

MHAK010033882018



Presented on : 24.11.2018  
Registered on : 20.12.2018  
Decided on : 30.04.2026  
Duration : 07Y 04M 10D

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL AT  
AKOLA.**

(Presided over by Smt. Sangita R. Pahade, Member, MACT )

**MOTOR ACCIDENT CLAIM PETITION NO.194/2018.**

**Exh.No.**

**Sau. Seema w/o. Arjun Banait,**  
Age : 35 years, Occ. : Nil,  
R/o. Shelodi, Tq. Khamgaon,  
Dist. Buldhana.  
At present-  
R/o. C/o. Vijay Umrao Ghogare,  
New Tapadiya Nagar, Akola,  
Tq. Dist.Akola.

**... claimant**

**- Versus -**

**1. Dilipkumar Mohankumar Zaa,**  
Age Adult,, Occ. : Business,  
R/o. Near Sub-Station, Shivanand  
Raipure (owner of Truck bearing  
No. CG-04-LS-9269)

**2. The Divisional Manager,**  
**The New India Insurance Com.Ltd.,**  
Div. Office – Prabhu Plaza,  
Gorakshan Road, Akola,  
Tq. Dist. Akola.

**...Respondents**

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**Appearance :-**

Mr.J.T. Ladda, Ld. Adv. for the claimant.

Respondent No. 1 – Ex-parte.

Mr.Kohade, Ld. Adv. for respondent No.2.

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**:: J U D G M E N T ::**

( Delivered on this 30<sup>th</sup> April, 2026)

- 1) The claimant has filed present petition under Section-166 of Motor Vehicle Act for grant of compensation on account of injuries and consequent disability sustained to her in accident.
  
- 2) It is contended by the claimant that on 27.08.2018 at evening at 6.15 p.m., she was travelling as pillion rider on motorcycle No. MH-28-U-1787 with her husband from Balapur to Shelodi. At Shegaon T-point, National Highway No. 6, Balapur to Khamgaon Road, the truck bearing No. CG-04-LS-9269 gave dash from front side to the motorcycle. The driver was driving the vehicle rashly and negligently with high speed without following rules of traffic. Due to dash, the claimant thrown down on the road. She has sustained injuries all over body. She was shifted to I-Con Hospital, Akola. She was admitted in hospital from 27.08.2018 to 31.08.2018. the Doctors

performed several operation to save the life of claimant. She has spend huge amount towards treatment. Her right leg was amputated. The condition of the claimant was not proper. After discharge, the Doctor advised to take continuous rest and also advised about the artificial foot for right leg amputation. Still she is taking treatment. She unable to walk on her own legs.

3) At the time of accident, her age was 35 years. She was working as a shop incharge at Sanjay Trading Company, Khamgaon. She was earning Rs. 17,200/- per month. She was also earning Rs. 3,000/- from part time seasonal work. She was very much expert in her management work and service. She was having bright future and she would have earn more. She was only bread earner of her family. There is no other member to look after and take care of the family. She has two minor school going children. Her whole family scummed to financial crises. She has suffered permanent disability. Her earning capacity is lost to the extend of 100%. She is unable to enjoy her future life.

4) It is further contended by the claimant that the report of accident was lodged to Balapur Police

Station. The police authority registered the offence vide Crime No. 389/2018 on 28.08.2018 under Sec. 279, 337 of IPC and Section-184 of Motor Vehicle Act against the Driver of the Truck bearing No. CG-04-LS-9269. The respondent No. 1 is the owner of the truck. The respondent No. 2 is Insurance Company with whom the truck was insured at the relevant period. The respondent No. 1 and 2, both are jointly and severally liable to pay the compensation along with interest.

- 5) It is further contended by the claimant that she is entitled to get Rs. 73,53,600/- but she has restricted her claim at Rs. 10,00,000/-. The amount is included compensation towards mental torture, shock, agony, pain and suffering and expenses. She has no amount to pay court-fee due to expenses in treatment. Therefore, she has restricted her claim at Rs. 10,00,000/-.
- 6) As the respondent No. 1 failed to file written statement, the case proceeded without W.S. against him.
- 7) The respondent No. 2 filed reply and written statement at Exh. 18. It is submitted that the respondent No. 2 Govt. undertaking Insurance

Company having its Division Office at Akola. It is denied that the claimant was pillion rider at the time of accident and the driver of the truck drove truck in rash and negligent manner and gave dash to the vehicle of the claimant. It is denied by the respondent No. 2 that the claimant was aged about 35 years at the time of accident and she was working as shop incharge and was earning Rs. 17,200/- and Rs. 3,000/-.

8) It is denied that the claimant was only earning member of her family and there is no other to look after and take care of the family. It is denied that the whole family scummed to the financial crises. It is denied that due to amputation, the claimant cannot stand without support and depend on the help of others. It is further submitted that the driver of the truck was not having valid and effective driving license and documents at the time of accident. He was not having valid permit and fitness certificate of the vehicle, therefore, there are breach of terms and condition of the policy.

9) It is further submitted that the husband of the claimant who was driving the vehicle was himself negligent and does not have proper driving license to

drive the vehicle. He is sole liable for the accident. The driver of the truck was driving truck by intoxicating alcohol. Therefore, the Insurance Company is not liable to pay compensation. The respondent No. 1 and the claimant have not produced any documents relating to their vehicle. They have not complied the provisions of Sec. 158(6) of Motor Vehicle Act.

- 10) It is further submitted by the respondent No. 2 that the husband of the claimant is farmer and having agricultural land at Mouze Shiloda. He is capable to look after the family. The family of the claimant is not depend on the earning of the claimant. The petition is filed on the bogus grounds which is not permissible in the eyes of law. The driver of the truck and the bike was himself on wrong door, therefore, the Insurance Company is not responsible for the act of driver of truck. On these grounds, lastly prayed for discharging the Insurance Company from the liability of compensation.
- 11) On the basis of the rival pleadings of the parties, my Ld. Predecessor has framed the following issues (Ex.22). My findings with reasons thereon are given as under:-

| Sr.No. | Issues                                                                                                                                                                                                                                         | Findings                                                                                                      |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| 01     | Whether the claimant proved that the accident took place between truck bearing No. CG-04-LS-9269 and motorcycle bearing No. MH-28-U-1787 because of the rash and negligent act/driving of the truck by its driver, owned by respondent No. 1 ? | In the affirmative                                                                                            |
| 02     | Whether the claimant proved that she sustained permanent disability on account of the said accident ?                                                                                                                                          | In the affirmative                                                                                            |
| 03     | Whether the claimant proved that she is entitled for compensation ? If yes from whom and to what extent ?                                                                                                                                      | Respondent nos.1 & 2 are jointly and severally liable to pay compensation of Rs. 20,95,550/- to the claimant. |
| 04     | What order ?                                                                                                                                                                                                                                   | As per final order                                                                                            |

### **REASONS**

#### **As to Issue No.1 & 2:-**

- 12) The claimant come with the case that she was proceeding by motorcycle as a pillion rider. Her husband was driving the vehicle, that time the Truck bearing No. CG-04-LS-9269 drove by its driver in rash and negligent manner and gave dash to the

motorcycle. She further deposed that the driver of the truck was driving the vehicle rashly and negligently in very high excessive speed without following traffic rules. Due to dash, she sustained serious multiple injuries all over the body, resulted into amputation of right leg L L limb.

13) Her husband lodged complaint in Balapur Police Station. The police authority registered crime as Crime No. 389/2018 on dated 28.08.2011 under Sec. 279, 337 of IPC and Sec. 184 of Motor Vehicle Act against the driver of the truck. In support of her contentions, she relied on the copy of FIR (Exh.34), spot panchanama (Exh. 35).

14) The owner of the vehicle failed to appear before the Court, therefore, the case proceeded ex-parte against him. The Insurance Company denied the contentions of the applicant and come with the case that, the husband of the applicant had also contributed to the accident. In cross-examination, she has shown her ignorance on the point of width of the road. She has admitted that when the motorcycle was turning towards Shegaon, the accident occurred on Choufully at 6.00 p.m. She denied that she was chatting with her husband. She denied that her

husband is responsible for the accident.

- 15) The opposite party or the driver of opposite party did not appear before the Tribunal as a witness to clarify the circumstances under which the accident took place. He was an eye witness to the accident. His evidence would have been helpful to decide the manner in which the accident took place. He withheld his evidence without assigning any reason. Therefore, adverse inference will have to be drawn and accordingly drawn that had he appeared before the Tribunal as a witness, his evidence would have gone against him. The inaction on the part of driver of opposite party in this regard indicates that he was conscious of the fact that due to his rash and negligent driving of the above numbered auto-rickshaw the accident took place. In the circumstances, I do not find any reason to disbelieve the case of the claimant. I, therefore, accept it and hold that the accident took place due to rash and negligent driving of the above numbered auto-rickshaw by its driver. Hence, I answer **issue No. 1 & 2** in “**affirmative**”.

**As to Issue No.3 :-**

- 16) The claimant come with the case that due to

dash given by the offending vehicle, she has sustained several crush injuries. Her right leg was cut off (amputated). She has taken treatment from I-Con Hospital, Akola. She has incurred about Rs. 2,50,000/-. She has produced treatment papers and bill issued by hospital, bill of medicines and other treatment at Exh. 26. As per bill produced on record, the total amount come to Rs. 1,16,000/-.

- 17) Sanjay Sakhare (CW-4) examined by the claimant at Exh. 56 deposed that he is record keeper in I-Con Hospital, Akola since 2008. He kept the record of various patients, who admitted in the hospital. I-Con Hospital has various facilities like I-Con Medical, I-Con Pathology, I-Con City Scan and MRI. All the branches preserves record. He further deposed that the claimant Seema Banait was admitted in the hospital as Indoor patient on 27.08.2018 to till 31.08.2018. The hospital bill was of Rs. 69,550/-. Said bill was paid by the relative of the claimant at the time of discharge. The patient was suggested other special treatment, physiotherapy, special diet plan from I-Con Hospital during the treatment from I-Con Hospital. The medicines were prescribed by I-Con Hospital. The patient has purchased various medicines. He has identified various bills produced by

the claimant.

18) In his cross-examination, it is come on record that he has not brought the appointment letter to show that he is working in the hospital since 2012. He has not brought authority letter. He appeared before the Court after receipt of the summons of the Court. As per oral and documentary evidence produced by the claimant, it reveals that she has incurred an amount of Rs. 1,16,000/- and Rs. 69,550/- towards medicines and hospital charges.

19) Dr. Yogesh Sindhikar (CW-3) examined by the claimant stated that he was working in the Medical Board General Hospital, Khamgaon. The disability of the claimant is about 80% as per document. In his cross-examination, he has stated that he has given the certificate as per Medical Guidelines and Rules mentioned in Gazette of India.

20) Dr. Abhay Patil (CW-2) examined by the claimant on the point of permanent disability. He has stated that he examined the patient. She has crushed injuries over right lower limb. He operated the patient at I-con Hospital. Thereafter, she was shifted to his hospital for plastic surgery. Cleaning of the wound and skin grafting was done in his hospital. He

assessed disability to the extent of 80%.

- 21) On the point of income of the claimant, she has examined Sanjay @ Satyanarayan Shrikisandas Rathi at Exh. 61 as C.W.5. He deposed that he is Manager of Sanjay Trading Company situated at Gandhi Chowk, Khamgaon since last 10 years. The company is registered company. Chanchal Rathi is proprietor. He further deposed that the claimant Seema Arjun Banait was working as Supervisor. She was getting salary of Rs. 15,000/- and other expenses. Due to accident, she is not working in his company. The salary was given in installment as Rs. 4,000/- weekly.
- 22) In his cross-examination, he has admitted that his wife is owner of the company. He has not produced documentary proof to show that the claimant was getting an amount of Rs. 15,000/- as salary.
- 23) On the point of income, Advocate Shri Laddha placed reliance on the cases of Smt. Umadevi Navneet Vyas Vrs. Himmatsingh Jeetsingh Ghotre and another, reported in 2017(5) ALL MR 396. In which, the Hon'ble High Court, Judicature at Bombay held that in absence of documents like salary slip, Muster role, Income Tax Return etc. the notional income of

deceased as Rs. 2000/- per month not proper and held where there is even slightest mentioned of income, person cannot classified in no income group or notional income. In that case, there was documentary evidence like appointment letter and salary certificate coupled with oral evidence. The income of the deceased was accepted as Rs. 10,000/- per month. In the present case, the claimant has adduced oral evidence and no salary slip or any document are produced on record. Therefore, considering the testimony of the claimant and Sanjay @ Satyanarayan Shrikisandas Rathi, the income of the claimant is taken as Rs. 10,000/- per month. Apart from this, 25% would be considered towards future prospects. As such the amount will come to Rs. 12,500/- (10,000 + 2,500). The annual income will come to Rs.1,50,000/- (12,500 x 12).

- 24) The claimant further stated that her age was 42 years at the time of accident. She was young and energetic lady. She was very much hard worker and earns a handsome amount. She was working as a shop incharge at "Sanjay Trading Co." and was earning Rs. 17,200/- per month. The claimant was also earning Rs. 3000/- per month from part time seasonal work. She was very much expert in her

management work and service. She was also punctual and sincere lady and her day to day earning was increasing day by day. She was having very bright future and she would have earned more. She was bread earner of her family. In disability certificate, her permanent disability is mentioned 80%.

- 25) Considering the evidence produced on record, the claimant is, thus, entitled to compensation under the following heads:-

| Sr.No. | Head                                                                                                                                          | Amount      |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| 01     | Hospital charges and medicines                                                                                                                | 1,85,550/-  |
| 02     | Pain and suffering                                                                                                                            | 1,50,000/-  |
| 03     | Special diet, conveyance charges                                                                                                              | 30,000/-    |
| 04     | Loss of amenities of life                                                                                                                     | 50,000/-    |
| 05     | Loss of income after application of multiplying factor of 14 (12,500/- x 12 =1,50,000/- x 14 =21,00,000/- ) 80% amount towards loss of income | 16,80,000/- |
|        | Total                                                                                                                                         | 20,95,550/- |

- 26) As such, I answer issue No. 3 “**Affirmative**” and pass following order.

### **ORDER**

- 1] Application is allowed with costs.
- 2] The respondent Nos.1 & 2 do pay an amount of

Rs.20,95,550/- (Rs. Twenty Lakh Ninety Five Thousand Five Hundred Fifty only) to the claimant jointly and severally with future interest at the rate of 7.50% per annum from the date of filing of petition till realization of entire amount including N.F.L. amount, if any.

3] The compensation amount along with the interest on entire compensation be given to claimant by account payee cheque.

4] The claimant shall make good deficit Court fees, if any, as per the rules.

5] Award be prepared accordingly.

Place – Akola

Date:-30.04.2026

(Smt. Sangita R. Pahade),  
Member,  
Motor Accident Claim Tribunal, Akola

**Certificate**

I hereby certify that the contents of this PDF file are same word for word as per original order:

|                    |   |                                  |
|--------------------|---|----------------------------------|
| Name of Steno      | : | Shamim Sayed                     |
| Court's Name       | : | District Judge-2 & A.S.J., Akola |
| Date               | : | 30.04.2026                       |
| Signed by PO       | : | 30.04.2026                       |
| <b>Uploaded on</b> | : | <b><u>30.04.2026</u></b>         |