IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST.) NO. 35052 OF 2016

ALONG WITH

CROSS OBJECTION (ST.) NO. 33684 OF 2023
WITH
CIVIL APPLICATION NO. 4927 OF 2016
IN
FIRST APPEAL (ST.) NO. 35052 OF 2016

National Insurance Co. Ltd.,
Through Its Mumbai Regional Office-I ….Appellant/Applicant

Versus

Sarika Anand Kolapkar & Ors. ….Respondents

Mr. Amol Gatne for the Appellant/Applicant.
Mr. Sudhir S. Hardikar for the Respondent Nos. 1 to 5.

CORAM : JITENDRA JAIN, J.
DATED : 24th MARCH 2026

P. C. :

1. This appeal challenges an order passed by the MACT, Pune, whereby, the Tribunal has directed opponent nos.1 and 2 to pay jointly and severally an amount of Rs. 30,35,108/- with interest @ 7.5% per annum. The said amount has been arrived at by awarding compensation on account of loss of dependency, medical expenses, consortium, love and affection, funeral expenses, etc. Being aggrieved by the above order, the appellant-insurance company has filed present appeal before this Court under Section 173 of the Motor Vehicles Act, 1988.

2. I have Mr. Gatne, learned counsel for the appellant and Mr. Hardikar, learned counsel for the respondents. By consent heard finally at the admission stage.

3. The first contention of the appellant-insurance company is that the driver was under alcohol influence, as recorded in the charge sheet filed by the police authorities and same should have been considered by the Tribunal before awarding the compensation. Insofar as this issue is concerned, if it is noted in the chargesheet about the driver being under the influence of alcohol. However, there is no medical report produced before the Tribunal by any of the authorities or the parties in support thereof. In the absence of any medical report being on record, merely because it is recorded in the chargesheet, it cannot be considered as to what extent, the driver was under influence of alcohol and what was the measure of the alcohol which would affect the accident. Therefore, this contention in the absence of any medical report cannot be accepted.

4. The second contention of the appellant-insurance company is that the average income disclosed for three years based on income tax returns should have been considered by the Tribunal and not the latest income tax return. The income for the first year is around Rs. 98,000/-, for second year around Rs. 1,40,000/- and for third year around Rs. 2,00,000/-. The contention is that the Tribunal was not justified in taking Rs. 2,00,000/- for awarding the compensation, but should have taken average of three years.

5. If the average of three years is considered, then the income would be around Rs. 1,50,000/- approximately, and the award of compensation, if such average is taken would result into an amount awarded by the Tribunal in excess by Rs. 86,500/-. The learned counsel for the respondents states that he has no objection if the figure is taken at Rs. 1,60,000/-. In this case, the Tribunal should have granted further Rs. 92,000/-. In my view, looking at the figure of the difference and excess i.e. Rs. 86,500/- and Rs. 92,000/-, it would not be worthwhile for this Court to examine this issue. Keeping this issue open to be decided by the Court in appropriate case, this appeal can be disposed of by retaining the order passed by the Tribunal.

6. It is made clear that this would not be treated as precedent for the proposition, whether only the last year's income should be considered or the average income of last three years should be considered. On account of materiality of figure, I am retaining the order passed by the Tribunal on this issue.

7. In view of above, the appeal is dismissed.

8. Cross Objection, if any, does not survive and is disposed of accordingly.

9. Since the First Appeal and Cross Objection are disposed of, Civil Application No. 4927 of 2026 does not survive and is disposed of.

10. Security deposit of Rs. 25,000/- to be transferred to the MACT, Pune.

[JITENDRA JAIN, J.]