

MHBU-1100-0456-2021



Received on	: 04/02/2021
Registered on	: 04/02/2021
Decided on	: 08/05/2026
Duration	: Yr. Ms. Ds.
	05 03 04

**IN THE COURT OF THE MEMBER, MOTOR ACCIDENT  
CLAIM'S TRIBUNAL, MALKAPUR, DIST. BULDANA.**

(Presided over by Rajendrakumar B. Giri)

**MACP NO.103/2021**  
**(Old MACP No.126/2016)**

**Exh.No.82**

- 1) **Ashvini Balkrushna Tayade,**  
Aged about 24 years,  
Occupation – Nil,
- 2) **ku. Swarali Balkrushna Tayade,**  
Aged about 03 Months,  
Occupation – Nil.
- 3) **Prabhavati Pralhad Tayade,**  
Aged about 55 years,  
Occupation – Housewife.
- 4) **Pralhad Mallhari Tayade,**  
Aged about 59 years,  
Occupation – Nil.
- 5) **Shivaji Pralhad Tayade,**  
Aged about 24 years,  
All R/o. Phuli, Tq. Nandura, Dist.  
Buldana.

**... Claimants/  
Petitioners.**

**--Versus--**

- 1) **Raju Rama Choudhari,**  
Aged about Major,  
Occupation – Business.  
R/o. Mahalpimpri, Tq. Jamner, Dist.

Jalgaon Khandesh.  
(Truck No. MH-06-AQ-5515)

2) **S.B.I. General Insurance Co.ltd.,**  
R/o. 'Natraj' 101/201 and 301  
Junction of Western Express Highway  
and Andheri Kurla road  
Andheri East Mumbai 400069  
(Policy No. - 0000000002209198)  
Policy Validity Duration  
dt.04/11/2014 to 03/11/2015

... Respondents.

***CLAIM: Petition under section 166 of the Motor Vehicle Act ,1988 for grant of compensation of Rs.1,00,000/-***

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**Appearance :**

Ld. Adv. Shri. H. M. Rawal for the Claimants.

Ld. Adv. Shri. D. P. Gothi for the Respondent No.1.

Ld. Adv. Shri. B. B. Pande for the Respondent No.2.

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**:- J U D G M E N T :-**

(Delivered on this 8<sup>th</sup> day of May, 2026)

The present petition is filed for grant of compensation of Rs.1,00,000/- (One Lakh) under section 166 of Motor Vehicle Act, 1988 by the legal representatives of the deceased Balkrushna Pralhad Tayade.

**The necessary facts are as follows :-**

02. The deceased Balkrushna Pralhad Tayade met with an accident on 08/10/2015. At the time of accident, he was

proceeding to his village from Nandura on his motorcycle bearing No. MH-28-AE-1342. While he reached near S.P.M. College on Nandura Motala road, the Eicher Truck bearing No. MH-06-AQ-5515 driven in a rash and negligent manner dashed to his motorcycle due to which he suffered grievous injuries. He was taken to the hospital for medical treatment wherein he succumbed to those injuries. The crime No.136/2015 for the offences under section 279, 304(A) of the Indian Penal Code was registered against the driver of the Truck.

03. The claimants contended that the accident causing death of Balkrushna Pralhad Tayade occurred due to the rash and negligent driving of the truck by its driver. The deceased suffered accidental death due to the accident caused by the truck driver. It was owned by the respondent No.01 and insured by the respondent No.02. At the time of accident, the deceased was aged about 29 years. He was working as a Sales Engineer in Paragon Synthetic And Polymer Ltd. Company G.I.D.C. Makkarpara Vadodara Gujrat and in-charge of Muktai Nagar, Buldana and Chikhli region. He was drawing the salary of 17,200/- per month alongwith other allowances. Due to the untimely death of the deceased, the claimants are suffering from destitution due to which they are entitled for cumulative compensation of Rs.50,00,000/-(Fifty Lakh) from the respondent Nos.01 and 02. Due to their inability to pay the court fees, they have restricted the claim for compensation to the

extent of Rs.1,00,000/-(One Lakh). Accordingly, they prayed for allowing the claim petition.

04. The respondent No.01 vide his written statement at Exh.16 contended that the accident occurred due to the negligence of the deceased in driving his motorcycle. As the vehicle owned by him i.e. Eicher Truck bearing no. MH-06-AQ-5515 was insured with the respondent No.02 at the time of incident, he prayed for fastening the liability of the accident on the respondent No.02, in the event of allowing the petition.

05. The respondent No.02 vide its written statement at Exh.21 traversed the claim of the petitioners / claimants on facts as well as on law points. It contested the petition predominantly by contending that the insurance company cannot be held liable to pay the compensation for the accident as the driver of the Eicher Truck was not holding a valid licence to drive a transport vehicle at the time of accident. In the absence of such licence, there is material breach of the terms of insurance policy and therefore the claim petition deserves to be dismissed. On facts, it was submitted that the involvement of the Eicher Truck in the accident is not coming out from the facts of the case as well as from the Police papers and therefore it is not liable for payment of any compensation to the claimants. With these contentions, it prayed for dismissal of the claim petition.

06. Considering the rival pleadings of the parties and

documents produced in support thereof, my Learned predecessor framed issues at Exh.25 which are reproduced below and I record my findings thereon for reasons to follow.

Sr. No.	Issues	Findings
01.	Do the claimants prove that deceased Balkrushna Pralhad Tayade died in motor vehicle accident occurred on 08/10/2015 at about 9.00 to 9.30 pm near S.P.M. College on Nandura to Motala Road, within the jurisdiction of Police Station, Nandura ?	Yes.
02.	Do the claimants prove that the above accident occurred due to rash and negligent driving of vehicle i.e. Truck bearing No. MH-06-AQ-5515, thereby giving dash to deceased vehicle Bajaj Pulsar No. MH-28-AE-1342, on which deceased was traveling ?	Yes.
03.	Do the opponent No.2 prove that the accident caused due to rash and negligent driving, high speed of another vehicle i.e. Bajaj Pulsar No. MH-28-AE-1342 ?	No.
04.	Are claimants entitled for compensation and interest, what compensation and since when	

	interest, from whom ?	Yes.
05.	What order ?	As per final order.

### REASONS

07. Heard Learned counsel for claimants Shri. H. M. Rawal and Learned Counsel Shri. B. B. Pande for respondent No.02. The learned counsel for respondent No.01 Shri. D. P. Gothi remained absent in the proceedings.

08. Perused written notes of argument of claimant at Exh.80 and of the respondent No.02 at Exh.81.

09. In order to prove the claim, the claimants have examined CW-1 Ashwini Balkrushna Tayade at Exh.26, CW-2 Mahendra Dinkar Patil at Exh.40, CW-3 Nilesh Anil Godhane at Exh.41, CW-4 P. I. Gaurishankar Shravan Pabale at Exh.57.

10. Besides the oral evidence of these witnesses, the claimants have relied upon the documentary evidence i.e. A. A. form at Exh.27, FIR in crime No.136/2015 at Exh.28, Spot Panchanama at Exh.29, Inquest Panchanama at Exh.30, Post Mortem Report of deceased Balkrushna at Exh.31, copy of Chargesheet At Exh.32, Registration Certificate of the offending vehicle bearing No.MH-06-AQ-5515 at Exh.33, licence of the driver of the offending vehicle at Exh.34, Insurance Policy of the

said vehicle at Exh.35, fitness certificate of the said vehicle at Exh.36 and the birth certificate of claimant No.02 at Exh.37, the identity card of the deceased issued by his employer at Exh.44, his salary slip at Exh.46 to 48, the copy of from No.16 issued by I.T. department at Exh.49 and the authority letter of CW-3 at Exh.45, the letter issued by CW-4 to S.P. Office Buldana at Exh.58, the letter issued by him to R.T.O. Office at Exh.59 and their reply at Exh.60, the letter issued to R.T.O. Office at Exh.61, the letter issued to the original owner of the vehicle at Exh.62, statement of respondent No.01 at Exh.63, letter issued by him to the respondent No.01 at Exh.64, statements of CW-3 at Exh.65 and Exh.66 and the statement of first informant Amol Tayade at Exh.67, arrest form of accused i.e the driver of the truck at Exh.68.

11. The respondent No.02 countered the case by examining its Legal Manager Rohit Ravindra Pathak as DW-1 at Exh.75. He has produced the copy of insurance policy at Exh.76.

**AS TO ISSUE NOS.01 TO 03 :-**

12. As far as the occurrence of the accident and involvement of the Eicher Truck bearing No.MH-06-AQ-5515 and its driving in rash or negligent manner is concerned, the CW-1 had reiterated, preceded by her pleadings, before the court that the accident occurred near S.P.M. College on Buldana Nandura road from where Balkrushna Pralhad Tayade was

proceeding on his motorcycle to his village. The offending vehicle i.e. the Eicher Truck dashed to his vehicle in a high speed as well as in rash and negligence manner. Due to the said dash, he suffered grievous injuries and succumbed to those injuries while he was taken to the hospital. The crime was registered against the driver of the offending vehicle involved in the accident and he is being prosecuted for the same.

13. It is her evidence in the cross examination that she had not witnessed the actual accident. She had received its information on telephone and therefore she is not aware about its actual happening. She denied that the deceased suffered head injury in the accident as he was not wearing helmet at the time of incident. She has also denied that the original driver of the offending vehicle was replaced as he was not having valid driving licence at the time of incident.

14. The CW-2 Mahendra stated before the court that on 08/10/2015 at about 09.30 pm while he was having a walk in front of his house, the driver of a Bolero Jeep informed him about the accident and involvement of Eicher Truck i.e. offending vehicle in the incident. He proceeded to the spot of incident at that time he realized that the deceased Balkrushna Tayade was injured in the accident. Even, he has also specifically stated that he had not witnessed the incident.

15. CW-4 P.I. Gaurishankar Pabale had filed

charge-sheet against the driver of the offending vehicle by investigating the crime registered after the accident. He had ascertained the role of the driver of the offending vehicle after thorough investigating of the crime No.136/2015.

16. As far as the involvement of the offending vehicle in the accident is concerned, the registration of FIR Exh.28 and the copy of Form No. A. A. at Exh.27 coupled with the charge-sheet submitted in crime No.136/2015 for the offences punishable under section 279, 304(A) of the Indian Penal Code against the driver of the vehicle bearing No.MH-06-AQ-5515, are sufficient documents to denote the involvement of the said vehicle in the accident.

17. The learned counsel for respondent No.02 while questioning the involvement of the offending truck in the motor vehicle accident has relied upon the judgment of Hon'ble Bombay High Court in First Appeal No. 2742 of 2015 in Bajaj Allianz General Insurance Co. Ltd Vs. Manisha Lahu Kale and others dtd. 04/09/2018 wherein it was laid down that in the absence of evidence placed on record by the claimant in discharging initial burden to prove the involvement of the offending truck in the accident, the liability cannot be fastened upon the owner and the insurance company of the truck. It was also observed in the said authority that even though the strict rules of evidence are not applicable to the compensation claim, it being the social legislation however the basic principles of law

in determining the claim for compensation needs to be observed by the Tribunal. In the present case, the involvement of the Eicher Truck bearing No. MH-06-AQ-5515 i.e. the offending vehicle is not in dispute as the said vehicle is noted in the FIR and found to be involved in the accident, during investigation of CW-4. The dispute pertains to driver of the vehicle. The offending vehicle being insured by the respondent No.02, the liability of the accident squarely falls on the respondent No.02. Therefore the insurance company cannot derive any benefit from the ratio of said authority.

18. Similarly, the Judgment of Hon'ble Bombay High Court in First Appeal No. 63 of 2011 in Meera Sidharth Kambli and Ors. Vs. Vijar Ekawade and Ors. Dtd.18/04/2015 is also of no use to the respondent No.02 as it was a case based on no evidence.

19. The Judgment of Hon'ble Bombay High Court in First Appeal No.05 of 2009 Damodar Pednekar Vs. Umakant Naik and another dtd. 19/09/2014 is also heavily relied upon by the respondent No.02 insurance Company. The said case also differs on facts as there was no evidence about rash and negligent driving of the offending vehicle and in the facts situation of the case the contention of the driver of the offending vehicle to the effect that the motorcyclist lost control and dashed his vehicle was accepted. In the present case there is no counter to the contention of the claimant that the offending vehicle

dashed to the two-wheeler of the deceased in rash and negligence manner.

20. In submitting the absence of rashness and negligence on the part of the offending vehicle, the reliance was placed on the Judgment of Hon'ble Bombay High Court in First Appeal No. 333 of 2003 Laxman Vithoba Gaunkar Vs. Sudesh Gaunkar S/o of Nanda Gaunkar dtd. 11/10/2010. It was a case in which the claimant was found driving his motorcycle in a rash and negligent manner. Such is not the case here. Therefore, no advantage can be derived from the said authority. Similarly, the authority of Hon'ble Bombay High Court in First Appeal No.195 of 2002 Narayan Kalangutkar and Ors. Vs New India Insurance Co. Ltd and Ors. Dtd 17/12/2011 is based on the involvement of two offending vehicles in the accident. The present case is arising out of a dash given by the offending vehicle to the motorcycle of the deceased. Therefore the said authority is of no use to the respondent No.02. Similarly, the Judgment of Hon'ble Bombay High court in First Appeal No. 17 of 2003 Suresh @ Sudesh Foll Dessai Vs. Suresh and Ors. Dtd 26/08/2010 also differs the facts as it is a case based on no evidence with respect to rash and negligence driving.

21. Considered in the backdrop of the principle of preponderance of probability, the evidence of CW-1, CW-2 and more particularly the documentary evidence produced on record by the claimants, which consisting of the FIR, spot panchnama,

statements of witnesses in the charge-sheet at Exh.32, it has to be held that accident occurred due to rash or negligent driving of the offending vehicle bearing No. MH-06-AQ-5515 by its driver.

22. The respondent No.02 specifically resisted the claim with contention that the driver of the offending vehicle was not having valid driving licence and therefor he was substituted in the present crime. As far as this defence is concerned, it needs to be considered in the background fact that the involvement of Eicher Truck bearing No. MH-06-AQ-5515 in the accident is not in much dispute as the said truck is noted as the offending vehicle in FIR at Exh.28. As far as the question of its driver at the time of incident is concerned, it must be stated that the CW-4 specifically stated before the court that the said vehicle was owned by the respondent No.01 and he had given statement before him that the accused Kiran Tayade was driving the said offending vehicle at the time of incident.

23. The respondent No.02, proceeding further, resisted the claim by contending that even said Kiran Tayade was not having valid driving licence at the time of the incident and therefore the DW-1 reiterated the contention of the respondent No.02 before the court that there is material breach of the terms of the policy which disentitles the claimants for any compensation or in the event of its grant, fastening its liability on the respondent No.02. For this purpose the licence of the

driver of the offending vehicle is produced on record at Exh.34 through the CW-4 by the claimants. The said licence show that it was issued on 03/10/2003 and valid till 02/10/2023. In view of such overwhelming documentary evidence, the defence of the respondent No.02 based on absence of driving licence of the driver of the offending vehicle and consequent breach of insurance policy must fail.

24. Even, the respondent No.02 tried to bring on record the absence of driving licence of the deceased to drive the motorcycle as well as his not wearing of the helmet at the time of incident to show his contributory negligence in the accident which had resulted into sustaining of head injury by him. Suffice to note that admittedly the accident is not witnessed by anyone. Besides the bare pleadings, the insurance company has not been able to show any contributory negligence on the part of the deceased in the accident, by way of any positive evidence. Therefore, such contention of the respondent No.02 cannot have any effect.

25. In support of such contention, the reliance is placed on the Judgment of the Hon'ble Bombay High Court in First Appeal (Stamp) No.30932 of 2016 The New India Assurance Co. Ltd. Development Officer / Agent : 825/17916 Vs. Mr. Julius T. J. Freitas and others. It was submitted that the deceased was also negligent in driving his two wheeler as he was not wearing helmet at the time of accident. The CW-1 had specifically denied

the same and therefore no deduction can be granted for said lapse on the part of the deceased as there is no clinching evidence supporting the said contention of the insurance company.

26. In view of the reasons stated above I answer issue Nos. 01 & 02 in affirmative and 03 in negative.

**AS TO ISSUE NO.04 :-**

27. As far as the grant of compensation and its quantum is concerned, the Claims Tribunal is guided by the judgment of Hon'ble Apex Court in Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another reported in AIR 2009 SC 3104 and the judgment in National Insurance Company Vs. Pranay Sethi 2017 ACJ 2700.

28. Para 09 of the judgment of Hon'ble Apex Court in Sarla Verma is quoted below for ready reference.

*9. Basically only three facts need to be established by the claimants for assessing compensation in the case of death : (a) age of the deceased; (b) income of the deceased; and the (c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are (i) additions/deductions to be made for arriving at the income; (ii) the deduction to be made towards the*

*personal living expenses of the deceased; and (iii) the multiplier to be applied with reference of the age of the deceased. If these determinants are standardized, there will be uniformity and consistency in the decisions. There will lesser need for detailed evidence. It will also be easier for the insurance companies to settle accident claims without delay. To have uniformity and consistency, Tribunals should determine compensation in cases of death, by the following well settled steps:*

*Step 1 (Ascertaining the multiplicand) The income of the deceased per annum should be determined. Out of the said income a deduction should be made in regard to the amount which the deceased would have spent on himself by way of personal and living expenses. The balance, which is considered to be the contribution to the dependant family, constitutes the multiplicand.*

*Step 2 (Ascertaining the multiplier) Having regard to the age of the deceased and period of active career, the appropriate multiplier should be selected. This does not mean ascertaining the number of years he would have lived or worked but for the accident. Having regard to several*

*imponderables in life and economic factors, a table of multipliers with reference to the age has been identified by this Court. The multiplier should be chosen from the said table with reference to the age of the deceased.*

*Step 3 (Actual calculation) The annual contribution to the family (multiplicand) when multiplied by such multiplier gives the 'loss of dependency' to the family.*

*Thereafter, a conventional amount in the range of Rs. 5,000/- to Rs.10,000/- may be added as loss of estate. Where the deceased is survived by his widow, another conventional amount in the range of 5,000/- to 10,000/- should be added under the head of loss of consortium. But no amount is to be awarded under the head of pain, suffering or hardship caused to the legal heirs of the deceased.*

*The funeral expenses, cost of transportation of the body (if incurred) and cost of any medical treatment of the deceased before death (if incurred) should also added.*

record of the present case show that the claimants have contended the age of the deceased as 27 years at the time of accident. The Inquest Panchanama Exh.30 & Post Mortem Report Exh.31 records the age of the deceased Balkrushna as 29 years. The claimants, and more particularly CW-1 being the wife of the deceased, were the best persons to produce satisfactory documentary evidence showing the age of the deceased at the time of accident. They have failed to do so even on the basis of preponderance of the probability. Since the Post Mortem Report Exh.31 and Inquest Panchanama Exh.30 are the documents produced by the claimants themselves, the age of the deceased at the time of accident has to be concluded as 29 years.

30. As far as the income of the deceased is concerned, the claimants have contended that at the time of accident the deceased was working as a Sales Engineer in the Paragon Synthetic And Polymer Ltd. G.I.D.C. Makkar Pura Vadodara Gujrat and he was incharge of affairs of the said company in Muktai Nagar, Buldana and Chikhli. He was drawing the salary of 17,200/- with other allowances. The CW-3 Nilesh Godhane i.e. the Area Manager of Paragon Company not only produced the identity card of the deceased the Exh.44 but also proved his salary slips at Exh.46 to 48 as well as the copy of his form No.16 issued by the employer company at Exh.49. The extract of salary register / salary slip at Exh.47 show that the deceased was employed in a private company and drawing net pay of

Rs.14,500/- and gross salary of Rs.17,200/-.

31. In the background of clinching evidence in respect of private job of the deceased at the time of incident his income needs to be assessed at Rs.14,500/- per month.

32. As far as the dependency of the deceased is concerned, it appears that the claimant No.01 is the wife of deceased whereas claimant Nos.02 is his daughter & claimant No.03 is his mother. The claimant Nos.04 & 05 are his father and brother respectively. As far as the claimant Nos.04 and 05 are concerned, they cannot be termed as dependent of the deceased. In the presence of class one heirs or legal representatives of the deceased i.e. claimant Nos.01 to 03, the dependent No.04 & 05 cannot rest their claim on the compensation. The application of the respondent no. 2 at Exh.71 is also disposed off accordingly. In view of such position, the dependent family member of the deceased are three and therefore based on the dictum of Hon'ble Apex Court in Sarla Varma's case, the deduction towards personal and living expenses comes to 1/3rd of the total income.

33. Thus, the just and fair compensation, to which claimant Nos.01 to 03 are entitled, is given in tabulated form as below. -

Name of deceased : Balkrushna Pralhad Tayade (Aged about 29 years)

<u>Sr. No.</u>	<u>Particulars</u>	<u>Amount of Calculation</u>
1.	Monthly Income	14,500/-
2.	Annual Income	1,74,000/-
3.	Addition to Income at 40% (Deceased being less than 40 years)	20,300/- (14,500/- + 5,800/-)
4.	Annual Income (20,300 x 12)	2,43,600/-
5.	1/3rd deduction towards personal and living expenses	1,62,400/- (2,43,600/- – 81,200/-)
6.	Multiplier	17
7.	Amount of compensation	27,60,800/- (1,62,400/- X 17)
8.	Loss of estate	15,000/-
9.	Loss of consortium	40,000/-
10.	Funeral Expenses	15,000/-
11.	<b>Total Amount of Compensation</b>	<b>28,30,800/-</b>

34. Thus, the claimant Nos.01 to 03 are entitled for an amount of compensation of Rs.28,30,800/- alongwith 6% interest per anum from the date of petition till the date of payment. Accordingly, I answer issue No.04 in affirmative and

proceed to pass the following order. -

**ORDER**

- 1] The MACP No.103/2021 (Old MACP No.126/2016) is allowed with costs.
- 2] The respondents do jointly and severally pay an amount of Rs.28,30,800/- (Twenty Eight Lakh Thirty Thousand Eight Hundred) as compensation to the claimant Nos.01 to 03 along with interest @ the rate of 6% per anum from the date of petition till realization with deduction of interim compensation, if any.
- 3] The respondent No.02 insurer to deposit the compensation amount in following bank account in the name of MACT Malkapur and inform the Tribunal accordingly by Email.

Name of the Bank	:	State Bank of India.
Branch	:	Malkapur.
Account No.	:	40786745622
IFSC Code	:	SBIN0000419
Email	:	mahbulmasc@aij.gov.in

- 4] The claimant No.01 & 03 are entitle for withdrawal of the compensation amount, to the extent of their share i.e. 1/3rd share each, on deposit of the said amount.

- 5] The amount of compensation payable to the claimant No.02, (1/3rd) be fixed in the FDR, she being a minor girl, till she attains majority, in a nationalized bank.
- 6] The claimants are directed to furnish their personal details like Bank Account details, Adhaar card, Pan card to the office of the Tribunal, at the earliest.
- 7] The amount of compensation deposited towards no fault liability, in terms of section 140 of The Motor Vehicles Act, if any, be deducted from the final amount of compensation.
- 8] The deficit court fees, if any, be recovered from the claimant.
- 9] The award of compensation be drawn up accordingly.

Malkapur.  
Date - 08/05/2026.

**(R. B. Giri)**  
Member Motor Accident  
Claim's Tribunal,  
Malkapur.

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**CERTIFICATE**

I certify that this order in P.D.F. upload is a true and correct copy of original signed order.

Name of Court : Ad-hoc District Judge – 1 & Additional  
Sessions Judge, Malkapur.  
Name of Stenographer : Mr. V. S. Jadhav. (Jr. Clerk)  
Date of order : 08.05.2026  
Date of signed on order : 08.05.2026  
by Judicial Officer  
Date of uploading : 08.05.2026