

MHBU010000752017



Received on : 12.01.2017
Registered on : 13.01.2017
Decided on : 20.08.2026
Duration : 9 Ys. 7 Ms. 7 Ds.

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. 9 of 2017.

(CNR : MHBU010000752017)

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|--|---|---|
| <p>1. Mayur s/o Panjabrao Sitafale,
Aged about 15 years, Occu. - Education,</p> <p>2. Nikhil s/o Panjabrao Sitafale,
Aged about 13 years, Occu. - Education,</p> <p>3. Wamanrao s/o Yashwantrao Sitafale,
Aged about 75 years, Occu. - Nil,</p> <p>4. Mrs. Sudha w/o Wamanrao Sitafale,
Aged about 68 years, Occu. - Nil,
R/o. Khandala Makardwaj,
Tq. Chikhli, Dist. Buldana.
[Nos.1 and 2 Minors through their GAL
applicant No.3]</p> | } | <p>....Petitioners.
(Claimants)</p> |
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Versus

- | | | |
|---|---|---|
| <p>1. Babasaheb s/o Vishwanath Adhav,
Aged – Major, Occu. - Transport Business,
R/o Dongargaon,
Tq. and Dist. Ahamadnagar,</p> <p>2. Reliance General Insurance Co. Ltd.,
Through its Manager, Reliance Centre, 19,
Walchand Hirachand Marg, Ballard Estate,
Mumbai – 400001.</p> | } | <p>....Respondents.
(Opponents)</p> |
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Appearance :

Mr. S. J. Deshmukh, learned Advocate for petitioners,
Mr. B. C.Wankhede, learned Advocate for respondent No.1,
Mr. B. B. Pandey, learned Advocate for respondent No.2.

...

J U D G M E N T

(Delivered on this 20th day of August, 2026)

Present petition is filed under Section 166 of the Motor Vehicles Act, 1988, for grant of compensation, on account of death of Panjabrao Wamanrao Sitafale (hereinafter referred to as “deceased Panjabrao”), took place in vehicular accident occurred on dated 07.07.2015.

The facts of case, in brief, are as under :-

2] That, on dated 07.07.2015, deceased Panjabrao along with his friend Pralhad Ingle was proceeding by his motorcycle bearing No.MH28/AK-6535 from Deulgaon Mahi to Chikhli. On the way, near Ancharwadi Shiwar, Car bearing No. MH-16/BH-1937 came from their behind very rashly and given dash to their motorcycle, due to which, deceased Panjabrao had sustained grievous injuries. Initially, he was admitted in Tuljai Hospital at Chikhli and then he was shifted to Vijayshree Hospital at Buldana. Thereafter, he took further treatment in Ghati Hospital at Aurangabad, however, he succumbed to the injuries.

3] According to petitioners, accident took place due to negligent act of the driver of Car bearing No. MH-16/BH-1937 and offence came to be registered against him in Andhera Police

Station. The said offending vehicle was belonged to respondent No.1 and at the relevant time, it was insured with respondent No.2.

4] On the day of accident, deceased Panjabrao was aged about 38 years. He was working as Talathi and getting salary of Rs.26,281/- per month. Petitioners were dependent upon his earning, therefore, they calculated the amount towards compensation at Rs.77,12,935/-, however, they restricted their claim to the extent of Rs.1,00,000/- along with interest @ 18% p.a. from both the respondents jointly and severally.

5] Respondent No.1 has filed his written statement (Exh.13), thereby admitted the accident. However, he denied that the accident took place due to his negligent act. It was submitted that he had valid and effective motor driving licence on the date of accident. His vehicle was insured with respondent No.2, therefore, respondent No.2 is vicariously liable to pay the compensation to the petitioners.

6] Respondent No.2 resisted the petition by filing its written statement (Exh.21), thereby denied the involvement of the offending vehicle in the said accident. It was submitted that there is delay of 40 days in lodging the report, which is not explained properly. It was further submitted that the driver of offending vehicle had no valid and effective motor driving licence. Respondent No.1 has breached the terms and conditions of insurance policy. Therefore, taking all such statutory and

general defences, it was submitted that respondent 2 is not liable to pay the compensation to petitioners and prayed for dismissal of petition.

7] On strength of such rival pleadings of parties, following issues (Exh.22) were framed and this Tribunal has recorded the findings with reasons thereon as follows :-

<u>Sr. No.</u>	<u>ISSUES</u>		<u>FINDINGS</u>
[1]	Do the claimants prove that deceased Panjabrao Wamanrao Sitafale died in motor vehicle accident occurred on 07-07-2015 at about 17-00 hrs. on Deulgaon Mahi – Chikhli road near Ancharwadi Shiwar ?	..	In affirmative.
[2]	Do the claimants prove that the above accident occurred due to rash and negligent driving and dash given by Beat Car No. MH-16-BH-1937 to the motorcycle No. MH-28-AK-6535, on which deceased was riding ?	..	...Partly affirmative. 50% negligence of deceased and 50% negligence of driver of offending vehicle.
[3]	Does the opponent No.2 prove that the driver of Beat Car was not holding valid and effective driving licence at the time of accident ?	..	In negative.
[4]	Are the claimants entitled for compensation and interest, what compensation and since when interest, from whom ?	..	...In affirmative. As per final order.
[5]	What order and award ?	..	..As per final order.

REASONS

As to issue Nos.1 and 2 :

8] In order to prove the accidental death of deceased Panjabrao, his father, the petitioner No.3 has examined himself as (PW1) and placed on record his affidavit (Exh.25) in lieu of examination-in-chief. In support of his contentions, he placed reliance upon documents including copy of F.I.R. (Exh.32), spot panchanama (Exh.33), inquest panchanama (Exh.34), post-mortem report (Exh.35), Charge-sheet (Exh.36), Seizure Panchanama (Exh.37) of vehicle, Registration Certificate (Exh.38) of offending vehicle, Insurance Policy (Exh.39) of offending vehicle, and Death Certificate (Exh.40) of his daughter-in-law.

9] In the cross-examination, (PW1) admitted that he has not witnessed the accident and even his son, Ramanand also has not witnessed the accident. Report came to be lodged after 40 days of the accident, against the respondent No.1. He denied that said offending vehicle was not involved in the accident. He admitted that he knows the respondent No.1, however he denied that crime came to be registered falsely after 40 days of the accident.

10] In order to prove the accident, petitioners have also examined Omprakash Sawale as (PW2), the Police Head Constable, who has carried out the investigation. He deposed that earlier ADR was registered. During investigation, it was

transpired to him that accident took place due to negligent act of Babasaheb Adhav, the respondent No.1 the driver of offending vehicle, therefore, he has filed charge-sheet (Exh.36) against him.

11] In the cross-examination of (PW2), it has come on record that accident took place on dated 07-07-2015. Ramanand Sitafale, the brother of deceased Panjabrao has lodged the report on dated 16.08.2015. Ramanand has not witnessed the accident. During investigation, he recorded statement of Ramanand Wamanrao Sitafale, Pralhad Shamrao Ingle, Dattatray Wamanrao Sitafale and Shivaji Sheshrao More, who were relatives of deceased Panjabrao. Out of them, Pralhad Ingle was the friend of deceased Panjabrao.

12] According to the learned Advocate Mr. B. B. Pandey appearing for respondent No.2, (PW2) has recorded the statement of only interested witnesses, who were either relatives or friend of the deceased, therefore charge-sheet is not sufficient evidence to reveal the negligence of respondent No.1. According to him, petitioners have failed to prove the involvement of the offending vehicle and negligent act of respondent No.1 therefore, respondent No.2 is not liable to pay compensation to the petitioners. In support of such contentions, he placed on record the written notes of arguments (Exh.69) and relied upon following citations, which I found the same are distinguishable as under:-

A) In **Bajaj Allianz General Insurance vs. Manisha & others**, First Appeal No. 2742 of 2015, decided by Hon'ble Bombay High Court, the involvement of offending truck was disputed. The claimants have placed on record only the oral evidence of claimant Manisha Lahu Kale and certified copy of charge-sheet of criminal case filed against respondent No.3, the driver of truck. However, the presence of driver could not be secured and in the result, criminal proceeding was stopped u/Sec. 258 of the Cr.P.C. The statements of witnesses recorded u/Sec. 161 of Cr.P.C. were in two sets. One set of statement of witnesses was recorded on 13/05/2009 and the second set of supplementary statement of same witnesses was recorded on 20/10/2009. 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. Suresh Mane in his statement recorded by Investigating Officer on 13/05/2009 stated that at the time of accident, 'unknown vehicle' dashed against the motorcycle of the deceased by which he was travelling as a pillion rider. After five months, Suresh Mane stated before the Investigating Officer that, later on he came to know that registration number of that unknown vehicle was truck No. MH-24/F-8796 and name of the driver was Shakil Salim Kotwal. Both the persons no where

stated the source of their information.

B) In **New India Assurance Company vs. Ashalata & others**, First Appeal No. 2829 of 2015 decided by the Hon'ble Bombay High Court, it emerges from the recitals of FIR that at the time of registration of offence, neither registration number of the vehicle involved in the accident nor the name of the driver was known to anybody. It was a case of hit and run accident. Panchnama of vehicle was prepared after 5 days of occurrence of the accident. The evidence of I.O. was not found trustworthy. Thus, it was held that to prove the involvement of the offending vehicle with the principle of preponderance probability, there should be at least some prima-facie material to show the involvement of the offending vehicle in the accident.

C) In **Oriental Insurance Co. Ltd. vs. Meena Variyal and others**, (2007) 5 SCC 428, Suresh Chandra Variyal was employed as a Regional Manager in M/s. Apace Savings and Mutual benefits Ltd., the owner of motor vehicle, respondent No.3. Variyal was provided with a car by the employer. The vehicle was insured with appellant. The said vehicle met with an accident and Suresh Chandra Variyal died. The widow and daughter of Suresh Chandra Variyal filed a claim petition under Sec.166 of the Motor Vehicles Act.

13] According to claimants, in the aforesaid case, deceased was driving alongwith his 'companion' Mahmood Hasan after completing his work for the employer. Around 11.30

p.m., the car collided with a tree due to the rash and negligent driving of the driver. The car was being driven by Mahmood Hasan at the time of the accident. The deceased was an occupant of the car. The car was being used for the business and for the benefit of the employer of the deceased. The claim was filed against the employer, owner of the motor vehicle and Insurance Company.

14] The facts and circumstances of the aforesaid cited cases are different than the facts and circumstances of the present case. Therefore, in my opinion, with due respect, the legal proposition laid down in the aforesaid cited cases by the Hon'ble High Court as well as Hon'ble Apex Court will not be favouring to the respondents in the present case.

15] It is true that petitioners have not examined any eye witness or Pralhad Ingle, the friend of deceased Panjabrao who was riding pillion on his motorcycle to prove the accident. It may be noted that in **Sunita and others Vs. Rajasthan State Road Transport Corporation**¹, the Hon'ble Apex Court has held that, a hyper technical and trivial approach cannot be sustained in a case for compensation under Motor Vehicles Act and Tribunal is not bound strictly by pleadings of the parties. Furthermore, in **Bimla Devi Vs. Himachal State Road Transport Corpn.**², it is 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

¹ 2019(1) TAC 710(SC)

² (2009) 13 SCC 530

claimants. The claimants were merely to establish their case on touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.

16] However, in **Ravi Vs. Badrinarayan, I (2011) ACC 704 (SC)**, it is held by the Hon'ble Apex Court that, delay in lodging F.I.R. cannot be a ground to doubt claimant's case. Delay in lodging the F.I.R. cannot be a ground to deny justice to the victim. In cases of delay, the Courts are required to examine the evidence with a closer scrutiny and in doing so; the contents of the F.I.R. should also be scrutinized more carefully. If Court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the F.I.R., the claim case cannot be dismissed merely on that ground.

17] In the present case, the accident took place on dated 07.07.2015 and Ramanand Sitafale, the brother of deceased Panjabrao lodged report (Exh.32) on dated 16.08.2015, after 40 days of the accident. In the said report, it is mentioned by the first informant that his real brother had died in the accident, therefore, he was mentally disturbed and hence, delay had occurred. It reveals that delay in lodging report has been properly explained.

18] It is pertinent to note that, negligence is failure to observe for the protection of the interest of another person. The

question of contributory negligence arises when there has been some act or omission on the part of petitioner himself, which has materially contributed to cause the accident. It means the failure by a person to use reasonable care for the safety of himself as an author of his own wrong.

19] It is pertinent to note that Ramanand Sitafale, the first informant has also not witnessed the accident. At the relevant time, deceased Panjabrao was driving the motorcycle and his friend Pralhad Shamrao Ingle was riding pillion, so Pralhad Shamrao Ingle was the material witness. Had he been examined by the petitioners, he would have thrown light upon the actual aspect of the accident. (PW2), the investigating officer has also recorded his statement, therefore, it was expected from the petitioners to examine the said material witness in order to reveal exclusive negligence of respondent No.1, the driver of said offending vehicle.

20] However, it reveals from the spot panchanama (Exh.33) that accident took place on the road running from Chikhli to Deulgaon Raja. It was double lane road having divider and width of each side road was 20 feet. It further reveals from the record that deceased Panjabrao was proceeding by said road from Deulgaon Raja towards Chikhli, which was running from south to north. The offending vehicle came from their behind. If the map shown in the spot panchanama (Exh.33) is perused, it would reveal that there was much space available to the

deceased Panjabrao to proceed from the left side of the road. However, it appears that he was proceeding by the road which is adjacent to the divider, therefore, offending vehicle dashed from behind and deceased Panjabrao fell down on the divider and sustained head injury.

21] According to (PW1), at the relevant time, work of construction of road was in progress. If it is so, then it was expected from both the drivers to be very careful while driving their respective vehicles. It was further submitted that one side road was closed and from the other side, both side the vehicles were passing. Nothing is revealed from the record that deceased Panjabrao was wearing helmet and it was expected from him to wear protective headgear, as he was riding on highway. If he would have worn helmet, he would not have sustained head injury and also would have survived. He was not taking proper care.

22] Thus, it reveals that deceased Panjabrao has failed to take proper safety of himself. He was not wearing the helmet and he was driving the motorcycle from the middle of the road, therefore, he also has contributed in the occurrence of the said accident. Hence, considering the entire facts and circumstances of the case, the contributory negligence of the deceased Panjabrao could be accepted to the extent of 50% and 50% negligence of respondent No.1 is revealed from the record. Thus, I record findings on issue Nos.1 and 2 accordingly.

As to issue No.3 :-

23] It is alleged by the respondent No.2 that respondent No.1 has breached the terms and conditions of insurance policy, however in support of such contention, respondent No.2 has led no cogent evidence. Nothing is revealed from the record that respondent No.1 has breached the terms and conditions of the insurance policy. Hence, I record findings on issue No.3 in negative.

As to issue No.4 :-

24] Petitioners are the legal heirs and depending upon the earning of deceased Panjabrao, therefore, they are entitled to get compensation. Basically three factors need to be proved by the petitioners for assessing just and reasonable compensation in case of death claim : (a) age of the deceased, (b) income of the deceased and (c) the number of dependents.

25] In order to prove the income of deceased Panjabrao, petitioners have examined (PW3) Ishwar Sirsat, the Revenue Assistant working in Tahsil Office, Chikhli. He has produced copy of service book (Exh.57) and certified copy of salary slip (Exh.58) of deceased Panjabrao. As per the said salary slip, in the month of June 2015, deceased Panjabrao had received salary of Rs.26,781/-. As per service record, the date of birth of deceased Panjabrao as on 30.06.1975. He was the permanent employee working as a Talathi.

26] In the cross-examination, (PW3) admitted that as per order of Tahsildar, the increment of deceased Panjabrao has been stopped since 01.07.2013. Deceased Panjabrao has not passed the departmental examination. Deceased Panjabrao had taken Group Insurance and his legal heirs have received Rs.1,20,000/- towards Group Insurance. The legal heirs of deceased Panjabrao had applied for service on compassionate ground, however they did not get the service on compassionate ground.

27] There is no reason to disbelieve the oral testimony of (PW3) Ishwar Sirsat, which is supported by cogent documentary evidence. Thus, considering the service record of deceased Panjabrao, on the day of accident, he was aged about 40 years and 6 days. He was earning Rs.26,781/- per month. It is well settled that the amount received towards Group Insurance can not be deducted from the amount to be granted towards compensation. He was the permanent Government employee.

28] Therefore, considering the number of dependents and guidelines laid down by the Hon'ble Apex Court in the case of **Smt. Sarla Verma Vs. Delhi Transport Corporation**³ and **National Insurance Company Limited Vs. Pranay Sethi**⁴, multiplier of '15' will be applicable and 1/4th amount is required to be deducted towards personal living expenses of deceased

3. Reported in 2009(4) ALL MR 429.

4. Reported in 2017 (4) T.A.C.673 (S.C.).

Panjabrao. So also, 30% towards future prospects is required to be granted to the petitioners. Thus, the total dependency would be Rs.26,781/- minus $1/4^{\text{th}}$ Rs.6,695/- towards personal living expenses of deceased Panjabrao = Rs.20,086/- X 12 X 15 = Rs.36,15,480/- + 30% towards future prospects i.e. Rs.10,84,644/- = Rs.47,00,124/-. 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 total amount would be 47,77,124/- and out of it, minus 50% amount Rs.23,88,562/- towards contributory negligence of deceased Panjabrao, therefore total dependency would be an amount of Rs.23,88,562/- towards compensation to be granted to the petitioners.

29] On the day of accident, said offending vehicle was belonged to respondent No.1 and at the relevant time, it was insured with respondent No.2, therefore, both respondents jointly and severally are liable to pay the compensation along with interest @ 7% p.a. to the petitioners from the date of petition till its realization. Accordingly, I record my findings on issue No.4.

As to issue No.5 :-

30] Thus, 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.23,88,562/- [Rs. Twenty Three Lakh Eighty Eight Thousand Five Hundred and Sixty Two 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] Both 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.
- [7] Award be drawn up accordingly on payment of deficit court fees within one month from the date of order.
- [8] M.A.C.P No. 9/2017 stands disposed of accordingly.

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

Date :- 20/08/2026.
Buldana.

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