

MHTH010025022019 	Received on	01/03/2019
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	Decided on	02/07/2026
	Duration	YY MM DD 07 04 01

**IN THE COURT OF MEMBER MOTOR ACCIDENT CLAIMS TRIBUNAL,
THANE, AT THANE**

(Presided over by R.V. Mohite, Member)

Motor Accident Claim Petition No.152/2019

CNR : MHTH010025022019

Exhibit 90

Mr. Macchindra Sitaram Suryawanshi

Age - 64 years, Occ. : Retired,

R/at : 302, Harshada Apat.,

Manisha Nagar Kalwa, Thane (West).

...Claimant.

Versus

1. Mr. Rajesh Hari Gaware

Residing at : A-702, Kashi-Dham,

Jaihind Park, Parsik Nagar, Kalwa, Thane.

2. Bajaj Allianz General Insurance Co. Ltd.

Thane Divisional Office,

Address : 201 to 206, 2nd Floor, Sun Magnetica,

Nr. Teen Hath Naka, Near New RTO,

Louis Wadi, Thane – 400602.

...Opponents.

**Claim : For Rs.50,00,000/- but restricted upto Rs. 1,00,000/-
under section 166 of M.V. Act.**

Advocate for the claimant	- P.M. Tillu.
Advocate for opponent No.1	- B.W. Gaikwad.
Advocate for opponent No.2	- B.M. Umate.

JUDGMENT
(Delivered on 02/07/2026)

The petition is filed under section 166 of the Motor Vehicles Act seeking the compensation of Rs.50,00,000/- (restricted upto Rs.1,00,000/-) alongwith interest on account of accidental injuries sustained by the claimant.

2. Briefs facts of the petition are as :-

On 30/05/2018 at about 8:30p.m., the claimant was returning from his daily walk to his residence towards Manisha Nagar, Kalwa. The claimant was standing on the extreme side of the road with intention to cross the road. At the relevant time, one Activa Scooter bearing No.MH-04-JN-5262 came from Parsik Nagar proceeding towards Kharegaon Naka i.e. from wrong direction in high and excessive speed without observing traffic rules and in rash and negligent manner i.e. Zig-Zag manner and dashed to the claimant. As a result, the claimant fell down on the road and sustained multiple injuries. The claimant was taken to Sapphire Hospital, Kalwa. Thereafter he was shifted to Jupiter Hospital, Thane. He was admitted there from 30/05/2018 to 30/06/2018, 25/08/2018 to 01/09/2018 and 16/12/2018 to 20/12/2018. Thereafter, the claimant also consulted Dr. G.N. Gaikwad an Orthopaedic Surgeon. The treatment is still going on.

3. The accident took place due to sole negligence of rider of motor Scooter bearing No.MH-04-JN-5262. Kalva police registered C.R.

No.213/2018 under section 279, 338 of I.P.C. and section 184 of the M.V. Act against the rider and owner of the offending vehicle and filed charge-sheet.

4. The claimant spent more than Rs.20,00,000/- for his medical treatment. He was 64 years old at the time of accident. He was retired from police department and getting pension of Rs.33,000/- per month. The claimant has sustained pecuniary and non pecuniary damages. Therefore, he is entitled to get just compensation with interest from the date of petition.

5. The opponent No.1 has filed written statement at Exh.14 and contested the claim. The opponent denied age, occupation, service and income of the injured. It is contended that the F.I.R. was lodged against unknown vehicle. The motor Scooter bearing No.MH-04-JN-5262 was used by son of opponent No.1 namely Ajinkya. On the day of accident, Ajinkya had taken said Scooter early in the morning for his daily work at Mumbai and returned back to home late at night. Thus, the said motor Scooter was never involved in the said accident. The said motor Scooter was validity insured with opponent No.2 at the time of alleged accident. So the opponent No.2 is solely responsible to satisfy the claim. Hence, he prays to dismiss the petition.

6. The opponent No.2 has filed written statement at Exh.20 and contested the claim. The opponent denied age, occupation, service and income of the injured. It is contended that the rider of offending Scooter bearing No.MH-04-JN-5262 was not holding valid and effective driving licence at the time of accident. It is further contended that claimant was negligently crossing the road without observing traffic rules and regulation. The claimant himself was tortfeasor. It is prayed that the claim petition be dismissed with cost.

7. My Ld. Predecessor has framed issues at Exh.22. Those issues along with my findings thereon with reasons are as under :-

Sr. No.	Issues	Findings
1.	Does petitioner prove that on 30/05/2018 at 8:30p.m., the accident occurred due to rash and negligent riding of motorcycle No.MH-04-JN-5262 ?	Yes.
2.	Does petitioner prove that he sustained permanent disability in the accident ?	Yes.
3.	Does respondent No.2 prove that respondent No.1 had committed breach of terms and conditions of policy and therefore, it is not liable to pay compensation ?	Yes.
4.	Whether the petitioner is entitled for compensation ? If yes, to what extent ?	Yes, Rs.19,20,129/-.
5.	What is the extent of liability of each of the respondents in the event the claim is allowed ?	Opponent No.2 at first instance and then to recover from opponent No.1.
6.	What order and award ?	As per final order.

8. Heard Learned Advocate for the claimant. He has filed written notes of argument at Exh.86. He is relied upon following case laws -

- i] **R.D. Hattangadi Versus Pest Control (India) Pvt. And others reported in 1995 ACJ 366,**

- ii] **Yadava Kumar Versus The Divisional Manager, National Insurance Co. Ltd. and Another reported in Civil Appeal No.7223 of 2010 decided by the Hon'ble Supreme Court of India,**
- iii] **The New India Assurance Co. Ltd. Sakinaka, Mumbai Versus Mrs. Dolly Satish Gandhi and others reported in First Appeal No.1344 of 2014 decided by the Hon'ble High Court of Judicature at Bombay.**
- iv] **National Insurance Co. Ltd. Versus Swaran Singh and others reported in 2004 ACJ 1.**

9. Heard Learned Advocate for opponent No.1. He has filed written notes of argument at Exh.89. He is relied upon following case laws -

- i] **Suraj Singh Dhakad Versus Smt. Shriwati Dhakad reported in 2024 Supreme (Online) (MP) 43060.**
- ii] **The Municipal Committee, Jullundur City Versus Romesh Saggi and others, reported in F.A.O. No.125 of 1963 I.L.R. Punjab and Haryana.**
- iii] **K.G. Premshankar Versus Inspector of Police and another, reported in (2002) 8 Supreme Court Cases 87.**

10. Heard Learned Advocate for opponent No.2. He has filed written notes of argument at Exh.85.

REASONS

As to Issue Nos.1 and 2 :-

11. Both issues are interlinked with each other hence, they are decided together.

12. In support of contentions in the claim petition, the daughter of claimant has filed her evidence affidavit at Exh.30. Said affidavit is replica of the petition. In addition to that, the claimant has filed F.I.R. at Exh.33, spot panchanama at Exh.34, R.C. book of vehicle at Exh.35, charge-sheet at Exh.36, insurance policy at Exh.37 and Aadhar card of claimant and witness at Exh.38 and Exh.39.

13. The daughter of claimant has deposed as natural guardian of the claimant. But she has not produced order of any court declaring or appointing her as natural guardian of the claimant under the Guardian and Wards Act. Further, she has not produced power of attorney given by the claimant to authorize her to depose in this matter on his behalf. So the evidence of daughter of the claimant is taken into consideration as witness of the claimant.

14. The claimant has not given any reason or produced any documentary evidence on record for not deposing in this matter. So adverse inference is drawn against him that he has not entered into witness box to avoid the cross-examination at the hands of opponents.

15. There is no any dispute about accidental injury to the claimant. The opponent No.1 has challenged involvement of motor Scooter bearing No.MH-04-JN-5262 in the said accident. He has deposed at Exh.53. As per his version, F.I.R. was lodged against unknown person with respect to unknown vehicle. There is nothing on record to collect him and his vehicle in the alleged accident. He has purchased said motor Scooter for his elder son Ajinkya for using for his daily works. On the day of alleged accident, Ajinkya had taken said motor Scooter early in the morning for his daily work at Mumbai and returned back to home late at night. His vehicle was never involved in the accident.

16. As per the cross-examination of opponent No.1, Karan @ Bhajju Rajesh Gavare is his son. At the time of accident, Karan was 18 years old. The police filed F.I.R. against him and his son Karan in respect of accident. He and his son accepted charge against them in Lok-Adalat.

17. I.O. has carried out investigation and filed charge-sheet against the opponent No.1 and his son Karan @ Bhajju. Neither the opponent No.1 nor his son Karan filed complaint against filing of false prosecution before Higher Authority or before Senior Police Officials. On the contrary, both the opponent No.1 and his son appeared in person on 01/08/2021 before the Judicial Magistrate First Class, Thane and pleaded guilty for the offences punishable under section 279, 337, 338 of I.P.C. and section 184, 134, 3 and 5 of the M.V. Act. Ld. JMFC Court explained consequences of pleading guilty to the opponent No.1 and his son Karan. They were also asked by the Court whether they are pleading guilty under any pressure to which they replied that they are pleading guilty voluntarily. On the same day, both of them were sentenced to pay fine. After pleading guilty and depositing of fine, they have not challenged order as well as prosecution before Higher Authority.

18. The opponent No.2 has not examined his son Ajinkya to prove contentions in his written statement that on the day of alleged accident Ajinkya took offending motor Scooter at Mumbai early in the morning and returned back at home late at night. There is absolutely no evidence to show that Ajinkya exclusively using offending motor Scooter prior to accident, on the date of accident and after the accident. Thus, the opponent No.1 has failed to prove that the offending motor Scooter was not involved in the alleged accident.

19. As per the contention of opponent No.2, the alleged accident took place due to negligence of claimant. But the opponent No.2 has not lead any evidence. The opponent No.2 has not examined rider of offending vehicle. There is absolutely no evidence on record to show any negligence of claimant in the alleged accident.

20. As per evidence on record, at the time of accident, the claimant was crossing the road. At the relevant time offending motor Scooter bearing No.MH-04-JN-5262 came from Parsik Nagar towards Kharegaon Naka in high and excessive speed without observing traffic rules and in rash and negligent manner and dashed to the claimant. As a result, the claimant fell down on the road and sustained multiple injuries. This shows rash and negligent riding of rider of offending vehicle as well as its speed. The rider of offending Scooter was the person having last opportunity to avoid accident. There is nothing on record to show any contributory negligence on the part of claimant. Thus, the accident occurred due to rash and sole negligent riding of rider of offending vehicle. The claimant sustained injuries in the said accident.

21. As per the evidence of daughter of claimant, the claimant has sustained 43.75% permanent partial neurological disability, 25% permanent partial orthopedic disability and 50% hearing disability. The claimant has examined Dr. Vinayak Dattatray Joshi at Exh.55 and produced disability certificate at Exh.56. The claimant has also examined Dr. G.N. Gaikwad at Exh.59 and produced disability certificate at Exh.60. As per the cross-examination of Dr. Joshi, the treating doctor of the claimant was Dr. Purandare. He never seen the patient prior to 02/11/2020 and after 25/09/2023. Disability certificate is issued on the basis of documents available from the patient. He has not preserved notes and reports of tests. As per the cross-examination of

Dr. Gaikwad, he never met with patient prior to 25/09/2023. At the time of issuance of disability certificate, he has perused earlier medical papers of Jupiter Hospital. He has not given limb-wise bifurcation of disability. The disabilities mentioned in the certificate is to a particular limb. Injuries mentioned in the disability certificate can be recovered by lapse of time.

22. The claimant was 64 years old at the time of accident. He was retired person. There is absolutely no evidence on record about doing any work by the claimant at the time of accident. The daughter of the claimant has not produced any evidence on record to show that the claimant intends to start police academy. The benefits which the claimant is getting after retirement are not stopped due to accident. There is no effect on the pension benefits of the claimant due to accidental injuries or alleged disabilities. Further, Dr. Purandare was treating doctor of the claimant. He has not issued any disability certificate. Dr. Joshi and Dr. Gaikwad who issued disability certificate are not treating doctor of the claimant. Further, the claimant has not come before the court to depose on oath.

23. By taking into consideration above evidence, the claimant sustained injuries as per discharge summaries of Jupiter Hospital. He has sustained permanent partial neurological disability and permanent partial orthopedic disability. But not as calculated by Dr. Joshi and Dr. Gaikwad. These disabilities do not affect functional capacity of the claimant as he is retired person and not doing any other work. Thus, the claimant has not sustained any functional disability. Accordingly, I answer Issue Nos.1 and 2 in the affirmative.

As to Issue No.3 :

24. The opponent No.2 has contended that owner of offending vehicle has committed breach of terms and conditions of insurance

policy. The rider of offending Scooter was not holding valid and effective driving licence at the time of accident. Therefore, there is willful breach of the terms and conditions of the insurance policy. To prove this fact, the opponent No.2 has examined its TP Expert – Prerna Singh at Exh.78 and produced office copy of notice dated 22/04/2019 at Exh.81 and certified copy of half charge-sheet at Exh.82.

25. I.O. carried out investigation and filed charge-sheet under section 279, 337, 338 of I.P.C. and section 184, 134, 3 and 5 of the M.V. Act. The opponent No.1 has not produced driving licence of driver of offending vehicle who is his son Karan till today. On the contrary, the opponent No.1 and his son Karan have pleaded guilty for all offences. The opponent No.2 sent to notice to the opponent No.1 for production of driving licence and other documents of offending vehicle. But opponent No.1 neither replied said notice nor produced documents before the opponent No.2. Thus, the rider of offending vehicle was not holding valid driving licence to ply it at the time of accident. There is breach of terms and conditions of insurance policy by the opponent No.1. Hence, I answer Issue No.3 in the affirmative.

As to Issue Nos.4 to 6 :

26. Accident occurred on 30/05/2018 due to rash and negligent driving of rider of offending motor Scooter bearing No.MH-04-JN-5262. The claimant sustained injuries due to accident. So, he is entitled to get compensation.

27. The offending motor scooter was duly insured by opponent No.2 at the time of accident. Insurance policy is at Exh.37. Its validity period was from 30/03/2018 to 29/03/2019. It covers the date of accident i.e. 30/05/2018.

28. The offending vehicle was owned by the opponent No.1 and it was insured by the opponent No.2 at the time of accident. The policy issued to opponent No.2 was not cancelled with respect to third party. However, there is breach of terms and conditions of insurance policy on behalf of the opponent No.1.

29. It is observed by the various High Courts and the Hon'ble Apex Court that the insurance company to satisfy the award in favour of third party at the first instance and then to recover the awarded amount from the owner of the vehicle where the insurance company could establish breach of terms of policy on a part of owner of the vehicle.

30. Considering above discussion, it is just and proper to direct the insurance company to satisfy the award and then recover from the opponent No.1 i.e. the owner of offending vehicle.

31. As per the evidence of claimant, he is retired from Police Department and getting pension of Rs.33,000/- per month. No retirement benefit has been stopped due to accident. Hence, I hold that there is no loss of future income to the claimant.

32. As per the evidence of claimant, after accident he was removed to Sapphire Hospital, Kalwa and after taking first aid he was admitted at Jupiter Hospital, Thane on 30/05/2018 and discharged on 30/06/2018. He was again admitted on 25/08/2018 and discharged on 01/09/2018. He was again admitted on 16/12/2018 and discharged on 20/12/2018. He paid Rs.11,67,648/-, Rs.1,00,054/- and Rs.2,02,427/- towards hospital bills. To prove this fact, the claimant has examined Billing Manager of Jupiter Hospital – Mahesh Ragho Patil at Exh.43. He has produced discharge summaries at Exh.47 to Exh.49 and hospital bills at Exh.50 to Exh.52. There is nothing on record to disbelieve said

evidence. So, the claimant is entitled to get an amount of **Rs.14,70,129/-** towards hospital bills.

33. Further as per the evidence of the claimant, he has paid Rs.3,79,125.37/- towards medicines. But he could not preserve entire bills. He has filed 51 cash memos to the extent of Rs.46,225.37/-. In absence of bills, the claimant is entitled to get an amount of **Rs.2,00,000/-** towards medicine bills.

34. Further the claimant is entitled to get **Rs.1,50,000/-** towards pains and sufferings, mental and physical shock, hardship, inconvenience, loss of amenities in life on account of accidental injuries, **Rs.25,000/-** towards special diet, **Rs.25,000/-** towards conveyance, **Rs.50,000/-** towards future medical expenses.

35. In the circumstances, the claimant is entitled to get compensation as under -

Hospital bills	Rs.14,70,129/-
Medicine bills	Rs. 2,00,000/-
Pains and sufferings, mental and physical shock, hardship, inconvenience, loss of amenities in life on account of accidental injuries	Rs. 1,50,000/-
Special diet	Rs. 25,000/-
Conveyance	Rs. 25,000/-
Future medical expenses	Rs. 50,000/-
Total amount	Rs.19,20,129/-

36. The claimant is entitled to get compensation of **Rs.19,20,129/-** (Rupees Nineteen Lakh Twenty Thousand One Hundred

Twenty-Nine Only) towards pecuniary and non-pecuniary damages from opponents. The opponent No.1 has committed breach of terms and conditions of policy. In such circumstances, the opponent No.2 insurance company to pay compensation amount at first instance and then to recover the same from opponent No.1. The Hon'ble Apex Court and the Hon'ble Bombay High Court has awarded interest @ 9% p.a. in various decisions. Hence, the claimant is entitled to get an interest @ 9% p.a. from the date of petition till depositing of the amount. The case laws cited by the claimant are applicable here. The case laws cited by the opponent No.1 are not applicable here. Therefore, I answer Issue No.4 in the affirmative as Rs.19,20,129/-, Issue No.5 as by opponent No.2 to pay at first instance and then to recover from opponent No.1 and for giving answer to Issue No.6, I pass the following order-

ORDER

1.	The petition is partly allowed with proportionate costs.
2.	The opponent Nos.1 and 2 do pay Rs.19,20,129/- (Rupees Nineteen Lakh Twenty Thousand One Hundred Twenty-Nine Only) to the claimant with interest @ 9% per annum from the date of petition till the date of depositing said amount within period of one month from the date of award, in bank account of the Motor Accident Claims Tribunal, Thane, by RTGS or NEFT, as per directions of the Hon'ble Apex Court in W.P. No.534/2020.
3.	Out of amount of compensation given to claimant, Rs.4,00,000/- (Rupee Four Lakh Only) be invested in fixed deposit for the period of 2 years, in his name, in any Nationalized Bank.
4.	The branch manager of concerned bank is directed to pay the amount of fixed deposit with interest to concerned claimant

	after its maturity without asking further order of this Tribunal for its realization.
5.	Remaining compensation amount be transferred by RTGS or NEFT in the account No.110297684589 of claimant maintained at Canara Bank, Branch – Naupada, Thane, having IFSC Code – CNRB0015460, his Aadhar card number is 367064203431 and PAN card number is AMLPS7108J, as per award.
6.	The opponent No.2 is directed to inform in writing to the claimant and the Tribunal after depositing the amount in M.A.C.T account by mentioning claim petition number, date of depositing amount, the amount, UTR number of NEFT or RTGS transaction and name of claimant.
7.	The claimant do pay the deficit court fee, if any.
8.	Award be drawn up accordingly.

Thane
Date : 02/07/2026.

(R.V. Mohite)
Member, Motor Accident Claims Tribunal,
Thane.