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BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL AT : BHOOM

(Presided over by: B.G. Dharmadhikari)

Motor Accident Claim Petition No.17/2019. **Exh.**

Claimants : 1. Ashvini w/o Ganesh Kawade
Age- 23 years, Occu.- Household,

2. Sambhuraje s/o Ganesh Kawade
Age- 1 years-minor
U/G. Of real mother
Ashvini w/o Ganesh Kawade

3 Bhaskar Mohanrao Kawade
Age- 64 years, Occu.- Agri.,

4 Daivshala w/o Bhaskar Kawade
Age- 61 years, Occu.- Household,
All R/o. Washi, Tq. Washi, Dist. Osmanabad.

Versus

Respondents: 1. Ashruba s/o Sahurao Gatkar
Age Major, Occu. Business
R/o. Ambi, Tq. Bhoom, Dist. Osmanabad.
Owner of Bolero Jeep No. MH-25-R-9048

2. The Divisional Manager,
Oriental Insurance Co. Ltd.,
Through Branch Office, Osmanabad.

Claim : U/section 166 of the Motor Vehicles Act, 1988.

Appearance : Shri. R. S. Gaikwad advocate for claimants.
Ex-parte against respondent No.1
Shri. P.P. Devale, advocate for respondent No.2

JUDGMENT
(Delivered on : 04.08.2026)

1- The present claim petition has been instituted by the claimants under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.1,06,60,000/- together with interest on account of the accidental death of Ganesh Bhaskarrao Kawade in a motor vehicular accident which occurred on 20.04.2018.

2 The claimant No.1 is the widow of the deceased, claimant No.2 is the minor son represented through claimant No.1, whereas claimant Nos.3 and 4 are the parents of the deceased. It is their case that they were wholly dependent upon the earnings of the deceased and have suffered irreparable pecuniary as well as non-pecuniary loss on account of his untimely death.

3 Respondent No.1 is the registered owner of Bolero Jeep bearing registration No. MH-25-R-9048 involved in the accident, whereas respondent No.2 is its insurer under a policy admittedly in force on the date of accident.

4 Notice of the petition was duly served upon both the respondents. Despite service, respondent No.1 failed to appear before the Tribunal. Consequently, by order passed below Exhibit-1, the matter proceeded ex parte against respondent No.1.

5 Respondent No.2–The Oriental Insurance Company Limited appeared through its learned advocate and filed written statement at Exhibit-13 resisting the claim.

Case of the Claimants -

6 The claimants pleaded that on 20.04.2018 the deceased Ganesh Kawade had gone to village Lanjeshwar along with his friend Ajay Gadhave in the Bolero Jeep belonging to respondent No.1 for attending Satyanarayan Pooja and dinner at the house of his sister. While returning to Washi during night hours, the deceased himself was driving the said jeep. According to the claimants, the road widening work on National Highway No.52 was then in progress and heaps of stones and construction material were lying on both sides of the road. It is alleged that due to the prevailing road conditions, the front tyre of the jeep suddenly burst, resulting in the vehicle turning turtle, causing fatal head injuries to Ganesh Kawade, who died on the spot. The claimants have attributed the accident to the mechanical defect in the vehicle coupled with the hazardous condition of the road and have contended that it was virtually an unavoidable accident.

7 It is further pleaded that immediately after the accident, the deceased was shifted to the Rural Hospital, Washi, where he was declared dead. Initially, Accidental Death No.38 of 2018 under Section 174 of the Code of Criminal Procedure came to be registered. Thereafter, on the statement of claimant No.3, Crime No.104 of 2018 under Sections 279, 337, 338 and 304-A of the Indian Penal Code came to be registered.

8 The claimants have further pleaded that at the time of death, Ganesh Kawade was 28 years of age, possessed educational qualifications up to M.Com., was pursuing Chartered Accountancy course, had undergone several entrepreneurship development programmes and was carrying on the business of Gurukrupa Steel Furniture and Electronics at Washi besides managing agricultural activities of the family. According to them, the deceased was earning not less than Rs.40,000/- per month and was the sole breadwinner of the family. His untimely death has allegedly deprived the widow of marital companionship, the minor son of paternal care and the aged parents of their only source of support.

9 On these averments, the claimants have sought compensation of Rs.1,06,60,000/- under various heads with interest at the rate of 12% per annum from the date of accident till realization, making both respondents jointly and severally liable.

Defence of Respondent No.2 -

10 Respondent No.2 denied the claim in toto. It admitted that the offending vehicle was insured with it under a valid policy covering the relevant period but contended that its liability, if any, would be governed strictly by the terms and conditions of the insurance policy.

11 The principal defence raised by respondent No.2 is that the deceased had borrowed the jeep from respondent No.1, who was his friend, for attending a family function and was himself driving the vehicle at the relevant time. It is contended that the deceased thus

stepped into the shoes of the owner and ceased to be a third party. Since no other vehicle was involved in the accident, the deceased himself being the driver and alleged tortfeasor, his legal representatives cannot maintain a petition under Section 166 of the Motor Vehicles Act against the insurer.

12 The Insurance Company further denied that the accident occurred due to bursting of tyre, mechanical defect or road condition. According to it, the accident occurred solely because the deceased drove the jeep at an excessive speed in a rash and negligent manner and thereby lost control over the vehicle. It was specifically pleaded that claimant No.3 himself subsequently lodged a report with the police attributing negligence exclusively to the deceased and on the basis thereof Crime No.104 of 2018 came to be registered against the deceased.

13 Respondent No.2 also disputed the age, occupation, income and educational qualifications of the deceased, denied that he was earning Rs.40,000/- per month, and contended that the amount claimed is highly excessive and unsupported by acceptable evidence. Though a plea regarding absence of valid driving licence was initially taken in the written statement, the same did not survive in view of the production of the driving licence on record and no evidence was adduced by the insurer in that regard.

Issues -

14 On the basis of rival pleadings, my learned predecessor framed issues at Exh.14. The same are reproduced herein below along with my findings thereon, for the reasons to follow:

	POINTS	FINDINGS
1)	Whether petitioners prove that, accident dated 20.04.2018 occurred due to mechanical defect of vehicle as well as due to the road situation ?	**In the negative**
2)	Whether respondent no. 2 proves that deceased borrowed the suit jeep i.e. suit vehicle from the respondent no. 1 ?	**In the affirmative.**
3)	Whether respondent no. 2 proves that the suit jeep was insured with the respondent no. 2 for period 17.08.2017 to 16.08.2018 ?	**In the affirmative.**
4)	Whether petitioners are entitled for compensation ? If yes, from whom and to what extent ?	**In the negative**
5)	What order ?	**As per final order.**

Evidence-

15 In order to substantiate the claim, the claimants examined claimant No.3 Bhaskar Mohanrao Kawade, father of the deceased, at Exhibit-15. Besides his oral testimony, several documents came to be produced, including the spot panchanama, inquest panchanama, post-mortem report, FIR, registration certificate of the vehicle, registered lease deed, Shop Act licence, educational certificates, entrepreneurship training certificates, driving licence and other documents. Most of these documents were admitted by respondent No.2.

16 Respondent No.2 did not examine any witness in support of its defence. However, it produced the complete insurance policy (Exhibit-56), which was taken on record. Neither party produced the Motor Vehicle Inspection Report, charge-sheet or final police

report. Likewise, no income-tax returns, books of accounts or other documentary proof of the alleged business income of the deceased were brought on record.

Scope of Determination -

17 Having heard the learned advocate for the claimants and the learned advocate for respondent No.2 and upon careful scrutiny of the oral and documentary evidence, it becomes evident that the controversy in the present case lies in a narrow compass. The first question is whether the claimants have succeeded in establishing that the accident occurred due to mechanical defect of the vehicle or hazardous road conditions and not because of negligence of the deceased himself. The second question is whether, the deceased having admittedly borrowed the vehicle from respondent No.1 and being himself its driver at the time of accident, can be regarded as having stepped into the shoes of the owner so as to disentitle his legal representatives from maintaining a claim under Section 166 of the Motor Vehicles Act. The third question relates to the effect of the comprehensive insurance policy (Exhibit-56) and the rival judicial precedents relied upon by the parties, particularly the recent decision of the Hon'ble Supreme Court in **Manjusha v. United India Assurance Co. Ltd. (2025)**, vis-à-vis the earlier decisions governing the liability of the insurer where the deceased himself was the borrower-driver of the insured vehicle.

Hence, I proceed to appreciate the evidence on record.

REASONS

As to Issue Nos.1, 2 and 3 :-

18 Since all these issues arise out of the same set of facts and evidence, they are conveniently dealt with together.

Appreciation of Oral Evidence -

19 In support of their claim, the claimants have examined only one witness, namely claimant No.3 Bhaskar Mohanrao Kawade, father of the deceased, at Exhibit-15. No independent witness, much less an eyewitness to the occurrence, has been examined by the claimants.

20 The testimony of PW-1 reveals that he admittedly had not witnessed the accident. His knowledge regarding the occurrence is entirely based upon the information allegedly received from relatives and from the injured occupant Ajay Gadhave. Consequently, his evidence regarding the actual manner of accident is essentially hearsay and cannot by itself establish the manner in which the accident occurred.

21 PW-1 has deposed that his son Ganesh had gone to village Lanjeshwar on the date of occurrence in the Bolero Jeep belonging to respondent No.1 along with his friend Ajay Gadhave. According to him, while returning to Washi, the deceased was driving the jeep cautiously and because the road widening work was in progress, the front tyre of the jeep burst, resulting in the vehicle turning turtle. According to him, there was no mechanical defect in the jeep and the accident occurred because heaps of stones and earth were lying on the roadside owing to the widening work. This version substantially reproduces the pleadings contained in the claim petition.

22 However, during cross-examination, PW-1 made certain admissions which assume considerable significance. He has categorically admitted that respondent No.1 Ashruba Gatkal was a close friend of the deceased. He further admitted that on the date of occurrence the deceased had borrowed the Bolero Jeep belonging to respondent No.1 for attending the family function at his sister's house. He has also admitted that after attending the dinner the jeep was to be returned to respondent No.1. He has further admitted that at the relevant time the deceased himself was driving the jeep. These admissions unequivocally establish that the deceased was not travelling as a passenger but was himself driving the borrowed vehicle.

23 PW-1 also admitted that the accident occurred at about 9.30 to 10.00 p.m. when the road widening work was in progress. However, when it was suggested that the deceased was driving the jeep at excessive speed without taking due care regarding the road condition, the witness denied the suggestion and volunteered that the jeep overturned because its wheel went over large stones lying on the road. The said explanation, however, is not supported by any independent evidence.

24 More importantly, PW-1 admitted that the First Information Report was lodged by him on 03.07.2018, nearly two and half months after the accident. He further admitted that he had narrated the facts to the police, the complaint was prepared accordingly, he had read it and thereafter signed the same. This admission assumes decisive importance because the contents of the FIR materially differ from the version subsequently introduced in the claim

petition as well as in his examination-in-chief.

25 PW-1 also admitted that a criminal case came to be registered against his deceased son. He further admitted that he does not know whether his son was actually paying income tax. Thus, though PW-1 attempted to support the claim petition, several admissions elicited in cross-examination substantially weaken the version advanced by the claimants.

Appreciation of Documentary Evidence -

26 The claimants have relied upon Spot Panchanama (Exh.24), Inquest Panchanama (Exh.25), Post-mortem Report (Exh.26), Registration Certificate (Exh.27), FIR (Exh.28), Insurance Policy (Exh.34), Lease Agreement (Exh.35), Shop Licence (Exh.36), Educational Certificates (Exhs.37 to 47) and Driving Licence (Exh.50).

27 The Spot Panchanama (Exh.24) establishes that the accident occurred on National Highway No.52 near Raiba Hotel between Sarmakundi and Washi Phata. The Panchanama records that the road widening work was in progress and heaps of stones and earth were lying on the roadside. Pieces of broken glass, detached windshield, mudguard, shoes, mirror cover and other articles were found scattered at the spot. Oil stains were noticed on the road. Significantly, the Panchanama specifically records that no skid marks or tyre marks were noticed on the road. The Spot Panchanama therefore undoubtedly proves that road widening work was in progress.

28 However, the spot panchnama nowhere records that the front tyre of the jeep had burst. Likewise, no burst tyre was seized or described in the Panchanama. No observation is recorded suggesting any mechanical defect in the vehicle. Thus, the Spot Panchanama does not corroborate the principal plea of the claimants that the accident occurred due to bursting of the front tyre.

29 The Post-mortem Report (Exh.26) reveals lacerated injuries over the right parieto-occipital region, multiple abrasions all over the body, fracture of cervical vertebra and severe brain injuries. The Medical Officer opined that death occurred due to hypovolemic shock resulting from head injury sustained in a road traffic accident. The medical evidence, therefore, establishes the cause of death but does not indicate the cause of the accident.

30 The Registration Certificate (Exh.27) proves that respondent No.1 Ashruba Shahurao Gatkal was the registered owner of the offending Bolero Jeep.

31 The most crucial document on record is the FIR (Exh.28) lodged by PW-1 himself. Though the accident occurred on 20.04.2018, the FIR came to be lodged only on 03.07.2018. In the FIR, PW-1 clearly stated that while returning from his daughter's house, the deceased himself was driving the Bolero Jeep. He further specifically stated that the deceased drove the jeep at excessive speed, negligently and without paying attention to the road condition, because of which the front tyre burst and the vehicle overturned.

32 Most significantly, PW-1 unequivocally stated in the FIR that his son himself was responsible for the accident. This statement forms part of the earliest version given by the father after deliberation and after the accidental death inquiry.

33 During cross-examination PW-1 admitted that the contents of the FIR were correctly recorded as narrated by him and after reading the same he had signed it. Therefore, the explanation subsequently introduced in the claim petition that the accident occurred solely because of road widening work and mechanical defect cannot be accepted without reservation. The FIR clearly attributes negligence to the deceased himself. The subsequent attempt to attribute the accident entirely to the road condition constitutes a material improvement over the earlier version.

Absence of Independent Evidence -

34 It is not in dispute that Ajay Gadhave was travelling in the jeep and survived the accident. He was the only natural eyewitness. Surprisingly, the claimants have withheld his evidence. No explanation whatsoever has been offered for his non-examination. An adverse inference therefore deserves to be drawn under Section 114 illustration (g) of the Indian Evidence Act that had he been examined, his evidence would not have supported the version of the claimants.

35 Likewise, although the claimants alleged bursting of tyre and mechanical defect, neither the Motor Vehicle Inspection Report nor any expert evidence has been produced. The Motor Vehicle Inspector has not been examined. Consequently, the allegation of

tyre burst remains unsupported by technical evidence. Similarly, though a criminal case was admittedly registered, neither the charge-sheet nor the final police report has been produced before the Tribunal.

Educational and Business Documents -

36 Exhibits 35 to 47 establish that the deceased was educated, possessed entrepreneurial training certificates and had obtained leasehold land and Shop Act licence. These documents undoubtedly show that the deceased was an educated young man engaged in business activities. However, they do not establish his actual monthly income. No income-tax return, books of account, bank statement, sales register, GST record or any documentary evidence has been produced to prove the alleged monthly income of Rs.40,000/-. These documents will therefore have relevance while determining educational background but cannot by themselves prove the actual earnings of the deceased.

Insurance Policy (Exh.56) -

37 Respondent No.2 has produced the complete insurance policy. The policy establishes that the offending jeep was covered under a Private Car Package Policy and remained valid from 17.06.2017 till midnight of 16.06.2018. The accident having occurred on 20.04.2018, there is no dispute that the policy was in force.

38 The premium schedule further discloses that Personal Accident Cover for the Registered Owner-Driver to the extent of Rs.2,00,000/- had been obtained besides third-party cover and other

contractual covers.

39 The Insurance Company has not led any oral evidence challenging the genuineness of the policy or proving any breach thereof.

40 From the cumulative appreciation of the oral and documentary evidence, this Tribunal finds that although the Spot Panchanama establishes that road widening work was in progress, there is no convincing evidence to conclude that the accident occurred solely because of mechanical defect or bursting of the tyre. On the contrary, the earliest version contained in the FIR, duly admitted by PW-1 during cross-examination, attributes rash and negligent driving to the deceased himself. The claimants have failed to examine the injured eyewitness Ajay Gadhave or to produce the Motor Vehicle Inspection Report or any expert evidence supporting the plea of tyre burst. Accordingly, the claimants have failed to discharge the burden of proving that the accident occurred solely because of mechanical defect of the vehicle or the road condition.

41 Conversely, the admissions of PW-1 clearly establish that the deceased had borrowed the jeep from respondent No.1, was himself driving it at the time of the accident and intended to return it after the function. Those admissions remain unshaken and sufficiently establish the defence raised by respondent No.2.

42 Likewise, the insurance policy produced on record conclusively proves that the vehicle was insured with respondent No.2 and the policy was valid on the date of accident.

43 Accordingly, Issue No.1 is answered in the Negative, Issue No.2 is answered in the Affirmative, and Issue No.3 is answered in the Affirmative.

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

44 The present petition is filed under Section 166 of the Motor Vehicles Act, 1988. It is well settled that a claim under Section 166 is founded on the principle of fault liability. Therefore, the burden lies upon the claimants to establish, on the touchstone of preponderance of probabilities, that the accident occurred due to actionable negligence of the person against whom liability is sought to be fastened.

45 In the present case, as stated earlier, the claimants themselves pleaded that the deceased had borrowed the Bolero Jeep belonging to respondent No.1 for attending the Satyanarayan Pooja at his sister's house and was himself driving the vehicle at the relevant time. Their further case is that the road widening work was in progress, heaps of stones and earth were lying on both sides of the road, the front tyre of the jeep suddenly burst due to the road condition, resulting in the jeep turning turtle. The petition even describes the occurrence as "nothing but an Act of God". Thus, the claim petition itself does not attribute negligence either to respondent No.1 or to any third person, but attributes the accident to the alleged tyre burst and the prevailing road condition.

46 The only witness examined by the claimants, as stated earlier, is PW-1 Bhaskar Mohanrao Kawade, father of the deceased.

Admittedly, he is not an eyewitness to the accident and his evidence regarding the manner of occurrence is based upon information received from others. During cross-examination, PW-1 categorically admitted that respondent No.1 was a friend of the deceased, that the deceased had borrowed the jeep from respondent No.1, that the vehicle was to be returned after the function and that the deceased himself was driving the jeep at the time of the accident. These admissions conclusively establish that the deceased had borrowed the vehicle and was driving it with the permission of respondent No.1.

47 The plea that the accident occurred due to bursting of the front tyre, as stated earlier, has not been substantiated by cogent evidence. The injured occupant Ajay Gadhave, who was the most natural eyewitness to the occurrence, has not been examined without any explanation. Likewise, neither the Motor Vehicle Inspection Report nor any expert evidence has been produced to establish the alleged mechanical failure.

48 The Spot Panchanama (Exh.24) undoubtedly shows that road widening work was in progress and heaps of stones and earth were lying on the roadside. However, it neither records any tyre burst nor indicates any mechanical defect in the vehicle. On the contrary, it specifically records that no skid marks or tyre marks were noticed on the road. Thus, as stated earlier, while the Spot Panchanama proves the road condition, it does not corroborate the specific case pleaded by the claimants.

49 The First Information Report (Exh.28), admittedly lodged by

PW-1 himself after reading and admitting its contents, also contains a materially different version. In the FIR, PW-1 specifically stated that the deceased was driving the jeep rashly and negligently without paying proper attention to the road condition and that the deceased himself was responsible for the accident. Though the FIR is not substantive evidence and cannot by itself prove negligence, it is undoubtedly a relevant previous statement which materially affects the credibility of the subsequent version advanced in the claim petition and examination-in-chief.

50 Even if the claimants' own version is accepted in its entirety, the accident is attributed to tyre burst and the prevailing road condition and is described as an unavoidable occurrence. Such a plea, by itself, does not establish actionable negligence on the part of respondent No.1 or any other person. Consequently, the claimants have failed to discharge the essential burden cast upon them under Section 166 of the Motor Vehicles Act.

51 As stated earlier, the admissions of PW-1 further establish that the deceased had borrowed the vehicle from respondent No.1 and was driving it for his own purpose. In law, such a borrower steps into the shoes of the owner. The Hon'ble Supreme Court in Ningamma v. United India Insurance Co. Ltd. has held that where the deceased himself was driving the borrowed vehicle and no other vehicle was involved in the accident, his legal representatives cannot maintain a claim under Section 166 against the insurer, as the deceased cannot be treated as a third party. The said principle has been consistently followed in **The Oriental Insurance Co. Ltd. v. Smt. Jaibunbi Bulambeg, Smt. Sangeetha v. Sri Krishna**

Chari and G. Nagarathna v. G. Manjunatha. The facts of the present case squarely attract the ratio laid down in the aforesaid decisions.

52 The learned advocate for the claimants placed reliance upon the recent decision of the Hon'ble Supreme Court in **Manjusha v. United India Assurance Co. Ltd.** to contend that since the offending vehicle was covered under a comprehensive package policy, respondent No.2 is contractually liable to compensate the claimants. The contention cannot be accepted. In Manjusha, the insurer had neither pleaded nor proved any limitation of its contractual liability and attempted to rely upon the policy limitation for the first time in appeal. The Hon'ble Supreme Court, therefore, held that such an unpleaded defence could not be entertained.

53 The present case stands on a different footing. Respondent No.2, from the very inception, specifically pleaded that the deceased had borrowed the vehicle, had stepped into the shoes of the owner and that the petition under Section 166 was not maintainable. The insurer also produced the complete insurance policy (Exh.56), which reveals that the Personal Accident Cover of Rs. 2,00,000/- is expressly confined to the Registered Owner-Driver. Admittedly, the deceased was not the registered owner of the vehicle and no material has been placed on record to show that the contractual cover extended to a borrower driving the vehicle with the owner's permission. Therefore, the ratio in Manjusha does not assist the claimants, whereas the principle laid down in Ningamma squarely governs the present case.

54 In view of the foregoing discussion, this Tribunal is of the considered opinion that the claimants have failed to prove the essential ingredients of a claim under Section 166 of the Motor Vehicles Act. The deceased had admittedly stepped into the shoes of the owner and the claimants have failed to establish actionable negligence on the part of respondent No.1 or any other person so as to fasten statutory liability upon the insurer. Equally, no contractual liability under the insurance policy has been established in favour of the claimants. Accordingly, Issue No.4 is answered in the Negative.

55 It is, however, clarified that the present adjudication is confined to the maintainability of the claim under Section 166 of the Motor Vehicles Act on the basis of the pleadings, evidence and the terms of the insurance policy produced before this Tribunal. No opinion is expressed regarding any independent contractual remedy, if otherwise available in law, which does not fall for consideration in the present proceedings. Consequently, the claim petition fails and deserves to be dismissed. Hence, the following order.

ORDER

1 The Petition is dismissed.

2 In the facts and circumstances of the case, there shall be no order as to costs.

3. Award be drawn up accordingly.

Pronounced in open Tribunal.

BHASKAR GOPALRAO DHARMADHIKARI

Digitally signed by BHASKAR GOPALRAO DHARMADHIKARI
Date: 2026.08.04 17:56:59 +0530

(B.G.Dharmadhikari)
Member, M.A.C.T., Bhoom.

Date : 04.08.2026.

CERTIFICATE

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

Name of Stenographer	-	M.M.Kashikar, Stenographer(Grade-1)
Court	-	MACT, Bhoom
Date	-	04.08.2026
Order signed by the Presiding Officer on	-	04.08.2026
Order uploaded on	-	04.08.2026