IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1763 OF 2025
ALONG WITH
INTERIM APPLICATION NO.11383 OF 2025
[For Stay]

HDFC Ergo General Insurance Co. Ltd. .. Appellant-Applicant

Versus

1. Adil Lutfi Peters
2. Sachchidanand Muchandi .. Respondents

ALONG WITH
INTERIM APPLICATION NO.13587 OF 2025
[For Withdrawal of Award Amount]

Adil Lutfi Peter .. Applicant-Org. Claimant

Mr. Surel Shah, Senior Advocate, with Mr. Abhishek Avachat and Mr. Siddhant Deshpande, Advocates for the Appellant-Applicant.

Mr. Yogesh Pande with Mr. Himanshu Jha, Advocates for the Applicant in IA/13587/2025.

CORAM : SHREE CHANDRASHEKHAR, CJ. &
GAUTAM A. ANKHAD, J.

DATE : 6TH JANUARY 2026.

P.C. :

The judgment dated 4th March 2025 in Application No.1285 of 2015 has been challenged by HDFC Ergo Gen. Co. Ltd. under section 173 of the Motor Vehicles Act, 1988.

2. The respondent no.1 is a victim of the motor accident who suffered permanent disability in a road accident on 18th November 2014. He was wearing a helmet at the time of the incident when suddenly one speeding car bearing registration no.MH-03-AW-5105 came and dashed to the respondent no.1. The respondent no.1 suffered 100% permanent disability at the age of 53 years and at that time he was serving as a Cabin crew in Air India Ltd. at Mumbai earning a sum of Rs.2,00,000/- per month besides certain allowances.

3. On the basis of the pleadings of the parties, the Motor Accident Claims Tribunal framed the following issues:-

> *"1. Whether applicant proves that on 18.11.2014, at around 4:00 p.m., on Appasaheb Marathe Marg, in front of TATA Motors Shorroom, Prabhadevi, Mumbai, he sustained injuries and permanent disability due to motor vehicular accident?*
> 2. *Whether applicant further proves that accident took place because of negligence on the part of driver of motor car bearing No.MH-03-AW-5105?*
> 3. *Whether insurer proves that accident took place due to sole negligence of applicant?*
> 4. *Whether insurer proves that application is bad for non-joinder of necessary party?*
> 5. *Whether insurer proves that driver of offending vehicle was not holding valid driving licence at the time of accident?*
> 6. *Whether applicant is entitled to compensation? If yes, to what extent and from whom?*
> 7. *What order?"*

4. In support of his claim, the victim-applicant produced seven witnesses and laid documentary evidence such as supplementary statement dated 1st August 2016, Registration Certificate issued by RTO, copy of FIR, a Spot Panchanama, a copy of the original RTO letter dated 2nd July 2015 in respect of the offending vehicle, a copy of the insurance policy, charge-sheet etc.

5. In his evidence in the Court, the victim-applicant narrated the whole incident. As AW-6 – Dr. Sameer who has signed the Disability Certificate vide Exhibit-74 deposed in the Court and proved the Disability Certificate. This is a finding recorded by the Tribunal that in a lengthy cross-examination nothing fruitful was elicited from AW-6.

6. The Tribunal considered various decisions including *"Khenyei v. New India Ass. Co. Ltd.*[1]*"*, *"U.P. State Road Transport Corpn. v. Rani Srivastava & Ors.*[2]*"*, *"Manikandan v. P. Palani &*

1 *(2015) 9 SCC 273*
2 *2006 ACJ 1864 (Allahabad HC)*

Ors.[3]*"*, *"K. Anusha & Rs v. Regional Manager, Shriram Gen. Ins. Co. Ltd.*[4]*"*, *"Sangita & Ors. v. Kalidas & Ors.*[5]*"*, *"Mohammed Zahir v. Shaikhhali Abdullah & Ors.*[6]*"*, *"Nishan Singh & Ors. v. Oriental Ins. Co. Ltd.*[7]*"*, *"Secretary, Communication Ministry, Govt. of India, Dept. of P & T, New Delhi & Ors. v. Ramrao alias Ramdas & Ors.*[8]*"*, *"Municipal Corporation v. Laxman Iyer & Anr.*[9]*"* and *"APSRTC & Anr. v. K. Hemlatha & Ors.*[10]*"* and came to a finding that there was no negligence on the part of the victim-applicant. The Tribunal has recorded the following findings :-

> *"41. The evidence of the applicant on the point of negligence is supported by the police papers i.e. the FIR, charge-sheet and other police papers. The evidence of the applicant on the point of negligence on the part of the opposite party has not been shaken in his cross-examination and the evidence of the opposite party on the point of negligence being not believable, I hold that the applicant had succeeded in establishing that the accident occurred due to rash and negligent driving of the opposite party and in that accident the applicant has sustained serious injuries and permanent disability. Further the opposite party has failed to establish that the accident was occurred due to sole negligence of the applicant himself or there was contributory negligence of the applicant himself. Hence I have answered the issue nos.1 and 2 in the affirmative and issue no.3 in the negative."*

7. The objection taken by the appellant-Insurance Company as to non-joinder of the necessary party was rejected. The issue no.5 which pertains to holding of a valid driving license by the driver of the offending vehicle and the issue no.6 as to the entitlement of the victim-applicant to the compensation were answered in favour of the victim-applicant. The Tribunal has passed the following order as to compensation payable to the victim-applicant on account of permanent disability suffered by him:-

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3 *2020 ACJ 2727 Madras HC*
4 *2021 SCC OnLine SC 3339*
5 *2022 ACJ 1272 Bombay*
6 *1980 ACJ 387 (Bom) (DB)*
7 *(2018) 6 SCC 765*
8 *1991 ACJ 278 (Bom) (DB)*
9 *(2003) 8 SCC 731*
10 *(2008) 6 SCC 767*

"1. *Application is partly allowed with proportionate costs.*

2. *Opposite party and insurer do pay jointly and severally Rs.2,97,89,800/- (Rupees Two Crores Ninety Seven Lakhs Eighty Nine Thousand Eight Hundred only) inclusive of NFL amount to the applicant with interest @ 7% p.a. from the date of application till actual realisation of the entire amount.*

3. *The opposite party and/or the insurer is directed to deposit the award sum to the credit of the bank account of this Tribunal directly by NEFT/RTGS mode. The details of the bank account of this Tribunal are as under:-*

Account Name	*MOTOR ACCIDENT CLAIMS TRIBUNAL, MUMBAI*
Account No.	*00000040777482356*
IFS Code	*SBIN0030002*
MICR Code	*400002273*

4. *On such deposition of the amount, the 40% amount along with interest accrued thereon be paid to the applicant by NEFT/RTGS on submitting his nationalised bank account passbooks photocopies duly verified by his banker and against proper identification by obtaining acknowledgment thereof on payment of deficit Court fees, if any.*

5. *Remaining amount be invested in the name of applicant in fixed deposit in any nationalised bank for the period of five years and thereafter be paid to him by NEFT/RTGS on due verification of his identification and compliance of NEFT and on payment of deficit Court fees, if any."*

8. Mr. Surel Shah, the learned senior counsel for the appellant-Insurance Company confined his arguments to the findings on negligence by the victim-applicant. No argument has been raised as to the quantum of compensation payable to the victim-applicant. The learned senior counsel for the appellant-Insurance Company refers to paragraph no.18 of the judgment dated 4th March 2025 and submitted that the contradiction as narrated in paragraph no.18 was not considered by the Tribunal.

9. Having gone through the judgment dated 4th March 2025, we are of a definite opinion that no interference is required with the said judgment on the ground that there is a contradiction in the statement of the victim-applicant; whether he was hit from the rear side or dashed from the front side of the vehicle. In the first place, the proceedings for compensation under the Motor Vehicles

Act is akin to a summary proceeding. Section 168 of the Act of 1988 provides an opportunity of hearing and holding of an inquiry into the claims and vests the power in the Claims Tribunal to make an award determining the amount of compensation which appears it to be "just". This is well settled that the Tribunal is not bound by the pleadings of the parties in a claim petition under section 166 of the Act of 1988. The function of the Tribunal is to determine amount of fair compensation in the event an accident has taken place. There are no pleadings by the appellant-Insurance Company that the guidelines in *"Sarla Verma & Ors. v. Delhi Transport Corporation & Anr."*[11] were ignored by the Tribunal. In the circumstances of the case, the Tribunal took a holistic view of the matter and awarded compensation of Rs. 45,25,000/- to the claimants. This is well remembered that the strict proof of income cannot be insisted by the Tribunal and the claimants are required to indicate the income generated by the victim of motor accident, present or future, on the touchstone of the preponderance of probability. The Tribunal is required to take a special care that the victims and their dependents do not suffer merely because of some doubts here or some obscurity there. Secondly, the decision rendered by the Tribunal on appreciation of the materials on record cannot be overturned on a minor mistake, even if committed by the Tribunal. It is not every mistake committed by a Court or Tribunal which may lay a foundation for challenging the judgment by filing a First Appeal. In *"Syed Yakoob v. K.S. Radhakrishnan"*[12], it was held that an error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari

11 *(2009) 6 SCC 121*
12 *1963 SCC OnLine SC 24*

can be issued if it is shown that in recording the said finding the Tribunal erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point cannot be agitated in a writ proceedings. An inference of fact to be drawn from the findings of the interim Tribunal is within the exclusive jurisdiction of the Tribunal, and this issue cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

10. Moreover, some inconsistency or contradiction in the statement of a witness shall not attain materiality unless it shakes the very foundation of the judgment. The contradiction as sought to be projected by the learned senior counsel to challenge the judgment dated 4th March 2025 shall not wipe out the other material portions of the evidence tendered by the victim-applicant.

11. Therefore, finding no ground to interfere, First Appeal No.1763 of 2025 is dismissed. By way of litigation cost, the appellant-Insurance Company shall pay Rs.2,00,000/- to the respondent no.1-victim in addition to the decretal amount as per the judgment dated 4th March 2025. The amount deposited in the Court by the appellant-Insurance Company shall be permitted to

be withdrawn by the victim-applicant or any other person authorized by him.

12. At this stage, a prayer for granting a stay by further four weeks has been made by the learned senior counsel for the appellant-Insurance Company. This request is declined primarily for the reason that no substantial question of law arises for consideration in this appeal.

13. In view of the above, pending Interim Application Nos.11383 of 2025 and 13587 of 2025 are disposed of as infructuous.

[GAUTAM A. ANKHAD, J.] **[CHIEF JUSTICE]**