MHAU010071572022

Presented on	..	27-09-2022		
Registered on	..	18-11-2022		
Decided on	..	05-11-2025		
Duration	..	Y	M	D
		03	01	08

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, AURANGABAD

(Presided over by : M. S. Agrawal, Member)

M.A.C.P. No.680/2022 **Exhibit No.56**

1. Smt. Dipa wd/o Pankaj Zawar
Age:- 35 years, Occ.- Household
R/o.: Near Shimpi Mangal Karyalay
Room No.10/B, Khalil Sheth Chawl,
Sangmeshwar Malegaon.
Tal. Malegaon, Dist. Nashik

At present c/o Vijay Bhagwanrao Lingayat,
Plot Nos. 84 and 85, Trimurti Chowk,
Behind Uttam Nagar,
Jawahar Colony Road, Aurangabad

2- Kum. Aditi d/o Pankaj Zawar
Age: 12 Yrs, Occ.: Education
R/o.: As above

3- Chiraj s/o Pankaj Zawar
Age: 8 Yrs. Occ.: Education
R/o.: As above

The claimant Nos. 1 and 2 are minors **Claimants**
U/g of mother claimant No.1.

Versus

1. Kiran s/o Pundlik Kadam
   Age:- 46 Yrs, Occ.: Driver
   R/o.: C/o Chandrakant Karbhari
   Sonawane, Kalwadi,
   Tal. Malegaon, Dist. Nashik

2. Chandrakant s/o Karbhari Sonawane
   Age:- 40 Yrs., Occ.: Business
   R/o.: at Post Kalwadi, **Respondents**
   Tal. Malegaon, Dist. Nashik

3. Cholamandalam MS General Insurance
   Co. Ltd. through its branch Manager
   Branch Office at shop No.4, Plot No. 33,
   Opp. LMS Jewellars, **Insurer**
   Rokdiya Hanuman Colony,
   Jalna Road, Aurangabad.

4. Sau. Vidya w/o Kantilal Zawar
   Age:- 66 years, Occ.- Household

5. Shri. Kantilal s/o Jainarayan Zawar
   Age:- 71 years, Occ.- Nil
   Respondent Nos. 4 and 5 R/o.: Near Shimpi
   Mangal Karyalay, Room No.10/B, **Respondents**
   Khalil Sheth Chawl, Sangmeshwar,
   Malegaon, Tal. Malegaon, Dist. Nashik

Petition :- Under Section 166 of the Motor Vehicles Act for compensation of **Rs. 70,00,000/-**.

Appearances :-

Shri. S. D. Kamble Advocate for the claimants.
Exparte against respondent Nos.1 and 2.
Shri. A. S. Usmanpurkar Advocate for respondent No.3.
Shri. M. A. Pathan Advocate for respondent Nos.4 and 5.

JUDGMENT

(Delivered on 5th November 2025)

This is a petition under Section 166 of the Motor Vehicles Act, 1988 (for short 'the Act') by survivors of victim Pankaj Kantilal Zawar (for short ‘the deceased’) of vehicular accident seeking compensation.

Briefly stated the factual matrix is as under :

2] On 08-11-2021 the deceased and his friends were traveling in Swift Car bearing registration No.MH-41-AM-1715 (‘offending vehicle’ for short) from Malegaon towards Jaisalmer, Rajasthan on National Highway, near Jodhpur at Julesar, at that time suddenly one unknown animal came in front of the Car and the respondent No.1 could not control the Car. It turned turtle and deceased sustained serious head injury. He was shifted at Mathuradas Mathur Hospital Jodhpur where he died on 09-11-2021 during the treatment.

3] Offence was registered with Balesar Police Station, as per the report lodged by Satish Ramdas in respect of accident against the driver of offending vehicle vide Crime No.247/2021 dated 09-11-2021. The deceased was 45 years old at the time of accident. He was businessman of four wheeler and was earning Rs.40,000/- per month. Thus, the claimants have claimed compensation of Rs.70,00,000/- with interest from the respondents jointly and severally.

4] The respondent No.1 appeared but failed to file written statement, hence as per order below Exh. 1 dated 08-07-2025 the claim is proceeded without written statement against defendant No.1.

5] Inspite of service of summons the respondent No.2 failed to appear in the petition, hence as per order at Exh.1 dated 08-07-2025 the claim is proceeded exparte against him.

6] The respondent No.3 has filed written statement at Exh.19. They have denied the claim. It is submitted that, the claim petition is not maintainable because claimants are resident of Nashik district. The accident took place at Jodhpur Rajasthan. The claimants have not filed residence proof of Aurangabad district. There is delay to lodge the FIR. Claimants have not filed postmortem report of the deceased. The driver of the offending vehicle was not holding valid and effective driving license at the time of accident. The offending vehicle is private Car used for hire and reward basis at the time of accident. Therefore, there is breach of terms and conditions of the insurance policy.

7] The sitting capacity of the Car is four plus one. At the time of accident seven persons were traveling in the offending vehicle. The age of the deceased was more than 46 years. There was no negligence on the part of the driver of the offending vehicle. The driver of the Truck No.RJ-51-GA-1784 was driving it in moderate speed. The claimants are not legal heirs and dependents of the deceased. Therefore, the claim is liable to be dismissed.

8] Respondent Nos.4 and 5 have filed written statement at Exh.30. It is submitted that, they are senior citizen and parents of the deceased and were totally dependent upon the deceased. Therefore, they are entitled to get share in the compensation.

9] Heard arguments of the claimants, insurer and respondents. The insurer submitted that, there is breach of policy as the driver of the offending vehicle was not holding valid driving license. The vehicle was used for commercial purpose. Therefore, the insurer is not liable to pay the compensation. The claimant submitted that, the chargsheet was filed against the driver of the offending vehicle. The offending vehicle turn turtle. Hence, respondents are liable to pay compensation. Respondent Nos.4 and 5 submitted that, they were dependent upon the deceased as parents. They are entitled for compensation.

10] Considering the pleadings of the parties, following issues are framed by my predecessor vide Exh.37 and I have recorded my findings thereon for the reasons given below:-

Sr. No.	Issues	Findings
1.	Whether claimants prove that, on 08-11-2021 at Julesar, Purohitan National Highway No.125, District Jodhpur, deceased Pankaj Kantilal Zawar died in motor accident due to rash and negligence driving of the driver of Swift Car No. MH-41-AM-1715?	Yes...

Sr. No.	Issues	Findings
2.	Whether respondent No.3 prove that, the owner of the offending vehicle has committed breach of terms and conditions of the insurance policy ?	No...
3.	Whether claimants are entitled for compensation ? If yes, for what amount and from whom as prayed ?	Partly Yes.. As per final order...
4.	What order and award ?	As per final order...

REASONS

11] In order to prove the claim the claimants have examined claimant No.1 Dipa Zawar, widow of the deceased (CW-1) (Exh.38). The claimants have relied on copy of FIR Exh.40, copy of statements Exh.41, copy of spot panchnama Exh.42, copy of inquest panchanama Exh.43, panchanama of dead body Exh.44, acknowledge of the dead body Exh.45, death certificate Exh.46, seizure panchanama Exh.47, mechanical report Exh.48, RC Book of the offending vehicle Exh.49, the insurance policy of offending vehicle Exh.50, driving license of driver of offending vehicle Exh.51, notice issued by police to the driver Exh.52. The claimants have closed their evidence by filing pursis at Exh.54.

12] The evidence of respondent Nos.1 and 2, 4 and 5 have been closed by passing order at Exh. 1 dated 03-11-2025. The respondent No. 3 has closed evidence by filing pursis at Exh.55.

13] Heard argument of claimants, respondent No.3 and 4 and 5. It is argued by the claimants that they have proved their claim by adducing evidence. The insurer has not adduced any evidence. Therefore, claimants prayed for granting the claim petition. The insurer argued that, claimants have not come in the Court with clean hand. They are residing at Malegaon District Nashik and the accident took place at Jodhpur, Rajasthan. Therefore, the claim is not maintainable. The delay to lodge the report is not explained. The private vehicle was used for commercial purpose. Seven passengers were traveling and got injured. The vehicle was used on hire and reward basis. There was breach of terms and condition of the insurance policy. The accident took place due to negligence of the another vehicle. There was no negligence on the part of driver of Maruti Swift Car. It is further argued that, claimants are not legal heirs of the deceased. Therefore, the insurer is not liable to pay the compensation.

<u>As to Issue No. 1</u>

14] The FIR was lodged on 09-11-2021. The accident took place on 08-11-2021. The FIR was lodged against the driver of the offending vehicle. It is lodged by Satish Ramdas. It is mentioned that, the offending vehicle was proceeding on the highway and suddenly animal came in front of the Car. The driver has tried to apply the breaks, but he could not control on the Car and it turned turtle. Only the deceased sustained serious injury and died in the hospital during the treatment. Another persons in the Car sustained minor injuries and they did not take any treatment in the hospital. Police have recorded statement of Walmik Balu Khairnar. He stated that, himself and his friend Pankaj, Satish were proceeding in the Car at Jaiselmer. The Car was proceeding on National Highway and suddenly animal came in front of the Car. The driver applied urgent breaks and hence the Car turned turtle. Deceased Pankaj sustained serious injuries and he died during medical treatment at MDM Hospital, Jodhpur. In the inquest panchanama it is mentioned that, deceased sustained serious head injury. The provisional forensic department report and death certificate at Exh.46 shows that, deceased died in the motor accident and accordingly death certificate has been issued. The offending vehicle was seized by police.

15] The inspection report of the offending vehicle shows that, the front bumper, head lights were damaged. All tyres of the vehicle, radiator, air conditioner, bonnet, front glass, roof, side glass and break light of the offending vehicle were damaged. Therefore, as per the police papers, only four occupants including driver were traveling in the Car at the time of accident. The accident took place due to negligence of the driver of the offending vehicle. The deceased died due to head injury sustained in motor accident. Accordingly, I answer issue No.1 in the affirmative.

<u>As to issue No. 2:-</u>

16] It is alleged that, the respondent No.2 has committed breach of terms and conditions of the insurance policy. It is alleged that, the private vehicle was used for commercial purpose by carrying seven passengers on hire and reward basis. It is further alleged that, the driver of the offending vehicle was not holding valid and effective driving license. The evidence of widow of the deceased was recorded. She deposed that, seven persons were traveling in the Car prior to accident. She deposed that, at the time of accident there were only four occupants. The police statement of occupants Walmik Khairnar reflects that, only four occupants including driver were traveling in the Car. The accident took place as suddenly animal came in front of the Car. The Car was proceedings on the National Highway. Therefore, definitely the speed of the Car might be high and the driver applied suddenly breaks, therefore Car turned turtle. The insurer has not adduced any evidence to prove that seven passengers were traveling in the Car at the time of accident. The driving license of the driver of the offending vehicle was issued on 08-11-2012. It was issued for transport vehicle on 08-11-2012. It is valid till 11-08-2026. The accident took place on 08-11-2021. Therefore, the driver of the offending vehicle was holding valid driving license at the time of accident.

17] It is alleged that, the private vehicle was used for commercial purpose and seven passengers were traveling in the Car. The insurer has relied on the inquest panchanama at Exh.44. There are names of Mukund Kalu, Jitendra Bhausaheb Pawar, Sk. Anis Sk. Chand, Walmik Balu Khairnar and Satish Ramdas Sirsagar. It is argued that, these all persons along with deceased and the driver were traveling in the Car. But, there is no record to show that, all the above persons were traveling in the Car and got injured. There is no evidence to prove that, the Car was used on hire and reward basis. But, the statement of the witness recorded by police itself reflects that, only four persons were traveling in the Car including driver. Therefore, there is no breach of terms and conditions of the insurance policy. The offending vehicle was insured in such circumstance, the owner of the offending vehicle has not committed breach of terms and conditions of the insurance policy. Accordingly, I answer issue No. 2 in the negative.

As to issue No.3:-

18] It is alleged by the claimants that, deceased was 45 years old at the time of accident and he was businessman and earning Rs.40,000/- per month. For this purpose the claimants have not examined any witness. They have not filed copies of income tax return of the deceased. Claimants have not filed any document in respect of birth date of the deceased. As per the forensic report and inquest panchanama the age of the deceased was 45 years at the time of accident. Therefore, it is considered that, the deceased 45 years old at the time of accident. Without proof of income it is necessary to considered notional income as per the Minimum Wages Act for the year 2021. The notional income will be Rs.12,000/- per month. It would be Rs.1,44,000/- per annum.

19] It is proved that, the deceased was earning

Rs.1,44,000/- per annum for loss of dependency. It is mentioned that all the claimants are dependent upon the income of deceased. They are wife and children of the deceased. Respondent Nos. 4 and 5 are parents of the deceased.

20] I am relying on the judgment of Hon'ble Supreme Court in case of ***Sadhana Tomar and oths. V/s Ashok Kushvaha and oths. Reported in 2025 live law (SC) 309.*** It is held that, the term "legal representative" under the Motor Vehicles Act should not be given a narrow interpretation to exclude those person as claimants who were dependent on the income of the deceased. It is held that, if the claimants were dependent on the income of the deceased they shall be granted compensation. A legal representative is one, who suffers on account of death of a person due to a motor vehicle accident and need not be a wife, husband, parent and child. It is further held that, proving loss of the dependency is sufficient to claim compensation. Therefore, every legal representative who suffers on account of the death of a person in a motor vehicle accident should have remedy for realization of compensation. It is further held that, if some legal representative who are not financially independent would also come under the definition of legal representative of deceased. They were considered as dependent upon the income of the deceased. But, it makes clear that, they must be financially dependent upon the income of the deceased. Therefore, claimants and respondent Nos.4 and 5 are entitled for compensation as legal representatives of the deceased.

21] The deceased was 45 years old therefore, 25% future prospect amount has to be added in the annual income of the deceased. The amount will come to Rs.1,80,000/- (Rs.1,44,000/- + Rs.36,000/-). In view of ratio in the case ***Sarla Verma & Ors. Vs. Delhi Transport Corporation & Another (2009 ACJ 1298 (SC)***, 1/4th is to be deducted towards personal and living expenses of the deceased. On such deductions, the yearly contribution to the family would be Rs.1,80,000/- minus Rs.45,000/- = Rs.1,35,000/-. Considering the age of the deceased was 45 years, the justifiable multiplier would be '14' & applying the same, the actual loss of dependency would come to **Rs.18,90,000/-**.

22] In the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. (2017 ACJ 2700 (SC)***, claimants and respondent Nos. 4 and 5 are entitled to receive **Rs.16,500/-** under the head "Loss to Estate" & **Rs.16,500/-** towards "Funeral Expenses". Further, as held in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors. (2018 ACJ 2782 (SC)***, claimants and respondent Nos. 4 and 5 are entitled to receive spousal, filial and parental consortium for wife, children and parents of **Rs.2,20,000/-.** The claimants and respondent Nos. 4 and 5 are entitled for total compensation of **Rs.21,43,000/-.** Accordingly I answer issue No.3 in the partly affirmative.

<u>As to point No.4 :-</u>

23] In the result, I come to the conclusion that the claimants have proved the claim. With this in answer to issue No.4, I pass the following order:-

ORDER

<table>
<tr><td>1.</td><td>Petition is partly allowed with costs.</td></tr>
<tr><td>2.</td><td>The respondent Nos.1 to 3 are jointly and severally liable to pay compensation of Rs.21,43,000/- (Rupees Twenty-One Lakh Forty-Three Thousand only) to the claimants and respondent Nos. 4 and 5 in the Court (inclusive of NFL amount, if any) together with interest @7% per annum from the date of claim petition till realization thereof in below stated bank account of this Tribunal directly by NEFT/RTGS:-
<table>
<tr><td>Account Name</td><td>The Member, Motor Accident Claim Tribunal, Aurangabad.</td></tr>
<tr><td>Bank Name</td><td>State Bank of India,
Branch Mahavir Chowk, Aurangabad</td></tr>
<tr><td>Type of account</td><td>Savings Account</td></tr>
<tr><td>Account No.</td><td>40777009568</td></tr>
<tr><td>IFS Code.</td><td>SBIN0021112</td></tr>
</table></td></tr>
<tr><td>3.</td><td>The total compensation amount be paid equally to claimant Nos.1 to 3 and respondent Nos. 4 and 5.</td></tr>
<tr><td>4.</td><td>The share of minor claimant Nos.2 and 3 be invested in fix deposit in any nationalized bank till attaining their age of majority under the guardianship of claimant No.1 mother.</td></tr>
</table>

5.	After getting deposited the amount directed above, it be disbursed to the claimants by NEFT/RTGS on submitting their bank account passbook photocopies duly verified by their banker and against proper identification by following the usual office procedure. The claimants shall pay deficit Court fees on the claim amount if any.
6.	Award be drawn-up accordingly.

Digitally signed by MANISH SURYAKANT AGRAWAL
Date: 2025.11.05 16:35:00 +0530

(M. S. Agrawal)
Member, M.A.C.T.,
Aurangabad.

Ch.Sambhajinagar
Date : 05-11-2025

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer : Sau. M. H. Shamnani
Court : Shri. M. S. Agrawal, Member,
M.A.C.T., Aurangabad.
Date : 05-11-2025
Judgment signed by
the Presiding Officer on : 05-11-2025
Judgment uploaded on : 05-11-2025