MHAH010058552024

Presented on	:	09/09/2024.
Registered on	:	26/09/2024.
Decided on	:	10/08/2026
Duration	:	Ys M Ds 01 11 01

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL AT AHMEDNAGAR, DIST-AHMEDNAGAR.

(Before Shri. M.A. Shinde, Member)

MOTOR ACCIDENT CLAIM PETITION NO. 316/2024
Exh.NO. 60 / A.

1. **Sangita Santosh Darekar,**
   Age - 40 Years, Occu. - Household,

2. **Prithviraj Santosh Darekar,**
   Age - 2.5 years, Occ. - Nil,
   Being Minor – Guardian his
   mother claimant No.1.

3. **Chandrabhaga Raghunath Darekar,**
   Age – 70 years, Occ – Nil,
   All r/o. Walunj, Tal. Nagar,
   Dist. Ahmednagar. .. **Claimants.**

Versus

1. **M/s. GHV India Pvt. Ltd.**
   Through Manager,
   Address – GHV House, Near RTO,
   Himmatnagar, Sabarkantha,
   Gujrat – 383001.

2. **Mohammad Imtiyaj Mo. Shafi**
   Ahmed Shaikh,
   Age – 45 years, Occ – Driver,
   R/o. Malanga, Bandra,
   Mujaffarpur, Bihar – 843115.

3. H.D.F.C. Ergo General Insurance Co. Ltd.,
First floor, Sai Icon, Survey No.55/3,
Opp. Axis Bank, Manmad road,
Savedi, Ahmednagar. .. **Opponents.**

Petition u/sec.166 of the Motor Vehicles Act for grant of just compensation

Appearance :-	
Shri. M.S. Zarekar	Learned Advocate for the claimants.
Shri.S.H. Andhale	Learned Adv. for opponent No.1 and 2.
Shri. A.K. Bang	Learned Advocate for opponent No.3.

JUDGMENT
(Delivered on 10th August, 2026.)

1. The claimants have filed this claim petition under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred to as "M.V. Act" for short) claiming compensation on account of death of Santosh Raghunath Darekar in a motor accident.

2. The case of the claimants that, on 09.05.2024 at about 11.00 a.m. the deceased Santosh Darekar was proceeding from his house towards his field on a motorcycle bearing its registration No.MH-16-BF-6425 on Solapur – Nagar highway. He reached near Walunj phata. He was taking a turn from the said road towards highway on Nagar side, a tipper bearing its registration No. GJ-09-AU-5607 (for short "the tipper") loaded with gravel came in a high speed and gave dash to the motorcycle and thereby the deceased sustained grievous injuries and succumbed to the injuries when he was brought to the Anand Rushiji hospital, Ahmednagar. The accident caused due to rash and negligent driving of the driver of the tipper. A Crime was registered against the driver of the tipper vide its Cr. No.

466/2024 with Nagar Taluka police station for the offence punishable under sections 304-A, 279, 337, 338, 427 of Indian Penal Code, 1860 ("IPC" for short) along with section 184 of the M.V. Act. During the course of investigation, the police have carried out spot panchanama. The inquest panchanama was also prepared. Medical certificate of cause of death, death certificate and other related documents were collected. After completion of investigation, the police have filed charge-sheet against the driver of the tipper.

3. It is submitted that, during his lifetime, the deceased was working with Shiva Nine Petroleum, Jakhangaon, Tal. and Dist. Ahmednagar and was earning Rs. 20,000/- per month. In addition to this, he was getting yearly income of Rs. 2,00,000/- from the agricultural business. He was also getting Rs. 7,000/- per month from milk business. Thus, he was earning Rs. 38,000/- per month. At the time of death, he was 52 years old. His date of birth was 01.06.1972. The claimants were totally depending on the earning of the deceased. Therefore, they claimed Rs. 37,29,000/- towards the compensation but restricted their claim for Rs.1,00,000/- and paid Court fee on it.

4. The opponent No.1 and 2 appeared in the case and filed their written statement at Exh.11. They have denied the age,income and liability to pay the compensation in the mater. It is specifically denied that the driver of the tipper was in any way responsible for the accident. It is also submitted that, the tipper was duly insured with opponent No.3 and therefore, if any liability occurs it be saddled on the opponent No.3.

5. The opponent No.3 appeared in the matter and filed its written statement vide Exh. 15 and denied all the contentions raised in the claim

petition. It has contended that, the driver of the tipper was not holding valid driving licence at the relevant time of the accident. There is breach of condition of policy, however, admitted that the tipper was duly insured with opponent No.3 at the relevant time of the accident. The age, income and other financial liabilities is specifically denied. The negligence on the part of the tipper driver is also denied. Hence, prayed to dismiss the claim petition with costs.

6. The issues are framed at Exh.16. I recorded my findings thereon for the reasons stated as under:-

ISSUES		FINDINGS
1]	Is it proved that, on 09.05.2024 at about 11.00 a.m. on Walunj phata Solapur road, Tal. and Dist. Ahmednagar, the accident took place, due to rash and negligent driving by driver / opponent No.2 of tipper No. GJ-09-AU-5607 ?	In the affirmative.
2]	Is it proved that Santosh Raghunath Darekar died due to the alleged accident ?	In the affirmative.
3]	Is it proved that there is a breach of insurance policy ?	In the negative.
4]	Are the claimants entitle for the compensation ? If yes, what should be the quantum and from whom ?	In the affirmative. As per final order.
5]	What award ?	..Petition is partly allowed.

R E A S O N S

7. In order to substantiate the claim, claimant Sangita Darekar filed her affidavit of examination-in-chief (Exh.17) and deposed in terms of

the averments made in the claim petition. So also, claimants have examined Subhash Dattatraya Japkar (CW2) at Exh.46. Besides this, claimants have produced on record following documents -

Sr. No.	**Particulars**	**Exhibits**
1.	Khabar.	21
2.	Complaint.	22
3.	FIR.	23
4.	Spot panchanama.	24
5.	Police Intimation.	25
6.	Inquest panchanama.	26
7.	Report to Civil Surgeon along with Corpus.	27
8.	Certificate of Cause of death.	28
9.	Driving licence of Mohd. Imtiyaz.	29
10.	R.C.book of Tipper.	30
11.	Insurance Policy.	31
12.	Goods permit.	32
13.	Fitness Certificate.	33
14.	Death Certificate.	34
15.	Adhar card of Deceased.	35
16.	Adhar card of claimant No.1.	36
17.	Adhar card of claimant No.3.	37
18.	School Leaving Certificate of deceased.	38
19.	7/12 extract.	39 to 41
20.	8A extract.	42
21.	Adhar card of Subhash Japkar	48
22.	Witness summons.	49
23	Letter of B.P.C.L.	50
24	Agreement.	51
25	No Objection Certificate.	52

8. The claimants have closed their evidence by filing evidence close pursis at Exh. 54.

9. The opponent No.1 and 2 did not examine any witnesses or lead any evidence. They have closed their evidence vide pursis Exh. 55. Opponent No.3 has not led any evidence. Hence, evidence of opponent No.3 is closed by order below Exh.1 dated 06.03.2026. Opponent No.3 filed written notes of arguments at Exh.58.

As to Issue No.1 and 2 :-

10. Sangita (CW1) blamed the opponent No.2 for the accident. She has reproduced the version in the claim petition. In her cross-examination, she admitted that, the accident took place at Walunj phata when her husband was taking the turn on the motorcycle towards Nagar road. She further admitted that the tipper was proceeding from Solapur to Nagar. She further admitted that, the driving licence of her husband is not filed on record. So also, she cannot tell the details of the driving licence. The FIR was lodged by her brother-in-law Devidas Raghunath Darekar. The spot of incident was also shown to the police by Devidas. She has specifically admitted that, neither she nor Devidas had witnessed the accident.

11. On the basis of these admissions, the learned counsel Shri.A.K. Bang has submitted that, on perusal of spot panchanama it appears that, the accident had occurred at Walunj phata when the deceased had all of sudden taken a turn and dashed to the tipper and therefore, the accident took place due to negligence on the part of the deceased. Moreso, the driving licence of the deceased is not filed on record. Therefore, the opponents may not be held liable to pay compensation in the matter. During

his course of argument, learned advocate for opponent No.3 Shri.A.K. Bang relied on following case laws -

1) Secretary Communication Ministry, Government of India Vs. Ramrao alias Ramdas and others, 1991 ACJ 278, wherein it is held that,

> *"In the first place it must be appreciated that petitioner cannot stand to gain by showing the weakness in the defence assuming that there is one in it. The petitioner must stand on his own to establish the case of the negligence to the satisfaction of the Court, i.e. upon preponderance of probability if not beyond any reasonable doubt."*

2) Oriental Insurance Co. Ltd. Vs. Premlata Shukla and others, 2007 ACJ 1928, wherein it is held that,

> *"Where an accident occurs owing to rash and negligent driving by the driver of the vehicle resulting in sufferance of injury or death by any third party, the driver would be liable to pay compensation therefor. Owners of the vehicle in terms of the Act also becomes liable under the 1988 Act. In the event vehicle is insured, which in the cse of a third party, having regard to sub-section (2) of section 147 of the Act, is mandatory in character, the insurance company would statutorily be enjoined to indemnify the owner.*
> *The insurer, however, would be liable to reimburse the insured to the extent of the damages payable by the owner to the claimants subject of course to the limit of its liability as laid down in the Act or the contract of insurance. Proof of rashness and negligence on the part of the driver of the vehicle is, therefore, sine qua non for maintaining an application under section 166 of the Act."*

12. On the other hand, the learned counsel Smt. S.M. Zarekar pointed out the map of spot of incident, which is part and parcel of the spot panchanama reflects the accident took place in the middle of the road and at a distance from the Walunj phata. During her course of arguments, the learned counsel Smt. S.M. Zarekar for claimants has relied on following case laws -

1) Mathew Alexander Vs. Mohammed Shafi and another, (2023)

3 ACC 335, wherein it is held that**,**

> *"Insofar as the claim petition filed by the Appellant herein is concerned, alleged negligence on the part of the driver of the tanker lorry and pickup van in causing the accident has to be proved. That is a matter which has to be considered on the basis of preponderance of the possibilities and not on the basis of proof beyond reasonable doubt. It is left to the parties in the claim petitions filed by the Appellant herein or other claimants to let in their respective evidence and the burden is on them to prove negligence on the part of the driver of the Alto car, the tanker lorry or pickup van, as the case may be, in causing the accident. In such an event, the claim petition would be considered on its own merits. It is needless to observe that if the proof of negligence on the part of the drivers of the three vehicles is not established then, in that event, the claim petition will be disposed of accordingly.*
>
> *In this context, we could refer to judgments of this Court in the case of N.K.V. Bros. (P) Ltd. Vs. M. Karumai Anmal reported in AIR 1980 SC 1354, wherein the plea that the criminal case had ended in acquittal and that, therefore, the civil suit must follow suit, was rejected. It was observed that culpable rashness under Section 304-A of IPC is more drastic than negligence under the law of torts to create liability. Similarly, in (2009) 13 SCC 530, in the case of Bimla Devi Vs. Himachal Road Transport Corporation ("Bimla Devi"), it was observed that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident. To the same effect is the observation made by this Court in Dulcina Fernandes Vs. Joaquim Xavier Cruz, (2013) 10 SCC 646 which has referred to the aforesaid judgment in Bimla Devi."*

2) Bimla Devi and others Vs. Himachal Road Transport Corporation and others, (2009) 78 AIC 129, wherein it is held that,

> *"In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration*

the respective stories set forth by both the parties."

13. There is substance in her argument that, as per the said map the accident took place in the middle of the road and at a distance from Walunj phata, therefore, it cannot be accepted that the deceased had all of sudden came on the road and dashed against the tipper. If this fact is to be accepted then as per the map, the spot of accident ought to have shown exactly on the Walunj phata and that too, on the left side of the road.

14. The sum and substance of the case laws relied on by both the parties is that, the claimants have to prove their case particularly on the point of negligence on the touch stone of preponderance of probability but they cannot gain by showing the weakness in the defence. The proof of rashness and negligence on the part of driver of the vehicle is *sine quo non* for maintaining an application under section 166 of the M.V. Act. Thus, keeping in view the said settled principles of law relating to compensation to the victims of road traffic accident and the material brought on record as discussed above, I hold that the accident took place due to rash and negligent driving on the part of opponent No.2.

15. Though, it is matter of record that the driving licence of the deceased is not produced on record but the same cannot be said to be a contributory factor to the accident in the absence of any overt act of negligence or rashness on the part of the deceased while riding the motorcycle.

16. The record further shows that, the deceased was immediately taken to Anand Rushiji Hospital, Ahmednagar. Dr. Satish Gaikwad declared him dead on arrival, as per police intimation (Exh. 25) and FIR

(Exh. 22). The inquest panchanama (Exh. 26) reflects that, the deceased died due to at Anand Rushiji Hospital and his dead body was sent to Civil Hospital for postmortem. Exh. 27 the Form II which was forwarded to the Civil Hospital is also placed on record. Medical certificate of cause of death is at Exh. 28 and death certificate (Exh. 34), which confirm the fact of death of the deceased in Road Traffic Accident. Therefore, I hold that the deceased died in a Road Traffic Accident on 09.05.2024, wherein the tipper was involved and driven by opponent No.2. Thus, I answer issue No.1 and 2 in the affirmative.

<u>As to issue No. 3</u> -

17. Opponent No.3 has pleaded that, as there is breach of condition of policy, therefore, the opponent No.3 is not liable to pay any compensation to the claimants. However, the record shows that, as per Exh. 29 the opponent No.2 was holding driving licence of transport vehicle which was valid till 03.12.2026. Therefore, the opponent No.3 failed to prove the fact that there is breach of condition of policy. Thus, I answer this issue in the negative.

<u>As to issue No.4</u> -

18. So far as income of the deceased is concerned, the claimants have examined Subhash Japkar (CW2), the owner of Shiv Nine Petrol Pump situated at Jakhangaon, Tal. And Dist. Ahmednagar. He confirmed the fact that, prior to the accident, the deceased was working as an employee on the said petrol pump. He was giving him salary of Rs. 20,000/- per month in cash. He has proved the muster rolls (Exh.53 and Exh.53.1).

19. On perusal of those muster registers, it appears that the deceased was an employee with Subhash Japkar (CW2) and was earning Rs. 20,000/- per month towards salary prior to the accident. Though it is tried to bring on record by the learned counsel Shri.A.K. Bang for opponent No.3, in the cross-examination of Subhash Japkar (CW2) that the registers at Exh. 53 are maintained by his Manager Raviraj. Itis also tried to bring on record in the cross-examination of Sangita (CW1) that, the petrol pump was owned by Subhash Japkar (CW2).

20. The learned counsel Shri. Bang has pointed out the FIR (Exh. 22) that, the occupation of the deceased is mentioned in the FIR as an agriculture and there is no whisper of job on petrol pump. Therefore, he submitted that, this is nothing but a improved version on the part of the claimants and relied on ***State of Haryana and another Vs. Jasbir Kaur and others, 2003 (3) T.A.C. 569 (S.C.)***, wherein it is held that,

> *"It has to be kept in view that the Tribunal constituted under the Act as provided in Section 168 is required to make an award determining the amount of compensation which is to be in the real sense "damages" which in turn appears to it to be "just and reasonable". It has to be born in mind that compensation for loss of limbs or life can hardly be weighted in golden scales. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate the compensation must be "just" and it cannot be a bonanza not a source of profit; but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to al cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears it to be just" a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not outcome of whims, wild guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrary. If it is not so it cannot be just".*

21. Keeping in view the said ratio laid down, as it is well settled principle of law that, the Motor Vehicle Act is a social legislation, the strict rules of pleadings are not applicable to the present proceeding and therefore, as there is a reference of employment of the deceased with Shiv Nine petrol pump in the claim petition and therefore, non-mentioning his employment with the petrol pump in the FIR cannot be considered as fatal to the case of the claimants.

22. So far as the testimony of Subhash Japkar (CW2) is concerned, it is not impeached during the course of the cross-examination. The claimants have also produced on record the copy of revenue record which reflect that the father of the deceased has 3 acre 14 guntha agricultural land and as per the claimants, it was cultivated by the deceased himself.

23. Thus, I hold that the deceased was earning Rs. 20,000/- per month from an employment with Shiv Nine Petrol Pump and was also earning Rs. 5000/- per month from labouring in his HUF field. Thus, the monthly income of the deceased is required to be considered of Rs. 25,000/- for the purpose of deciding the present claim petition.

24. It is also brought on record that, at the time of death the deceased was 51 years old as his date of birth is reflected from his school leaving register (Exh.30) as 01.06.1973 and the accident took place on 09.05.2024. Therefore, multiplier of 11 will be applicable to the present case. As per the claim petition, three claimants were depending on the income of the deceased who was married and having a minor son at the time of death, therefore, 1/3 rd of his income is required to be deducted from his total income. As he was not having permanent job, therefore, 10% of future prospects is required to be considered, considering his age.

25. The claimant No.1 and 2 being wife and minor child are entitle for consortium but the claimant No.3 i.e. the mother of the deceased is not entitled for consortium in view of ratio laid down by the Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram and others, Civil Appeal No. 9581 of 2018 (arising out of SLP (Civil) No. 3192 of 2018)***.

26. As such, the quantum of compensation amount payable to the petitioners is calculated as per ratio laid down by the Hon'ble Supreme Court in ***Sarla Verma And others Vs. Delhi Transport Corporation and Anr., [2009 (5) Mh.L.J. (SC) 775]*** and ***National Insurance Company Ltd. Vs. Pranay Sethi [2018 (3) Mh.L.J. (SC) 70],*** as under :-

Sr. No.	**Heads**	**Calculations**
(1)	Monthly income Rs. 25,000 x 12	3,00,000/-
(2)	1/3rd amount deducted as per personal expenses (3,00,000 – 1,00,000 = 2,00,000/-)	2,00,000/-
(3)	10% future prospects 2,00,000/- x 10% = 20,000/- = 2,00,000 + 20,000/- =	2,20,000/-
(4)	Loss of Dependency after considering multiplier of 11 (age of deceased is 51 years) Rs. 2,20,000 x 11.	**24,20,000/-**
(5)	Loss of Consortium for claimant No.1 including 10% enhancement.	**44,000/-**
(6)	Loss of Consortium for claimant No.2 including 10% enhancement.	**44,000/-**
(7)	Loss of Estate, including 10% enhancement.	**16,500/-**
(8)	Funeral expenses,including 10% enhancement.	**16,500/-**
(9)	Total compensation awarded.	**25,41,000/-**

Thus, the claimants are entitled for just compensation of Rs. 25,41,000/-. The opponent No.1 being owner and opponent No.3 being insurer are jointly and severally liable to pay compensation. Thus,I answer issue No.4 in the affirmative. Accordingly, I pass the following order -

O R D E R

1] Petition is partly allowed with proportionate costs.

2] The opponent No.1 and 3 shall jointly and severally pay compensation of **Rs. 25,41,000/- (Rupees Twenty Five Lakhs Forty One Thousand only)** to the claimants inclusive of N.F.L. amount along with interest @ 9 % per annum from the date of this petition till realization of entire awarded amount.

3] On realization of compensation amount -

(i) An amount of **Rs.10,00,000/- (Rupees Eight Lakhs Only)** be kept in Fixed Deposit in the name of claimant No.1 for the period of 5 (five) years in any Nationalized Bank.

(ii) An amount of **Rs.5,00,000/- (Rupees Five Lakhs Only)** be kept in Fixed Deposit in the name of claimant No.2 till he attains majority in any Nationalized Bank.

(iii) An amount of **Rs.6,41,000/- (Rupees Six Lakhs Forty One Thousand Only)** be deposited in the name of claimant No.1 in any Nationalized Bank by RTGS or NEFT.

(iv) An amount of **Rs.4,00,000/- (Rupees Four Lakhs Only)** be deposited in the name of claimant No.3 in any Nationalized Bank by RTGS or NEFT.

(v) The claimants are at liberty to withdraw the amount of interest accrued on the both fixed deposit amounts quarterly, if they desires.

4] Opponent Nos.1 and 3 shall pay the amount either through **RTGS** or **NEFT** in the bank account maintained by the Tribunal. The details of the bank account are as under:-

Account Name	**:**	District Judge-1 and Member,

		M.A.C.T. Ahmednagar.
Account Number	**:**	42919289225
Bank Name & Branch	**:**	State Bank of India, Main Branch, Ahmednagar.
IFSC Code	**:**	SBIIN0000303
	:	'0' indicates Zero.
C.I.F. Number		80904863498

5] The claimants shall produce their Savings bank account details of any Nationalized bank along with either a certificate of the banker giving all details of their bank account including IFSC Code, or a copy of a cancelled cheque of the bank account.

6] The claimants are directed to pay deficit Court Fee, if any.

7] The copy of award be sent to the Insurance Company by e-mail. After depositing the compensation amount into the above mentioned bank account, the Insurance Company shall inform the Tribunal by sending E-mail accordingly.

8] Award be drawn accordingly.

MADHAV ARVIND SHINDE

Digitally signed by MADHAV ARVIND SHINDE
DN: cn=MADHAV ARVIND SHINDE, ou=BOMBAY HIGH COURT,CID - 6951301, o=BOMBAY HIGH COURT, st=Maharashtra, c=IN
Date: 2026.08.10 18:10:03 +0530

(M.A. Shinde)
Member, MACT,
Ahmednagar.

Date : 10/08/2026.