

MHBIO80000672023



Presented on : 05/01/2023
Registered on : 23/01/2023
Decided on : 18/05/2026
Duration : Yr. Ms. Ds.
03 04 13

**IN THE COURT OF CIVIL JUDGE SENIOR DIVISION CUM
COMMISSIONER FOR EMPLOYEES' COMPENSATION,
MAJALGAON, DIST. - BEED**
(Presided over by : S. S. Budruk)

W. C. F. A. No.01/2023.

Exh.52

1. **Kaveri W/o. Digambar Taur,**
Age-36 Years, Occu: Household,
 2. **Pallavi D/o. Digambar Taur,**
Age-21 Years, Occu: Household,
 3. **Pratibha D/o. Digambar Taur,**
Age-20 Years, Occu: Education,
 4. **Sonali D/o. Digambar Taur,**
Age-18 Years, Occu: Education,
 5. **Abhay S/o. Digambar Taur,**
Age-14 Years, Occu: Education,
under guardianship of mother i.e.
petitioner No.1 - Kaveri W/o. Digambar Taur.
 6. **Ankushrao S/o. Pralhadrao Taur,**
Age-64 Years, Occu: Agriculture,
 7. **Shakuntalabai W/o. Ankushrao Taur,**
Age-60 Years, Occu: Agriculture,
All R/o. Kawadgaonthadi, Tq. Majalgaon,
Dist. Beed.
- ...Petitioners**

- V E R S U S -

1. **Govind S/o. Bapurao Darade,**
Age-55 Years, Occu: Agri. & Business,
R/o. Adgaon, Tq. Selu, Dist. Parbhani.
**(Owner of Commander Jeep
No. MH-15 K-7116)**
2. **Manager, United India Insurance
Company Ltd.,**
V. T. Patil Chowk, New Osmanpura,
Aurangabad, Tq. & Dist. Aurangabad,
**(Insurance Company of Jeep
No. MH-15 K-7116)**

...Respondents

**Claim: For compensation of Rs.12,11,424/- with interest
and penalty etc.**

Appearances:

Advocate for petitioners : Mr. V. B. Deshmukh
Advocate for resp. No.1 : Mr. B. S. Hingane
Advocate for resp. No.2 : Mr. S. R. Acharya

J U D G M E N T**(Delivered on 18th May, 2026)**

The petition is instituted for getting compensation of Rs.12,11,424/- from the respondents with interest and 50% penalty amount from respondent No.1 on account of Motor Vehicular Accidental death of Digambar S/o. Ankushrao Taur, under Section 4 & 4A of the Employee's Compensation Act, 1923. (Here-in-after referred in short to as "**the Act**").

02. This proceeding is taken up for disposal in summer vacation on being joint pursis placed on record by the parties to that effect vide Exh.51.

The facts in short, under petition are as under:

03. That, petitioner No.1 is a widow, petitioner Nos.2 to 4 are daughters, petitioner No.5 is a minor son and petitioner Nos.6 and 7 are parents of deceased Digambar S/o. Ankushrao Taur. Respondent Nos.1 and 2 are owner and insurer of commander Jeep bearing Registration No.MH-15 K-7116, respectively.

04. It is the case of the petitioners that, deceased Digambar S/o. Ankushrao Taur was working as a driver with respondent No.1 on said commander Jeep prior to one year of accident in question. Deceased Digambar was getting salary of Rs.13,000/- per month from respondent No.1. As such, there was relationship between deceased Digambar and respondent No.1 as employee and employer.

05. As per petition pleadings, on 05/03/2018 deceased Digambar was discharging his duty as a driver on said Commander Jeep under the authority and instruction given by respondent No.1. When, it was proceeding towards Majalgaon through Gadhi road and reached in front of Suvarnaganga Mangal Karyalay at about 10 to 11 A.M. met with an accident on being Truck bearing Registration No.MH-04 CG-9381 gave dash it from front side and wrong direction. The said truck was drove by its driver in rash and negligent manner in very high speed. The petitioners submit that, deceased Digambar as a driver and other passengers were sustained grievous injuries in the said accident. The persons present on the spot had hospitalized them

at Rural hospital, Majalgaon, Dist. Beed. After medical examination, the doctor declared said Digambar as a dead on being sustained severe head injuries.

06. It is further pleaded in petition that, the incident was reported by cousin brother of deceased Digambar namely Vaijanath Rambhau Taur to the police of City Police Station, Majalgaon. On that basis, crime bearing No.74/2018 under Section 304-A, 279, 338 of the Indian Penal Code, 1860 was came to be registered against a driver of said Truck. The police had conducted investigation. The spot panchnama was carried on spot and also seized both vehicles by the police. At the time of accident deceased Digambar was a healthy person and he did not have any habit. Petitioner No.1, 6 and 7 have suffered mental shock due to accidental death of Digambar. Petitioner Nos.2 to 5 did not get necessary facilities for their welfare on being lost of their father. The said commander Jeep was duly insured with respondent No.2 at the time of said incident i.e. from 29/08/2017 to 28/08/2018. Thus, respondent Nos.1 and 2 are arrayed as necessary parties. The petitioners are residing within jurisdiction of this Court. Likewise, accident in question took place within jurisdiction of this Court. Thus, this Court is having jurisdiction to try and entertain the petition.

07. The petitioners further pleaded that, initially they had instituted the proceeding against the respondents bearing M.A.C.P. No.21/2018 for getting compensation before the Motor Accident Claims Tribunal at Majalgaon. However, it came to be

withdrawn by them vide application dated 20/10/2022 with permission to file a fresh proceeding under Workmen Compensation Act read with order passed by said Tribunal on 07/12/2022. In the said proceeding, the respondents were appeared through advocates. As such, the notice of this proceeding was not given to the respondents on being they have already knowledge about the incident. The petitioners were dependent on the income of deceased Digambar. They given calculations with multiplier factor by showing age of deceased 34 years in respect of actual payable compensation amount vide paragraph No.19 of petition (Exh.1). So, the petitioners have constrained to institute this proceeding.

08. It is matter of record, the petitioners have carried amendment in the title clause of petition (Exh.1) in respect of special designation of this Court for entertaining the present proceeding as Civil Judge Senior Division cum Commissioner for Employee's Compensation in consonance with the provisions of the Act vide order passed below Exh.46 on 22/04/2026.

09. Respondent No.1 has contested the petition by filing written statement at Exh.13. However, he has admitted that, he was owner and respondent No.2 was insurer of commander Jeep bearing MH-15 K-7116 at the time of incident. He also admitted that, deceased Digambar was serving as a driver with him on his said commander Jeep and they had relations as Employee and Employer. He has also admitted the date and occurrence of accident as narrated in petition (Exh.1), when

deceased Digambar was driving said commander Jeep in the capacity of his driver. He has also not disputed a fact that, said Digambar died due to head injury sustained in the accident. According to him, the said crime came to be registered against the driver of Truck bearing registration No.MH-04 CG-9381. Thus, he does not have legal obligation to pay compensation amount with interest and penalty, as sought for.

10. Accordingly, this respondent has admitted the contents of paragraph Nos.2 to 5, paragraph No.6 in part and paragraph Nos.7 to 10, 12, 14 to 16 & 18 of petition (Exh.1). He submits that, the said incidence took place on account of rash and negligent driving of said Truck driver. Thus, petition is liable to be dismissed for want of joining driver and owner of said truck, as necessary parties. The petitioners have withdrawn said M.A.C.P No.21/2018 filed against him and others under Section 166 of the Motor Vehicles Act. As such, they have no locus-standi to join him in the present proceeding as a respondent. The petitioners had admitted in the said proceeding that, alleged accident took place due to rash and negligent driving of said Truck driver. The said commander Jeep was purchased by him for personal use. It was duly insured with respondent No.2-Insurance Company at relevant time. Deceased Digambar was having valid driving license at that time, as well. Hence, he urged to dismiss the petition with costs against him.

11. Respondent No.2 has contested the petition by filing written statement at Exh.14. It denied the relation among the

petitioners and deceased Digambar for want of knowledge. It has also denied remaining pleadings therein in to-to. It submits that, respondent No.1 has to prove his ownership over said commander Jeep, his relation with deceased Digambar as Master & servant, payment of monthly salary and validity of insurance. The petitioners have not filed driving license of deceased Digambar. The directions to that effect needs to given to the petitioners and respondent No.1. The petitioners have to prove a fact regarding accident and nexus of injuries and death of Digambar. The petitioners have to prove their claim on the basis of documentary evidence. The respondents are not either jointly or severally liable to pay the compensation. This respondent is not legally liable to pay compensation, penalty and interest. The insurance of said commander Jeep with this respondent is under verification and not confirmed by its office. Thus, it's liability to pay compensation is subject to defense available under Section 149(2) of the M. V. Act and compliance of Section 64-VB of the insurance Act. The alleged incidence is not reported or intimated either by respondent No.1 or the petitioners to its office within specified period.

12. Respondent No.2 further pleads that, the police papers of incident itself show that, alleged accident took place due to fault of Truck driver and the crime has also been registered against him. He has also been charge-sheeted before the Court of law. Thus, the petitioners ought to have file claim against owner, truck driver and insurer of said truck. So, the

petition is liable to be dismissed for want of joining owner, insurance company and driver of said truck. As such, driver, owner and insurer of said truck are liable and responsible for making payment of the compensation to the petitioners. The said motor accident claim petition came to be withdrawn by the petitioners after considerable time period, in which they have made allegations against a driver of said Truck that, he drove the same in rash and negligent manner at the time of incident. Hence, the petition is not instituted within limitation period. So, the question does not arise to fasten liability on this respondent for making payment of compensation amount and interest. Thus, respondent No.2 has urged to dismiss the petition.

13. On rival pleadings of the parties, my learned predecessor has framed issues at Exh.15. Those are reproduced below with my findings thereon for reasons recorded in writing as under :

Sr.No	ISSUES	FINDINGS
1.	Whether the petitioners prove that, deceased Digambar Ankushrao Taur was employee of respondent No.1 as driver on Commander Jeep bearing No.MH-15 K-7116?	Yes..
2.	Whether the petitioners prove that, deceased Digambar Ankushrao Taur died during the course of employment or arising out of employment?	Yes..
3.	Whether the petitioners prove that, the deceased was getting monthly income of Rs.13,000/- per month?	Yes.. to the extent of Rs.9,602/-

4.	Whether the petitioners prove that, the deceased was of 34 years old when he succumbed to death?	Yes, but as 40 years.
5.	Whether the petition is bad for non-joinder of necessary parties?	No..
6.	Whether petitioners prove that, at the time of incident the Commander Jeep bearing No.MH-15 K-7116 was insured towards respondent No.2?	Yes..
7.	Whether the petition is within limitation?	Yes..
8.	Whether respondent No.2 proves that, respondent No.1 has violated the terms and conditions of the insurance policy?	No..
9.	Whether the petitioners are entitled for the amount of compensation as claimed from the respondents jointly and severally?	Yes, Rs.8,84,200/- with interest & penalty of Rs.4,42,100/-
10.	What order and award ?	As per final order.

REASONS

14. In support of petition pleadings, the petitioners have examined petitioner No.1- Kaveri W/o. Digambar Taur (Pw-1) at Exh.16 and one Mr. Hemantkumar S/o. Harishchandra Kavthekar (Pw-2) at Exh.33 being an official of Deputy Regional Transport Office, Beed. They closed oral evidence vide Exh.35.

15. Respondent Nos.1 & 2 have neither adduced oral evidence nor proved documentary evidence in support of their respective written statement pleadings. They closed oral evidence vide Exhs.36 & 37 respectively.

16. It is matter of record, the petitioners, respondent

Nos. 1 & 2 have placed on record pursis at Exhs. 50, 48 & 49 respectively and thereby conveyed that, they are not willing to adduce oral evidence or submit additional written statement in consonance with amendment carried in title clause of petition (Exh.1), as referred supra.

17. In support of oral evidence, the petitioners have relied upon, certified copy of First Information Report at Exh.19, Certificate of Registration in respect of Commander Jeep bearing registration No.MH-15 K-7116 at Exh.20, certified copy of spot panchanama dated 05/03/2018 carried by police in Crime No.27/2018 at Exh.21, certified copy of post-mortem report of deceased Digambar Taur at Exh.22, Certificate of Insurance of said Commander Jeep at Exh.23, Authority letter given by head of said Regional Transport Office in favour of Mr. Hemantkumar Kavthekar (Pw.2) for tendering evidence at Exh.30 and true copy of extract of Register maintained by said office indicating entry of Driving Licence issued in the name of deceased Digambar at Exh.34.

18. Heard the learned advocates Mr. V. B. Deshmukh, for the petitioners, Mr. B. S. Hingane, for respondent No.1 and Mr. S. R. Acharya, for respondent No.2, at length. They have also placed on record written notes of argument and pursis at Exh.38, 39 & 40 respectively. In terms of pursis filed at Exh.39, respondent No.1 has submits that, the said Commender Jeep was duly insured with respondent No.2 and deceased Digambar was also having valid driving licence at the time of incident.

Hence, he urged to consider written notes of argument of the petitioners filed at Exh.38 as his argument. As such, the learned advocates for both side have argued almost all the facts, in the line of pleadings made by their respective parties, as reproduced supra. They have also invited my attention towards the nature of oral and documentary evidence available on record.

19. The learned advocate for petitioners has additionally argued that, pleadings made in petition (Exh.1) is supported by an oral evidence of two witnesses. They have also placed on record documentary evidence. As such, it has been duly proved by the petitioners that, Digambar Taur died in motor vehicle accident due to head injury. At the time of incident, he was having valid driving licence and the said Commander Jeep was also duly insured with respondent No.2. Thus, the petitioners are entitled to get compensation amount with interest from the date of accident and penalty amount as described in paragraph No.19 of petition (Exh.1).

20. In support of argument, he placed reliance upon the ratio laid down by the Hon'ble Madras High Court in the cases of **M/s. Vivek & co., V/s. N. Rani & another in C.M.A. No. 1705/2018 decided on 12/02/2021, Saberabibi Yakubhai Shaikh & others V/s. National Insurance Company Ltd. & others 2014(3) Mh.L.J. 252, Neela & Ors. V/s. Manager Bharti Axa General Insurance Co. Ltd. & Ors. 2023 SAR Online(SC)83 and Manusha Sreekumar & Ors. V/s. The Union India Insurance Co. Ltd. 2022 SAR Online (SC) 1202.**

21. On the other hand, the learned advocate for defendant No.2 has additionally argued that, the petitioners have not proved that, respondent No.1 and deceased Digambar had the relation as Master and Servant for want of supporting documentary evidence. The petitioners have not examined respondent No.1 on this point, as well. He also failed to tender oral evidence on this point. Even otherwise, the recitals of First Information Report (Exh.19) indicate that, the deceased Digambar was the owner of said Commander Jeep. It seems to have lodged by his cousin brother namely Vaijnath Rambhau Taur and on that basis crime has been registered forthwith. Thus, the claim against this respondent is not tenable. The said crime has been registered against the driver of Hyva Truck and also he was charge-sheeted. The said incident was occurred due to rash and negligent driving of said truck driver. Thus, the petitioners ought to have claimed compensation amount against the owner and driver of said truck. The testimony of Kaveri (Pw.1) is based upon hearsay evidence. Even, on considering the nature of said incidence took place between two vehicles, respondent No.2 is not liable to pay compensation amount, as sought for. Hence, he urged dismiss the petition against respondent No.2 with costs.

22. It is evident that, petitioner No.1 is a widow, petitioner Nos.2 to 4 are daughters, petitioner No.5 is a minor son and petitioner Nos.6 and 7 are parents of deceased Digambar Taur. It seems that, respondent No.2 has merely

denied the relations among the petitioners and deceased Digambar for want of knowledge. It is admittedly bring on record that, Digambar died in said incident took place on 05/03/2018 at about 11.00 A.M. on Majalgaon to Gadhi road near said Mangal Karyalaya. These facts are also established on the basis of copies of First Information Report (Exh.19) and Spot Panchanama (Exh.21).

23. Respondent No.2 has also not disputed a fact that, Digambar died due to head injuries with internal hemorrhage sustained in the said accident. Admittedly, the petitioners had initially instituted the proceeding bearing M.A.C.P No.21/2018 before the Hon'ble Motor Accident Claim Tribunal, Majalgaon for compensation on account of accidental death of Digambar under Section 166 of the Motor Vehicle Act, 1988. Respondent No.2 has not specifically pleaded that, it was not party to the said proceeding. It has been disposed off by the said Hon'ble Tribunal on 07/12/2022 on being withdrawn by the petitioners with liberty to file fresh application under Section 4 of the Workmen's Compensation Act. The certified copy of application (Exh.27) therein and said order passed below Exh.1 is also placed on record by the petitioners at Exh.43. In view of these admitted facts, the controversy under the proceeding requires adjudication on the basis of evidence available on record.

AS TO ISSUE NO.7 :-

24. This issue being based upon mixed question of fact and law, is taken up for disposal at first instance.

25. The learned advocates for the parties have not raised this aspect thoroughly in their respective arguments with reference to the relevant provisions of law. Respondent No.2 has challenged validity of the main proceeding on the ground of limitation. Such claim requires to be preferred before the Commissioner within two years of the occurrence of the accident or in case of death, within two years from the date of death vide Section 10 of the Act (formerly Workmen's Compensation Act). At the same time, if we taken into consideration a admitted fact that, the petitioners had withdrawn the proceeding bearing M.A.C.P No.21/2018 instituted on their behalf at first instance with liberty to file afresh such proceeding vide Exh.43, then Section 14 of the Limitation Act, 1963 allows for the exclusion of time spent bonafide in prosecuting a previous, filed legal proceeding in a Court that lacked jurisdiction or had a similar defect. This provision ensures that, the time spent before such wrong forum, is not counted towards the limitation period for filing a fresh suit, provided the previous action was pursued in good faith.

26. Contesting respondent No.2 has not denied a fact that, the petitioners have pursued the said proceeding before the said Hon'ble Tribunal in good faith. Per contra, it seems that, the same learned advocate for defendant No.2 representing for respondent No.3 therein, has given no objection for granting such permission by filing say in writing on petitioners' application Exh.27 therein. The said fact gathered on the basis

of certified copy of said application filed in the present proceeding vide Exh.43. Even, the said Hon'ble Tribunal pleased to extend liberty to the petitioners for filing this proceeding, as noted supra. Admittedly, the said incident has been took place on 05/03/2018 and Digambar died on very same day. On verification through Case Information System, it gathered that the petitioners had instituted the said M.A.C.P No.21/2018 on 25/06/2018 (registered on 25/09/2018) and the same has been finally disposed off on 07/12/2022. Thus, period from 25/06/2018 to 07/12/2022 consumed for the said earlier proceeding needs to be excluded while computing the period of limitation vide Section 14 of the Limitation Act, 1963. The present proceeding is instituted on 05/01/2023. So, I have no hesitation to hold that, this proceeding is instituted within limitation. Therefore, I answer issue No.7 in the affirmative.

AS TO ISSUE NO.5 :-

27. Both respondents have challenged validity of this proceeding on being bad for non-joinder of necessary parties. According to them, owner of said Truck and its insurance company were necessary parties in the present proceeding. Respondent No.2 has additionally submits that, driver of said Truck was necessary party in the present proceeding on being accident in question took place due to rash and negligent is driving. The crime came to be registered against him as per First Information Report (Exh.19). This aspect is also raised by the learned advocate for respondent No.2 in the argument.

28. Needless to say that, the necessary party is one without whom no effective decree or order can be made or passed and a proper party is one in whose absence an effective decree or order can be made or passed, but his presence is necessary for complete and final decision on subject matter of the case under Order I Rule 10 of Code of Civil Procedure, 1908.

29. The nature of present proceeding based upon material fact in issue that, whether deceased Digambar was employee of respondent No.1 as a driver on said Commander Jeep at the time of accident in question? Unless and until, the petitioners have established that, there was Master and Servant relations between respondent No.1 and deceased Digambar at the time of accident, they cannot get the compensation with interest and penalty, as sought for under Section 4 and 4A of the Act respectively. The object of the Act to provides payment of compensation to employees or their legal heirs in case of death etc. Therefore, the owner of said Truck or its insurance company neither termed as necessary parties nor as a proper parties in the present proceeding. In other words and subject to keep open other legal aspects, the Court can pass effective decree herein in absence of said Truck owner, its driver and insurance company. So, the present proceeding cannot be termed bad for non-joinder of necessary parties. Therefore, I answer issue No.5 in the negative.

AS TO ISSUE NOS.1 & 2 :-

30. These two issues are intermingled each other. Thus,

those are taken up for consideration together.

31. It pertains to note that, respondent No.1 in his written statement (Exh.13) has admitted that, he was owner and respondent No.2 was insurer of said Commander Jeep at the time of incident. Not only that, he also goes to admit that, deceased Digambar was serving as a driver with him on his said Commander Jeep and they had relation as employee and employer. He further pleaded that, deceased Digambar was driving said Commander Jeep in the capacity of his driver at the time of occurrence of accident in question. As such, testimony of petitioner Kaveri (Pw1) is corroborated by admission given by respondent No.1 on these fact in issues. It is significant to note that, respondent No.2 has brought on record in cross-examination of this witness that, deceased Digambar was serving as a driver with respondent No.1 from last two years before the date of incident.

32. It is not the case of respondent No.2 that, said Commander Jeep was not insured with it at the time of incident in question. On the other hand, the recitals of Certificate of Insurance filed at Exh.23 indicate that, the said Commander Jeep was validly insured with respondent No.2 from 29/08/2017 to 28/08/2018 i.e. covering the date of accident. Admittedly, said certificate of Insurance has been issued by respondent No.2, in which the name of respondent No.1 shown as a insured. Thus, in my opinion, respondent No.2 is now estopped from taking contrary defence that, respondent No.1 is

not a owner of said Commander Jeep at the time of incident. Even otherwise, Certificate of Registration (Exh.20) reflects the name of respondent No.1 as a owner on 14/07/2010 i.e. much before more than 7 years from the date of incident. Thus, mere recitals in First Information Report (Exh.19) that, said Commander Jeep was owned by deceased by Digambar will not sufficient to hold that, said Commander Jeep was not owned by respondent No.1 at the time of incident. In my opinion, those contents of Certificate of Registration (Exh.20) shall be prevailed over the contents of said First Information Report. In view of forgoing discussion, I have no hesitation to hold that deceased Digambar was employee of respondent No.1 as a driver on said Jeep and he died during the course of said employment.

33. Definition of “employee” given in Section 2(11)(dd) (ii)(c) of the Act, means a person, who is recruited as a driver, helper, mechanic, cleaner or in any other capacity in connection with a motor vehicle. Thus, the petitioners have proved that, deceased Digambar was employee of respondent No.1 serving as a driver on said Commander Jeep at the time of incident. Therefore, in view of forgoing discussion, I do not agree with an argument advanced by the learned advocate for defendant No.2 on these fact in issue. Per contra, an argument advanced by the learned advocate for the petitioners is found in consonance with documentary evidence available on record coupled with admission of respondent No.1 on these factual matrix. Thus, I answer issue Nos.1 and 2 in the affirmative.

AS TO ISSUE NO.3 :-

34. There is no documentary evidence in respect of the monthly salary or income source of deceased Digambar. As per pleadings and evidence of petitioner Kaveri (Pw1) deceased Digambar was getting monthly salary of Rs.13,000/- as a driver from respondent No.1. This fact is also admitted by respondent No.1. However, respondent No.2 has denied this fact and asked the strict documentary proof to that effect. Therefore, the petitioners ought to have taken efforts for bringing on record documentary evidence to that effect. However, it seems that, they have not taken best possible efforts for the same. Moreover, respondent No.1 has also not stepped into witness box and failed to give an opportunity for conducting his cross-examination on that aspect to defendant No.2 being insurance company. It is well settled that, when a party does not enter the witness box to state his own case, then an adverse presumption must be drawn against him, affirming that his failure is highly damaging to his case vide Section 114(g) of the Evidence Act, 1872 (corresponding Section 119(g) of Bharatiya Sakshya Adhinyam, 2023). Therefore, it will not be justifiable to accept blindly unilateral mere admission of respondent No.1 regarding monthly salary of deceased Digambar.

35. On this aspect, the learned advocate for the petitioners has relied upon the ratio laid down in the cases of **Neela & Ors.**, and **Manusha Sreekumar & Ors.** (stated supra). However, in those cited cases the question was under

consideration for determination of compensation amount under Section 166 of the Motor Vehicle Act, 1988. However, the petitioners herein have claimed compensation under provisions of the Act enacted as a welfare and beneficial legislature and makes the provisions for special commissions to built expeditiously disputes regarding compensation payable to employees or their legal heirs/dependents in case of death, which provides Schedule-IV under Section 4 for working out compensation amount in case of disablement or death by giving factors coupled with the age of employee etc. Therefore, in my opinion, with due respect the ratio laid down in the above cited cases will not helpful to these petitioners for determination of relevant monthly income of deceased Digambar.

36. The learned advocate for the petitioners, has also placed reliance upon the ratio laid down in the case of **M/s. Vivek & co.** (stated supra) decided recently on 12/02/2021. In this cited case, the minimum wages fixed by the State Government being more beneficial has been considered for the purpose of fixing the monthly income of the employee concerned and determined compensation amount in the similar case fall under the Act itself. Therein aspect regarding absence of evidence regarding employee's service whether temporary lent or lent on hire by the owner, has also been taken into consideration. In the said cited case, in absence of evidence regarding monthly income source of employee, the compensation came to be determined by considering the

minimum wages notified by the State Government for relevant time. Therefore, in the case in hand also, it will be justifiable to determine monthly income of deceased Digambar at the time of his death by taking base of minimum wages notification of the State of Maharashtra.

37. Admittedly, deceased Digambar was a driver and he had valid driving licence of Light Motor Vehicle (N.T.) at the time of incident vide Exh.34. Its came to be marked as exhibit on the basis of testimony of Hemantkumar Kavathekar (Pw2) being official of the Regional Transport Office, Beed. Therefore, deceased Digambar has to be considered as a skilled employee. On being search made, it gathered that, the State of Maharashtra had set minimum wages for the relevant year 2018 by notification for such skilled person under Zone-II covering municipal council area @ Rs.9,602/- per month. Therefore, I have no hesitation to hold that, deceased Digambar was getting monthly income of Rs.9,602/- at the time of his death in terms of ratio laid down in the case of **M/s. Vivek & co.** (stated supra). Thus, an argument advanced by the learned advocate for petitioners is found partially accepted in terms of observation made supra. Thus, I answer issue No.3 in the affirmative to the extent of Rs.9,602/- instead of Rs.13,000/-.

AS TO ISSUE NO.4 :-

38. There is lack of pleading in petition (Exh.1) regarding exact relevant age of deceased Digambar or his last birthday immediately preceding the date on which the alleged

compensation fell due. However, the petitioners have made reference in paragraph 19 of the petition (Exh.1) that, deceased Digambar was 34 years old at the time of incident. The contents of affidavit of the petitioner Kaveri (Pw1) vide Exh.13 are also silent on this material aspect. Moreover, there is no documentary evidence in support of the pleadings of the petitioners regarding exact age of deceased Digambar, except police paper i.e. spot panchanama (Exh.21). It will be relevant to refer that, the concerned doctor also did not mention the age of deceased Digambar at relevant Sr. No.7 of postmortem report (Exh.22) and referred therein as “young male Hindu by religion”.

39. However, the police have mentioned the age of deceased Digambar as 40 years at relevant column No.3 in paragraph No.5 of spot panchanam (Exh.21). The said document is also admitted on behalf of defendant No.2 by making such endorsement in writing under the signature of its learned advocate. Therefore, I have no alternative than to hold that, the deceased Digambar was 40 years old, when he succumbed to death. Thus, I answer issue No.4 in the affirmative as 40 years in stead of 34 years.

AS TO ISSUE NO.6 :-

40. Evidence of the petitioners Kaveri (Pw1) is supported by Certificate of Insurance (Exh.23), it has been admitted by defendant No.2 by making such endorsement in writing under the signature of its learned advocate. The contents thereof duly proved that, said Commander Jeep bearing

registration No. MH-15 K-7116 was duly insured with respondent No.2 for the period from 29/08/2017 to 28/08/2018 covering the date of accident in question that is 05/03/2018, as discussed supra. This fact is also not seriously challenged by the learned advocate for respondent No.2, while tendering an argument. Thus, I have no hesitation to hold that the said Commander Jeep was insured with respondent No.2/insurance company at the time of accident in question. Hence, I answer issue No.6 in the affirmative.

AS TO ISSUE NO.8 :-

41. It is matter of fact, respondent No.2 has pleaded that, the petitioners have not placed on record driving licence of deceased Digambar and thereby indirectly made attempt to defend that, respondent No.1 has violated the terms and conditions of insurance policy. However, the petitioners have nullified its theory by examining Mr. Hemantkumar Kavathekar (Pw 2) at Exh.33 and bringing on record extract of register maintain by the Regional Transport Office, Beed vide Exh.34. The contents thereof show that, deceased Digambar was holding driving licence of Light Motor Vehicle (N.T.) for the period of 04/10/2011 to 31/12/2027 covering the date of accident in question. Needless to say that, the said Commander Jeep comes under the category of Light Motor Vehicle (N.T.). Moreover, petitioner Kaveri (Pw1) has also categorically denied in cross-examination that, deceased Digambar was carrying passenger to Majalgaon through said Commander Jeep at the time of

incident. Respondent No.2 has not examined any witness to fortify its theory on this issue and failed to give an opportunity for conducting cross-examination to the petitioners. Thus, an adverse inference could be drawn against this respondent that, its theory under this issue is contrary to real fact by invoking the provisions of Section 114(g) of the Evidence Act, 1872. Thus, I have no hesitation to hold that, respondent No.2 failed to prove that, respondent No.1 has violated the terms and conditions of insurance policy. So, I answer issue No.8 in the negative.

AS TO ISSUE NO.9 :-

42. The petitioner have claimed compensation of Rs.12,11,424/- with interest against both respondents and 50% penalty amount from respondent No.1 on being legal heirs of deceased Digambar, to died on 05/03/2018 in the said Motor vehicular accident. In terms of findings on issue Nos.1 and 2, the petitioners have proved that, deceased Digambar was employee of respondent No.1 as a driver and he died during the course of said employment. In terms of findings on issue No.6, the said Commander Jeep was insured with respondent No.2 at the time of accident in question.

43. It is well settled that, when a motor vehicle driver dies in the course of employment, his dependents can seek compensation under either as per the provisions of the Employee's Compensation Act, 1923 or the Motor Vehicles Act, 1988. Basic difference between those proceedings that, the petitioners must plead and establish in the proceedings

instituted under Section 166 of the Motor Vehicle Act that, the death occurred due to the rash or negligent act of the offending vehicle's driver. Whereas, in the proceeding instituted under former the said Act such fault or negligence is irrelevant and the employer and insurance company of motor vehicle, if any are strictly liable to pay of compensation, if the death of employee arose out of and in the course of employment. Moreover, the method of calculation of compensation is different under the provisions of those two Act. Under Section 4 of the Act, the calculation of compensation is rigidly prescribed as per formula given under Section 4(1)(a) of the Act couple with multiplication given by relevant factor as prescribed schedule IV given therein. The claim under the Act requires to be made by “defendants” of deceased strictly defined under Section 2(d) of the Act. There is no specific bar for claiming compensation by one out of aforesaid two provisions of different enactment, subject to it must be based upon applicable grounds thereto respectively, as discussed Supra. However, there is specific bar for claiming compensation under those both provisions vide Section 167 of the Motor Vehicles Act, 1966.

44. Admittedly, the petitioners had withdrawn their claim made under the provisions of Motor Vehicles Act, 1966 before the Hon’ble said Tribunal, with permission of filed afresh this proceeding vide Exh.43. Thereafter, this proceeding is instituted by the petitioners within limitation, vide findings made on issue No.7. Thus, I do not find any legal bar on

tenability of this proceedings with reference to provisions of Section 3(5) of the Act. In view of foregoing discussion, deceased Digambar was 40 years old and getting monthly income of Rs.9,602/- at the time of incident. Therefore, if we taken into consideration formula i.e. an amount equal to fifty percent of the monthly wages of the deceased employee's multiplied by the relevant factor given in Section 4(1)(a) read with Schedule IV given in the Act as well as age and income of deceased Digambar at the time of accident, as held Supra, then payable amount of compensation comes to Rs.8,84,200/- rounded up.

45. It is not disputed that, respondent No.1 as employer of deceased Digambar, did not make provisional payment as a compensation to the petitioners by accepting his liability to that effect within prescribed time period vide Section 4-A(2) and (3) of the Act. The settled position of law is not disputed on behalf of the respondents that, if the employer made default to make such provisional payment towards compensation within one month from the date of it felt due, the petitioner are also entitle to get interest at least 12% simple interest on amount of compensation from the date of accident vide Section 4-A(3)(a) of the Act. This legal position is also discussed by the Hon'ble Supreme Court in the Case of **Saherabibi Yakubhai Shaikh and Ors.** (stated above). Obviously, respondent Nos.1 and 2 being owner and insurer of said Jeep are jointly and severally liable to pay said compensation amount with interest to the petitioners.

Needless to say that, the insurance company is responsible for indemnifying the compensation amount and the interest.

46. It is well settled that, respondent No.1 being employer of deceased Digambar was under legal obligation to make provisional payment towards compensation by accepting his liability to that effect within one month from the date of said accident. However, he failed to do so. It is evident that, petitioner No.1 being widow, petitioner Nos.2 to 4 being unmarried daughters, petitioner No.5 being minor son and petitioner Nos.6 & 7 being parents were financially reliant on deceased Digambar at the time of his death. Thus, in my opinion, respondent No.1 is liable to pay 50% penalty amount on the aforesaid total compensation amount which comes to Rs.4,42,100/- on being he caused unjustified delays in making provisional payment as a compensation towards his personal liability vide Section 4-A(3)(b) of the Act.

47. In view of foregoing discussion, the petitioners are entitle to get amount of compensation of Rs.8,84,200/- with simple interest @ 12% from the date of accident i.e. from 05/03/2018 till realization of entire amount from the respondents jointly and severally vide Section 4(1) and 4-A(3) (a) of the Act respectively. Respondent No.1 will have to pay additional amount of Rs.4,42,100/- as 50% penalty on said principal compensation amount to the petitioners vide Section 4-A(3)(b) of the Act. As such, I found partial substance in the argument advanced by the learned advocate for the petitioners

in terms of observations made Supra. However, I do not find substance in the argument advanced by the learned Advocates for both defendants as per aforesaid findings. Hence, I answer issue No.9 in the affirmative partially.

AS TO ISSUE NO.10 :-

48. In view of findings on issue No.9, the main petition deserves to be partly allowed. The respondents are jointly and severally liable to pay the petitioners an amount of compensation of Rs.8,84,200/- with interest @ 12% from the date of accident i.e. from 05/03/2018 till realization of entire amount vide Section 4(1) and 4-A(3)(a) of the Act respectively. Further, respondent No.1 is liable to pay additional amount of Rs.4,42,100/- to the petitioners as 50% penalty amount on principal compensation amount vide Section 4-A(3)(b) of the Act. In view of peculiar circumstances of the case and nature of dispute, in my opinion, the petitioners are also entitle to get proportionate costs of the proceeding. Accordingly, in answer to issue No. 7, I pass following order.

ORDER

- 1) The petition (Exh.1) is partly allowed with proportionate costs.
- 2) The respondents do pay jointly and severally to the petitioners an amount of compensation of Rs.8,84,200/- with interest @ 12% from the date of accident i.e. from 05/03/2018 till realization of entire amount vide Section 4(1) and 4-A(3)(a) of the Act respectively.

- 3) Respondent No.1 further do pay to the petitioners an additional amount of Rs.4,42,100/- as 50% penalty on principal compensation amount vide Section 4-A(3)(b) of the Act.
- 4) The decree be drawn up, accordingly.

Date : 18/05/2026.

(S. S. Budruk)
Civil Judge Senior Division,
Majalgaon.

CERTIFICATE

The contents of above order is/are word to word same and found correct in this pdf.

Dictated on : 18/05/2026.
Typed on : 18/05/2026.
uploaded on : 18/05/2026.

Sd/-
(M.A.Kulkarni)
Steno-Gr.II
C.J.S.D.Majalgaon.

