to the family of the appellants by working hard.

39. In view of the aforesaid reasons, it would be just and reasonable for us to take his notional income at Rs 30,000 and further taking the young age of the parents, namely, the mother who was about 36 years old, at the time of accident, by applying the legal principles laid down in Sarla Verma v. DTC, the multiplier of 15 can be applied to the multiplicand. Thus, $30,000 \times 15 = 4,50,000$ and 50,000 under conventional heads towards loss of love and affection, funeral expenses, last rites as held in Kerala SRTC v. Susamma Thomas, which is referred to in Lata Wadhwa cases and the said amount c under the conventional heads is awarded even in relation to the death of children between 10 to 15 years old. In this case also we award Rs 50,000 under conventional heads. In our view, for the aforesaid reasons the said amount would be fair, just and reasonable compensation to be awarded in favour of the appellants."

iv. In the aforesaid case the Apex Court had taken into consideration earlier judgments, including the judgment in the case of Lata Wadhwa v State of Bihar(supra) to conclude that in the case of a minor, while applying the multiplier of 15, the notional income could be taken at Rs, 30,000/- instead of Rs. 15,000/- for a non-earning member as specified in the Second Schedule of Section 163A of the Motor Vehicles Act, 1988. The Apex Court had taken notice of the fact that

the value of the Rupee had come down drastically from the year 1994, when the notional income of a non-earning member was fixed at Rs. 15,000/-. The Apex Court has also emphasized on the aspect that the deceased minor child, had he been alive, would have certainly contributed substantially to the family of the claimant by working hard.

v. The reliance of the Appellant on the case of Pranay Sethi (supra) would not assist the Appellant inasmuch as the said is not in the context of the death of a minor child. In the facts of the present case, it is an undisputed position that the deceased minor child was 13 years of age, and hence the decision of the Apex Court in the case of Kishan Gopal Vs. Lala (supra) would apply squarely to the facts of the present case. In fact, the MACT has rightly applied the ratio as laid down Kishan Gopal Vs. Lala (supra) and adopted the notional income in case of the deceased minor child at Rs. 30,000/- and by taking the multiplier of 15, by applying the legal principles laid down in Sarla Verma & Ors Vs. Delhi Transport Corp.& Anr (supra) come to correct figure of Rs. 4,50,000/- and another Rs. 50,000/- under conventional heads towards loss of love and affection, funeral expenses, last rites, as held in the case of Kerala SRTC Vs. Susamma Thomas (1994) 2 SCC 179, and rightly come to the figure of Rs. 5,00,000/- as compensation under all heads. I therefore cannot find fault in the impugned judgment and award of the MACT in respect of the aforesaid compensation amount awarded to the deceased minor child. In so far as the amount of Rs. 30,92,000/- towards medical expenses, the MACT has awarded the aforesaid compensation on the basis of medical bills which were produced and which were not controverted or contested by the Appellant.

vi. Further, in respect of the submission of the Appellant that the MACT had not fastened the liability on the father of the deceased minor child on the principle of contributory negligence, and has mechanically fastened the liability on Respondent No. 2, the MACT rightly came to the conclusion that in the absence of any evidence being led by the Appellant, in respect thereof, the liability was rightly fastened on Respondent No. 2 and not on the father of the minor deceased. Therefore, the argument of contributory negligence, as advanced by the Appellant needs to be rejected. In so far as the Appellant's contention that the MACT had not correctly decided that the driving license of Respondent No. 2 was not valid and hence there is a breach of the Terms and conditions of the insurance policy, the MACT has correctly held that in the absence of evidence led by the Appellant before the MACT, the said breach could not be verified. Further the insurance policy of Respondent No. 2 was valid from 6th October 2019 to 5th October 2020 and since the accident occurred on 8th November 2019, the same was validly covered under the aforesaid insurance policy. Hence, I am inclined to reject the aforesaid contention of the Appellant.

vii. Insofar as the contention of the Appellant that the interest amount of 7.5% is erroneous and excessive, the same also needs to be rejected in as much as in the case of Dharampal Vs. UP State Road Transport Corporation (2008) 12 SCC

208, the Apex Court has, after considering the bank rate which was prevailing at the time of passing of the award in the case of Dharampal Vs. UP State Road Transport Corporation (supra), being 18th May 2005 has held that the interest rate of 7.5% was correct from the date of application till the date of payment. The current bank rate also would be in the range of 7.5-8%. In view thereof, the rate of 7.5% as awarded by MACT is upheld.

9. In view thereof, the appeal filed by the Appellant is dismissed. Respondent No. 1 is at liberty to withdraw the amount awarded by way of the impugned judgment and award along with interest deposited by the Appellant with the MACT as well as this Court, along with the accrued interest thereon from the date of application till realization. Further, if the amount of award has not been deposited in the MACT or the Court, then the Appellant shall pay the amount of award within a period of 3 weeks from the date of uploading of this order as awarded by the impugned judgment and award along with interest at the rate of 7.5% from the date of application till realization . Appeal dismissed. No costs.