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Decided on : 02.05.2026
Duration : 5 years, 3 months and 21 days.

Exhibit No. _____.

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, BULDANA,
AT BULDANA.

(Presided over by S. D. Jagmalani, Member, M.A.C.T., Buldana)

Motor Accident Claim Petition No.13 of 2021.

(CNR : MHBU010000482021)

1. **Smt. Minal wd/o Nilesh Borse,**
Aged 28 years, Occu. - Household,
 2. **Ku. Shravni d/o Nilesh Borse,**
Aged 5 years, Occu. - Nil,
 3. **Ansh s/o Nilesh Borse,**
Aged 5 months, Occu. - Nil,
Nos.2 and 3 Minors, through G.A.L. mother
claimant No.1, Smt. Minal wd/o Nilesh Borse,
 4. **Sau. Mangla Bhaskar Borse,**
Aged 51 years, Occu. - Household,
 5. **Bhaskar Chandrabhan Borse,**
Aged 67 years, Occu. - Pensioner,
All R/o Tanaji Nagar, Ward No.15,
Near Mahatma Jotiba Phule School,
Buldana, Tq. and Dist. Buldana.
- ... **Petitioners.**
(Claimants)

Versus

1. **Bajaj Allianz General Insurance Company Ltd.**
GE Plaza, Airport Road, Yerwada, Pune.
 2. **Mohd Rafique Khan,**
Age – Major, Occu. - Owner of TATA Tempo
No.MH23/W-1840,
R/o. Shiv Sai Plaza, Flat No.303, Plot No.17,
Sector 17A, Sector -50, Nerul, Navi Mumbai,
Dist. Thane.
- ... **Respondents.**
(Opponents)

3. **Nadeem Qureshi s/o Abdul Latif Qureshi,**
Age – 28 years, Occu. - Driver,
R/o. R/409, Bldg. No.7/B, Indian Oil Nagar,
Mankhurd link road,
Borla Natwar Parekh Compd.,
Greater Mumbai, Mumbai Suburban – 400043
- } ...Respondent
(Opponent)

Appearance :

Mr. S.P. Sanap, Advocate for petitioners,
Mr. B.B. Pandey, Advocate for respondent No.1,
Claim petition proceeded exparte against respondent Nos.2 and 3.

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J U D G M E N T

(Delivered on this 02nd day of May, 2026)

1] Present petition is filed under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation, on account of death of Nilesh Bhaskar Borse (hereinafter referred to as 'deceased Nilesh'), took place in vehicular accident occurred on dated 05.11.2020.

Facts of the case, in brief, are as follows :-

2] That, on dated 05.11.2020, deceased Nilesh was proceeding by his motorcycle bearing No. MH28/Z-9621 from his house to attend his duty as Assistant Manager in State Bank of India, Branch Goregaon (East) Mumbai. On the way, in front of I.Y. College wall TATA Tempo bearing No.MH23/W-1840 came from his behind very rashly and given dash to the deceased Nilesh, due to which deceased Nilesh had sustained fatal injuries and died in Cooper Hospital, Juhu, Mumbai. According to the petitioners, the accident took place due to negligent act of respondent No.3, the driver of said TATA Tempo vehicle and offence came to be registered against him in Jogeshwari Police Station. The said TATA Tempo was belonged to

respondent No.2 and at the relevant time, it was insured with respondent No.1.

3] On the day of accident, deceased Nilesh was aged about 35 years and he was getting salary of Rs.48,072/- per month. Petitioners were dependent upon his earning. Therefore, they calculated loss of dependency and claimed Rs. 3,21,82,620/- along with interest @24% per annum towards compensation from all the respondents jointly and severally.

4] Respondent No.1 has filed its written statement (Exh.22), thereby denied the manner of accident as well as age, occupation and earning of deceased Nilesh, as asserted by the petitioners. It was submitted that deceased Nilesh was not wearing helmet and accident took place due to sole negligence of the deceased. It was further submitted that petitioners have not joined as party to the owner as well as insurer of the motorcycle No.MH28/Z-9621. Therefore, petition suffers from the non-joinder of necessary parties. It was further submitted that respondent No.3, the driver of offending vehicle had no valid and effective driving licence. On the day of accident, there was no permit and fitness certificate valid of the offending vehicle. Respondent No.2 has breached the terms and conditions of Insurance Policy. Thus, taking all such statutory and general defences, it was submitted that respondent No.1 is not liable to pay the compensation to the petitioners and prayed for dismissal of the petition.

5] Respondent No.2 and 3 were duly served with the notice, however they remained absent, therefore petition came to be

proceeded exparte against them.

6] On the strength of such rival pleadings of the parties, learned predecessor of this Tribunal framed following issues and I recorded findings with reasons on the same as under :

Sr. No.	ISSUES	FINDINGS
1.	Do claimants prove that Nilesh s/o Bhaskar Borse succumbed to the injuries sustained by him in a vehicular accident, which took place on dated 05-11-2020 on Western Express Highway, Jogeshwari (East), Mumbai, due to rash and negligent driving by the driver of TATA Tempo bearing registration No. MH-23-W-1840 ?	<u>...In affirmative.</u>
2.	Does opponent No.1 prove that the driver of said vehicle bearing registration No. MH-23-W-1840 was driving it without valid and effective driving licence; as well the said vehicle was not having permit and fitness certificate at the time of accident, which amounts to breach of the terms and conditions of policy ?	<u>...In negative.</u>
3.	Does opponent No.1 prove that accident took place due to sole negligence of the rider of motor cycle bearing registration No. MH-28-Z-9621 i.e. deceased himself ?	<u>...In negative.</u>
4.	Does opponent No.1 prove that the claim is bad for non-joinder and mis-joinder of necessary parties ?	<u>...In negative.</u>
5.	Whether claimants are entitled for compensation ? If yes, to what extent and from whom	<u>...Yes.</u> <u>As per final order.</u>
6.	What order and award ?	<u>...As per final order.</u>

REASONS

As to Point Nos.1 and 3 :

(Since both the issues are interconnected with each other, it would be convenient to discuss and decide them jointly.)

7] In order to prove the accidental death of deceased Nilesh, his wife petitioner No.1 has examined herself as (P.W.1) and placed her affidavit (Exh.29) in lieu of examination-in-chief on record. In nutshell, she deposed that on the day of accident, her husband was proceeding by his motorcycle to attend his duty. On the way, TATA Tempo bearing No.MH23/W-1840 came from his behind very rashly and given severe dash to her husband, due to which, her husband has sustained fatal injuries. In support of her contentions, she has relied upon documentary evidence such as copy of F.I.R. (Exh.30), spot panchanama (Exh.31), inquest panchanama (Exh.32), A.D.R. (Exh.33), post-mortem report (Exh.34) and Form Comp.A.A (Exh.46).

8] In cross-examination, (P.W.1) admitted that she has not witnessed the accident. F.I.R.(Exh.30) has been lodged by Sunil Khodke on the basis of information given to him on phone by Ganesh Borse. She further admitted that Ganesh Borse was not along with her husband on the day of accident. Sunil Khodke and Ganesh Borse both are her relatives. She further admitted that the office hours of her husband start from 9.00 a.m. On the day of accident, the accident took place around 9.30 a.m. Therefore, it was suggested to her which she denied that on that day, as her husband got late, he was driving the motorcycle very rashly and accident took place due to his sole negligence.

9] Petitioners have not examined any eye witnesses to prove the accident and they only relied upon certified copy of police papers, therefore learned Advocate Mr. B. B. Pandey appearing for respondent No.1 vehemently contended that petitioners have failed to establish negligent act on the part of driver of offending vehicle. Therefore, petition deserves to be rejected. In support of such contentions, he placed reliance upon the following reported cases which were found distinguishable from the facts of the present case :

1) In the case of **Pappu vs. Vinod Kumar Lamba, Civil Appeal No.20962 of 2017**, it was held by the Hon'ble Apex Court that in the claim petition, the name of driver of offending vehicle was not mentioned. It is contended that Truck No.URS-2735 driven by Om Prakash was knocked down by the offending Truck No.DIL-5955 coming from opposite direction by rash and negligent driving. The reply filed by respondent No.1, the owner of offending Truck DIL-5955 also does not mention the name of the driver of offending Truck.

2) In the case of **Narayan Kalangutkar vs. New India Assurance Company, 2012 A.C. 263 (Bom)**, it was held that evidence of (AW5) Mohandas Naik establishes that charge-sheet was filed against the drivers of both the vehicles. Tribunal upon appreciation of the evidence held that claimants have failed to prove rash and negligent driving on the part of respondent Nos.2 and 4 who were driving respective vehicles and consequently dismissed claim petition.

3) In the case of **Suresh alias Sudesh Foll Dessai vs. Suresh, 2011(1)TAC110**, in the cross-examination, claimant admitted that middle front portion of the pick-up dashed against the motorcycle. He was also shown the sketch and he admitted that the accident had taken place at a turn as shown in the sketch. Claimant in his evidence

did not give all the details as to the manner in which the accident occurred.

4) In the case of **Bajaj Allianz General Insurance Vs. Manisha w/o Lahu Kale, First Appeal No.2742 of 2015**, the statements of witnesses recorded under Section 161 of Cr.PC. were in two sets. One set is of the statements of witnesses recorded on 13.05.2009 and the second set is of the supplementary statements of the same witnesses recorded on 20.10.2009. The Tribunal also relied on supplementary statements of Suresh Namdeo Mane and Rajabhau Bhanudas Kale recorded on 20.10.2009. It is the most important to note that on 13.05.2009 statement of Rajabhau Kale was not recorded by Investigating Officer. Only on 20.10.2009 Rajabhau Kale stated before the Investigating Officer that on 10.05.2009 Suresh Mane informed him on telephone that one unknown vehicle dashed against his motorcycle and in that accident Suresh Mane sustained injury and Lahu Bhanudas Kale died. Subsequently Rajabhau Kale stated that, "later on I came to know that the said unknown vehicle was truck No. MH-24-F-8796 and its driver was Shakil Salim Kotwal". In his statement he nowhere stated as to what was his source of knowledge regarding registration number of the offending truck and name of driver."

5) In the case of **The New India Assurance Vs. Smt. Alpa Rajesh Shah, First Appeal No.848 of 2012**, it was found that there was no attempt made by the Appellant to examine the driver of the Tanker. Therefore, it is held that it was a fit case to draw an adverse inference against the Appellant and the insured.

6) In the case of **Bijoy Kumar dugar Vs. Bidyadhar Dutta, AIR 2006 Supreme Court 1255**, it was held that the accident took place head-on collision between Maruti Car and Bus. Tribunal, relying upon

the evidence and the material placed on record, came to the conclusion that the deceased Raj Kumar Dugar and Ajay Baruah, the driver, respondent No.2, both were driving their respective vehicles in a rash and negligent manner and the accident was as a result of their contributory negligence for which the insurer respondent No.3 was held liable to pay half of the amount of compensation to the claimants.

7) In the case of **A. Chithra vs. G. A. Sivakumar, C.M.A. (MD) No.61 of 2017**, it was held that the deceased rider was not wearing helmet at the time of accident. Therefore, it is held that 15% contributory negligence has to be fixed on the deceased driver.

10] The facts and circumstances of aforesaid cited cases are different than the facts and circumstances of the present case. It is true that, petitioners have not examined any eye witness to the accident. However, in **Bimla Devi Vs. Himachal State Road Transport Corpn., (2009) 13 SCC 530**, the Hon'ble Apex Court has held that, a strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be proved by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

11] In the present case, it appears from the record that, on the very day of accident, report (Exh.30) has been lodged by Sunil Khodke in respect of alleged accident, upon which crime came be registered against the driver of Tempo bearing No.MH23-W-1840 in Jogeshwari Police Station. It is alleged that the said offending Tempo came from behind of the deceased Nilesh very rashly, given him dash

and said Tempo run over on his both legs below knee. The cause of death as mentioned in Post Mortem Report (Exh.34) was shock and hemorrhage as result of polytrauma allegedly sustained in motor vehicle accident.

12] It reveals from the spot panchanama (Exh.31) that accident took place on Western Express Highway. There is no reason to disbelieve the oral testimony of (PW1) which is supported by cogent documentary evidence. Respondent has not brought on record any worthwhile material even to prove the contributory negligence of the deceased Nilesh. Thus, accidental death of deceased Nilesh is revealed from the record. Hence, I record findings to issue Nos.1 in the affirmative and No.3 in negative.

As to Issue No.2 :-

13] According to respondent No.1, the driver of respondent No.1 had no valid and effective motor driving licence. In support of such contention, respondent No.1 has examined Kiran Chavan, the employee of RTO Office, Wadala, Mumbai as (R.W.1) and he produced M.D.L. extract (Exh.58) of respondent No.3, the driver of offending vehicle. According to him, the said driver had no valid driving licence of the transport vehicle. However, he admitted that the L.M.V. transport was valid on the date of accident.

14] Respondent No.1 has also examined its legal executive, Mr. Sandip Maldhure as (R.W.2) and he also contended that the offending vehicle was heavy goods vehicle. It was transport vehicle. However, respondent No.3, the driver had only LMV transport vehicle licence, therefore, according to him, respondent No.2 has willfully

breached the terms and conditions of the insurance policy (Exh.64).

15] However in the cross-examination, (R.W.2) admitted that offending vehicle was heavy goods vehicle is not mentioned in the vehicle particulars (Exh.63). The offending vehicle is goods carrier and it is delivery van. Thus, taking into consideration the oral as well as documentary evidence placed on record by respondent No.1, it appears that offending vehicle is the commercial delivery van and on the date of accident respondent No.3, the driver had LMV transport vehicle licence.

16] However, according to Mr. B.B.Pandey, learned Advocate appearing for the respondent No.1 vehemently contended that respondent No.2 has breached the terms and conditions of insurance policy. In support of such contention he placed reliance on following reported cases:-

A) In **United India Insurance. Vs. Bindiya Udaykumar Adwani, 2009 (2) BomCR 380**, it was held that Dharmendra was driving the Car rashly and negligently on the date of incident, while he was minor, thus it is clear that there was breach of the condition of the policy which excludes a person who has no licence or who has been disqualified for holding or obtaining a driving licence, from driving.

B) In **United India Insurance Company Vs. Sujata Arora, 2013 ACJ 2129**, it was held that since the owner, respondent No.1 entrusted the offending van to respondent No.2, who was not holding valid driving licence at the time of accident, respondent No.1 violated the conditions of the insurance policy and, therefore, the insurance

company is not liable to indemnify the owner, respondent No.1.

C) In **Swapnil s/o Suresh Mandlik vs. Branch Manager, First Appeal No.567 of 2019**, driving licence issued in favour of driver of offending vehicle on 14.09.2006 was valid only up to 13.09.2009 and it was renewed only 19.01.2012. Therefore, it was submitted that on the date of accident i.e. 31.12.2011, the driver of the offending vehicle did not hold valid and effective driving licence.

D) In **The Oriental Insurance Vs. Sri. Naresh Babu N., M.F.A. No.7074 /2016(MV)**, it was held that the rider of vehicle was not having a valid driving licence and secondly he was not wearing helmet, therefore, he was held not entitled to compensation.

17] The facts and circumstances of aforesaid cited cases are different than the facts and circumstances of present case. It may be noted that, in case of **M/s. Bajaj Alliance General Insurance Co. Ltd. Vs. Rambha Devi, 2024(4) TAC 724 (SC)**, the Hon'ble Apex Court held that, a driver holding a license for Light Motor Vehicle (LMV) class, under Sec.10(2)(d) for vehicles with a gross Page 125 of 126 vehicle weight under 7,500 kg., is permitted to operate a "Transport Vehicle" without needing additional authorization under Sec.10(2)(e) of the MV Act specifically for the "Transport Vehicle" class. For licensing purposes, LMVs and transport Vehicles are not entirely separate classes.

18] Thus, in the light of legal principle laid down by the Hon'ble Apex court, in the present case, even if it is presumed that, the driver of offending vehicle had no transport licence on the day of

accident, however, the extract of driving licence indicates that his licence for driving LMV transport licence was valid on the day of accident. Therefore, it cannot be held that, respondent No.2 has breached the terms and conditions of the insurance policy. Accordingly, I answer issue No.2 in the negative.

As to issue No. 4 :-

19] It was submitted by respondent No.1 that, petition suffers from the non-joinder of necessary parties. However, it is well settled that necessary party is such, in whose absence, dispute cannot be adjudicated effectually and completely.

20] In the present petition, dispute involved in the petition can be adjudicated effectually and completely without impleading the owner and insurer of the aforesaid motorcycle. Nothing is revealed from the record that petition is bad for non-joinder of any such necessary parties. Hence, I record my finding to issue No.4 in the negative.

As to issue No.5:-

21] Petitioners being the legal representatives of the deceased Nilesh are entitled to get compensation. Basically three factors need to be proved by the petitioners for assessing compensation in case of death claim : (a) age of the deceased, (b) income of the deceased and (c) the number of dependents.

22] In the case of **Syed Basheer Ahamed vs. Mohd. Jameel, Civil Appeal No.10 of 2009, decided on 06.01.2009 by the Hon'ble Supreme Court**, it was held that the amount of compensation

determined to be payable to the claimants has to be fair and reasonable by accepted legal standards.

23] So far as age of deceased Nilesh is concerned, petitioners have placed on record his motor driving licence (Exh.43), in which his date of birth is mentioned as on dated 11/07/1985. So it reveals that on the date of accident, he was aged about 35 years.

24] In order to prove the monthly income of deceased Nilesh, petitioners have examined (PW2) Mayank Kumar, branch Manager of S.B.I. and he has proved salary slip (Exh.53) of month October, 2020 of deceased Nilesh, which reveals that his gross salary was Rs.48,072/- and after making legal deductions of Rs.3,345/-, his net salary was of Rs.44,727/-. The form No.16 (Exh.76) indicates his total taxable income for the assessment year 2020-21 was Rs.6,07,260/-. Therefore, there is no reason to disbelieve the testimony of (PW2) Mayank Kumar, which reveals his last net pay was Rs.44,727/-(in round figure it would Rs.44,700/-) and he was the permanent employee.

25] I have perused the facts of reported cases cited by learned Advocate B.B.Pandey appearing for the respondent No.1 and found the same are distinguishable as under:-

I) In the case of **United India Insurance Vs. C.K. Anwar, decided on 23rd February 2012, by the Hon'ble Karnataka High Court,** claimant claimed to be an agriculturist and also businessman. However, income from agricultural land was not established. Except producing Hoenece to run a Hotel, no credible proof with regard to income from hotel business was produced. Thus, the Tribunal by

resorting to guess work has taken the income from business at Rs.7000/- per month.

II) In **Smt. Manjuri Bera vs. The Oriental Insurance Company Ltd. and Anr., 2007 ACJ 1279**, victim's married daughter has made her claim under Section 140 of the said Act saying that she has five children; that they are minors; that she was brought up by her uncle; that after her mother's death the deceased lived in the same house in which the claimant was living with her uncle before her marriage; that the deceased was a mason that after her marriage she lived with her husband and, therefore, she was held entitled to get statutory compensation under Section 140 of the said Act.

III) In **Smt. Kalpana Madhu Gavali vs. Maharashtra State Road Transport Corporation, First Appeal No.1579 of 2006**, it is held that the component of compensation under the head of loss of future prospects is not to be subjected to interest.

26] However, it may be noted that in **The Oriental Insurance Co. Ltd. Vs. Niru @ Niharik, Special Leave Petition (C) No.11340 of 2020, decided by the Hon'ble Apex Court** it is held that, interest on future prospects would be received only after the period for which the multiplier is adopted. Therefore, the interest can be awarded on the amount of the future prospects.

27] Therefore, in the present case, considering the number of dependants and guidelines laid down by the Hon'ble Apex Court in the case of **Smt. Sarla Verma Vs. Delhi Transport Corporation reported in 2009(4) ALL MR 429, and National Insurance Company**

Limited Vs. Pranay Sethi, reported in 2017 (4) T.A.C.673 (S.C.), multiplier of '16' will be applicable and 1/4th amount is required to be deducted towards personal living expenses of deceased Nilesh. So also, 50% towards future prospects is required to be granted to the petitioners.

28] Thus, the total dependency would be Rs.44,700/- minus 1/4th Rs.11,175/- towards personal living expenses of deceased Nilesh = Rs.33,525/- X 12 X 16 = Rs.64,36,800/- + 50% towards future prospects i.e. Rs.32,18,400/- = Rs.96,55,200/-. Petitioners are also entitled for loss of estate Rs.16,500/-, funeral expenses Rs.16,500/- and loss of consortium of Rs.44,000/-. Therefore total dependency would be an amount of Rs.97,32,200/-.

29] The said offending vehicle was belonged to respondent No.2 and at the relevant time, it was insured with respondent No.1. Therefore, all the respondents are jointly and severally liable to pay the compensation alongwith interest @ 7% p.a. to the petitioners from the date of petition till its realization. Accordingly, I record my finding to issue No.5.

As to Issue No.6 :-

30] In view of the findings recorded above, petition deserves to be allowed. Accordingly, I proceed to pass the following order :-

ORDER

- [1] Petition is allowed with proportionate costs.
- [2] Petitioners are entitled to get the compensation amount of Rs.97,32,200/- [Rs. Ninety Seven Lakhs Thirty Two Thousand and Two Hundred only] (inclusive the amount of NFL, payable under Section 140 of the M.V. Act), with interest at the rate of

7% p.a. from the date of presentation of present petition till its actual realization.

- [3] All the respondents jointly and severally do pay the aforesaid amount of compensation to petitioners.
- [4] Respondents are directed to deposit the amount of award by way of NEFT / RTGS in the account of Tribunal, Buldana alongwith prescribed format to the Tribunal and shall send copy of same to the petitioners.
- [5] Petitioners shall produce their 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 their bank account.
- [6] On depositing the compensation amount, it be disbursed equally amongst the petitioners on their due verification as per rules. Share of petitioner Nos.2 and 3 be kept in any nationalized bank in fixed deposit till they attained majority and petitioner No.1 is entitled to receive periodical interested thereon.
- [7] Award be drawn up accordingly.
- [8] M.A.C.P No.13/2021 stands disposed of accordingly.

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

Date :- 02/05/2026.

Buldana.

(S.D. Jagmalani)
Member,
Motor Accident Claims Tribunal,
Buldana.

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