MHNS010004842023

Received on	:-	12/01/2023		
Registered on	:-	17/01/2023		
Decided on	:-	10/08/2026		
Duration	:-	Y.	M.	D.
		03	06	29

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, NASHIK, AT NASHIK

(Presided over by R.N. Rokade)

Motor Accident Claim Petition No. 99/2023 **Exh. 27.**

Smt. Asha Tanaji Thombre,
Age – 32 yrs., Occ. :- Tailoring work,
R/o. Darrel, Tal. Chandwad,
Dist. Nashik. **...Applicant**

Versus

1] Tanaji Changdev Thombre,
Age :- 35 yrs., Occ.:- Service,
R/o. Darhel, Tal. Chandwad, Dist. Nashik,

2] General Manager,
Tata AIG Insurance Company Limited,
Address :- 202/A, The Oriyan.
2nd floor, 5, Koregaon Park, Pune. **...Opponents**

Appearance :-
Mr. B.G. Chitalkar, the learned Advocate for the applicant.
Smt. Shabnam E. Memon, the learned Advocate for opponent No.1.
Mr. S.V. Aher, the learned Advocate for opponent No.2.

J U D G M E N T

(Delivered on this 10th day of August, 2026)

1] This application has been filed under Section 166 of the Motor Vehicles Act, 1988 (as amended by the Motor Vehicles (Amendment) Act, 2019), seeking compensation on account of the grievous injuries and permanent disability sustained by the applicant in a motor vehicle accident.

Shorn of superfluities, the material averments in the application may be summarised as under :

2] On 11/11/2022, at about 02:15 p.m., the applicant, then aged 32 years and engaged in the tailoring business, was travelling in a Bolero vehicle bearing registration No. MH-14/AZ-5286 from Babina, Zashi (Uttar Pradesh) towards village Darhel, Tal. Chandwad, Dist. Nashik. While the said Bolero was proceeding on the Mumbai–Agra Highway No.52, from Sendhava towards Shirpur, opposite Vikas Hotel, the driver of the said Bolero drove the vehicle in a very rash and negligent manner, at an excessive speed, and without observing the traffic rules and regulations. As a result, the said Bolero vehicle turned turtle. Due to the said accident, the applicant sustained a grievous injury to her head, brain, right leg, and ribs of the chest. The applicant incurred medical expenses amounting to Rs.50,000/- towards treatment. The accident occurred solely due to the negligence of the driver of the aforesaid Bolero vehicle. A crime was registered against the said driver at Shirpur Police Station vide C.R. No.280/2022.

3] Prior to the accident, the applicant was engaged in the tailoring business and was earning Rs.15,000/- therefrom. On account of the injuries sustained in the accident, the applicant is unable to carry on her occupation and earned her livelihood as before. Hence, the present application has been filed seeking compensation for loss of future income and under other conventional heads.

4] Opponent No.1 resisted the claim by filing a written statement (Exh.12). All the material averments made in the application, which are adverse to the interest of opponent No.1, have been stoutly denied. The mode and manner of the accident have also been denied. Ultimately, it is contended that the aforesaid Bolero vehicle was insured with opponent No.2 at the relevant time, and therefore, any liability arising out of the said accident, is required to be indemnified by opponent No.2. On these and amongst other grounds, opponent No.1 has prayed for dismissal of the application.

5] Opponent No.2, the insurer, resisted the claim by filing its written statement (Exh.18). All the averments made in the application, which are adverse to the interest of opponent No.2, have been specifically denied. The personal details of the applicant, including her age, occupation and income, have also been disputed. It is contended that alleged accident occurred on

11/11/2022, whereas the F.I.R. came to be lodged on 12/11/2022, i.e., with a delay of one day. According to opponent No.2, the said delay casts serious doubt of the involvement of Bolero vehicle bearing No. MH-41-AZ-5286 in the alleged accident. Though it is admitted that the aforesaid Bolero vehicle was insured with opponent No.2 at the relevant time, it is contended that, the liability of opponent No. 2, if any, is subject to the terms, conditions, limitations and compliance with the statutory provisions of the policy. It is further contended that the driver of the said vehicle was not holding a valid and effective driving licence at the relevant time. The applicant has been put to strict proof of all allegations relating to negligence, injuries, permanent disability, hospitalization, medical expenses, and loss of income. It is specifically denied that the driver of the aforesaid vehicle was negligent or solely responsible for the accident. On these grounds, opponent No.2 prayed for dismissal of the application with costs.

6] In the light of the rival pleadings, issues were framed at Exh.13. My findings on the said issues, together with the reasons therefor, are as follows :

Sr. No.	**ISSUES**		**FINDINGS**
[1]	Does claimant/applicant prove that on 11/11/2022 at about 02.15 p.m. opposite to Hotel Vikas, village Hadakhed Shivar, on Sendhava side to Shirpur side driver of opponent No.1 drove Bolero Vehicle bearing No. MH-	..	Yes.

	41-AZ-5286 in rash and negligent manner and turtle the said bolero vehicle ?		
[2]	Does claimant/applicant prove that he was travelling by said Bolero vehicle and sustained grievous hurt and permanent disability in said accident due to rash and negligent driving of driver of respondent No.1 ?	..	Partly in affirmative to the extent of simple injuries.
	ADDITIONAL ISSUES		
[2A]	Does the opponent No.2 prove that there was a breach of terms and conditions of insurance policy due to non-holding of license and permit ?	..	No.
[2B]	Does the opponent No.2 further prove that, the claimant/applicant was travelling in vehicle as fare paying passenger ?	..	No.
[3]	Is claimant/applicant entitled to compensation ? If yes, to what extent ?	..	Yes. As per final order.
[4]	What award ?	..	As per final order.

R E A S O N S

7] In order to substantiate the averments made in the application, CW1 Asha Tanaji Thombre, entered the witness box. The applicant has also produced certified copies of the investigation papers in support of the claim. Since the said investigation papers have already been exhibited in M.A.C.P. No.100/2023, arising out of the same accident, and both parties admitted that the said investigation papers pertain to the present accident, they are read in evidence and considered for the purposes of this application as well. In rebuttal, the opponents did not adduce any oral evidence.

8] At the outset, it is necessary to refer to the undisputed facts. It is not in dispute that, at the time of the accident, the applicant was travelling in the Bolero vehicle bearing No.MH-41/AZ-5286. The controversy between the parties pertains to the entitlement of the applicant to compensation under Section 166 of the Act and the liability of the opponents to pay the same to satisfy the award.

<u>As to Issue Nos.1 and 2</u> :

9] The testimony of CW1 Asha Tanaji Thombre that she met with the accident and sustained injuries in an accident involving the Bolero vehicle bearing No.MH-41/AZ-5286 finds requisite support in the true copy of F.I.R., the spot panchanama of the accident (Exh.22). The true copy of F.I.R. (Exh.22) reveals that Ashabai Tanaji Thombre lodged the F.I.R., wherein she had narrated the manner in which the accident occurred, as well as the resultant injuries sustained by the passengers travelling in the said Bolero vehicle. The spot panchanama clearly establishes the involvement of the Bolero vehicle in the accident. It records the damage sustained by the said vehicle immediately after the accident, which constitutes contemporaneous evidence corroborating the applicant's version regarding the occurrence of the vehicle and the involvement of the aforesaid vehicle. In the backdrop of the aforesaid material, it can be safely inferred that the applicant was travelling in the Bolero vehicle bearing No.MH-41-AZ-5286 and sustained injuries in the said accident.

10] There can be no dispute about the broad proposition that the liability to pay compensation is rested on the principle of injury due to negligence. Indubitably, the victim or dependent of the victim, as the case may be, has to establish negligence on the part of the driver of the offending vehicle so as to make the owner and insurer liable to pay the compensation, in an application under Section 166 of the Act. But the degree of proof of negligence varies. In a claim petition the applicant is not expected to establish "gross negligence and rashness" at par with the burden which rests upon the prosecution in a criminal case. It has to be established and proved on the touchstone of preponderance of probabilities, with a lesser degree of proof.

11] On the aforesaid touchstone, reverting to the facts of the case, the F.I.R. and the spot panchanama vividly depict the manner in which the accident occurred. On the day of the accident, the aforesaid Bolero vehicle had turned turtle and the occupants thereof had sustained injuries. From the very nature of the accident it becomes evident that no other vehicle or agency was even remotely involved. The sole negligence of the opponent No.1 was, thus, the direct cause of the accident.

12] At this stage, the learned advocate for opponent No.2 submitted that no document has been place on record to substantiate the claim of the applicant that she has suffered grievous injuries, much less permanent disablement.

13] It is true that CW1 Asha Tanaji Thombre conceded in no uncertain terms that she has not produced permanent disability certificate on record. The applicant did not take pains to either examining the treating doctor or to adduce any other evidence in proof of the grievous injuries sustained by her. As the applicant herself does not profess to establish that she sustained any permanent disability on account of the injuries sustained in the accident, there is no question of determination to the extent of the permanent disability. Hence, I am inclined to answer issue No. 2 in the affirmative to the extent of simple injuries only on the strength of the testimony of CW1 Asha Thombre and that too, by construing it rather generously, in the backdrop of the nature of the proceeding and the object of the Act. Thus, I answer issue No.1 in the affirmative and issue No. 2 in partly affirmative to the extent of simple injuries.

<u>As to issue Nos. 2A and 2B :</u>

14] At this juncture, it is submitted on behalf of opponent No.2 that opponent No.1 was not holding a valid and effective driving licence at the time of the accident and had thereby committed a breach of the terms and conditions of the insurance policy. However, no cogent evidence has been adduced in support of the said contention. Nothing has been brought on record to establish that opponent No.1 committed any breach of the terms and conditions of the insurance policy.

15] The learned Advocate for the opponent No.2 further contended that the applicant was travelling in the offending vehicle as a fare paying passenger. Thus, opponent No.1 committed a breach of the terms and conditions of the insurance policy. Consequently, it is submitted that the insurer is not liable to indemnify the insured or to pay any compensation.

16] It is pertinent to note that opponent No.2 has not examined any witness to substantiate its contention that the applicant was travelling as a fare paying passenger at the time of the accident. On the contrary, the evidence on record establishes that opponent No.1 was travelling in the said vehicle alongwith his family members. Hence, the contention that the applicant is a fare paying passenger is not accepted. Consequently, there is no breach of the terms and conditions of the insurance policy. The insurance policy placed on record reveals that the offending Bolero vehicle was covered under a Comprehensive Package Policy. It is well settled that the risk of occupants travelling in a private vehicle is covered under a comprehensive package policy. The evidence on record further establishes that the applicant was travelling as an occupant of the Bolero vehicle and not as a fare paying passenger. Therefore, the applicant falls under the category of a third party for the purposes of the Act and the insurer cannot avoid its statutory as well as contractual liability to indemnify the insured. Accordingly, I answer issue Nos.2A and 2B in negative.

As to issue Nos. 3 and 4 :

17] In view of findings recorded on issue Nos.1 and 2, in the absence of the evidence which lends in support to the claim of the applicant is having sustained grievous injuries and incurred expenses to the tune of Rs.50,000/- in my view it would be in the fitness of things to award a consolidated amounts towards the injuries sustained in the accident and for the expenses which the applicant can be assumed to have reasonably incurred for the treatment. Separate compensation under the head of pain and suffering, under in the light of the nature of simple injuries may not be justifiable.

18] Having regard to the gamut of the circumstances, the nature of the claim, the nature of injuries and the period of hospitalization (as claimed by the applicant), a sum of **Rs. 25,000/-** would be just and reasonable compensation **for the**

injuries sustained by the applicant. Hence, I am inclined to answer issue No. 3 in the affirmative to the aforesaid extent.

19] Lastly, the aspect of interest under Section 171 of the Act is discussed in recent pronouncement of the Hon'ble Supreme Court in the case of **Kajal Vs. Jagdish Chand and others, reported in (2020) 4 SCC 413,** wherein it was held that the entire amount of compensation shall carry an interest of 7.5% per annum from the date of filing of the claim petition till payment of the amount. In view of the above observation, I am inclined to award interest @ 7.5% per annum. Hence, the following order :

O R D E R

1] The application is partly allowed with proportionate costs.

2] Opponents Nos.1 and 2 do pay jointly and severally a sum of Rs.25,000/- [Rs. Twenty Five Thousand only] to the applicant with interest @ 7.5% p.a. from the date of claim-petition. On realization, the entire amount of compensation with interest be paid to the applicant by an account payee cheque on due identification and verification.

3] Applicant shall produce her bank account details along with either a certificate of the banker giving all details of the bank account including IFS Code or a copy of a cancelled cheque of her bank account.

4] Opponents are directed to deposit the amount of award by way of NEFT / RTGS in the account of Tribunal bearing CA A/c No. 00000033377237119, IFSC Code

No. SBIN0000437 State Bank of India, Treasury Branch, Nashik alongwith prescribed format to the Tribunal and shall send copy of same to the applicant.

5] Award be drawn accordingly.

(Dictated, delivered and pronounced in an open Court.)

ROKADE RAHUL NAGNATH

Digitally signed by ROKADE RAHUL NAGNATH
Date: 2026.08.10 18:11:08 +0530

Date :- 10/08/2026.

Nashik.

(R.N. Rokade)
Member,
Motor Accident Claims Tribunal,
Nashik.