



Presented on : 19/05/2015
Registered on : 22/05/2015
Decided on : 11/08/2026
Duration :11 Y.02 M.20D

EXH. NO.114

BEFORE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL,
GONDIA
(Presided by M. T. Asim)

MOTOR ACCIDENT CLAIM PETITION NO.33/2015
(CNR No. MHGO010004802015)

Aatish s/o Manohar Chandewar,
Aged 20 years, Occu.: Student
R/o- Shastri Ward Gondia, Tah. &
Dist. Gondia.

....**PETITIONER**

VERSUS

1) **Shamsher Khan s/o Yusuf Khan Pathan**
Aged Major, Occ. Driver
R/o- Chawdi Chowk, Chhota Gondia
Tah. and Dist Gondia

2) **Shashi w/o Sunil Chauhan**
Aged Major, Occ. Owner
R/o- Pratap Ward Civil Line
Gondia.

3) **The Oriental Insurance Co. Ltd**
(Through its Branch Manager)
Main Road, Katangi Lane,
Gondia, Tah. and Dist Gondia.

....**RESPONDENTS**

PETITION UNDER SECTION 166 OF MOTOR VEHICLES
ACT, 1988.

.....
 Mr. Shaikh, Advocate for the Petitioner.
 Mr. Shamkuwar, Advocate for respondent No.1
 Mr. Barapatre, Advocate for respondent No.2.
 Mr. Hotchandani, Advocate for respondent No.3.

J U D G M E N T

(Delivered on this 11th day of August, 2026)

The claim petition is filed under Section 166 of the Motor Vehicles Act, 1988 by petitioner Aatish Manohar Chandewar on account of injuries sustained by him which resulted in permanent disability in motor vehicular accident which occurred on 04-12-2012 at about 18.30 hours near Kasturba Bar, Manohar Chowk, Gondia, within the jurisdiction of Police Station, Gondia City due to involvement of vehicle bearing registration No.MH-35-0748.

2. The brief facts of the case are as under:

It is contended that on 04-12-2012 at about 18.30 hours petitioner Aatish Manohar Chandewar was returning after attending tuition class at Mama Chowk, Gondia along with his friend to his house through Manohar Chowk, Gondia on motorcycle bearing registration No. MH-35-V-6700 by his correct side. The offending vehicle Tata Truck bearing registration No. MH-35-748 near Kasturba Bar came from behind being driven in rash and negligent manner by respondent no.1 and gave dash to the motorcycle which applicant was riding. As a result of which applicant and his

friend fell down on the road and sustained serious injuries and he also sustained injury to his left leg because of the rear wheel of offending truck. Applicant was taken to Central (Bajaj) Hospital, Gondia and first aid was given to him there. Thereafter applicant was referred to Hope Hospital, Nagpur where emergency and costly tests were done and as his left leg crushed badly, the surgeon had conducted major operation of applicant and his left was amputated. Applicant remained admitted in Hope Hospital since 04-12-2012 to 14-12-2012 and was discharged on 14-12-2012. Medical Board of Government Hospital, Gondia has certified that applicant has sustained 55% permanent disability in the accident. Due to rash and negligent driving of non-applicant No.1 said accident occurred. Offence was registered under sections 279, 337 and 338 of the IPC vide crime No.179/2012 against respondent No.1 with police station Gondia City. The petitioner incurred Rs.5,00,000/- for medical treatment, diet and traveling. Due to said accident applicant's life has been shortened and whole future of applicant has gone in darkness and he is suffering loss of amenities and prospect in his future life. Due to accident applicant has suffered physical and mental agony. At the time of accident applicant was aged 18 years old and he was student. Due to said accident applicant has become permanently disabled and he is dependent upon others. He has calculated his claim to the tune of Rs.57,50,000/- however, he has restricted his claim to the tune of Rs.8,00,000/-.

3. It is contended that at the time of accident respondent No.1 was driving offending vehicle and it was owned by respondent No.2. At the time of accident offending vehicle was insured with respondent No.3. Therefore, petitioner made prayer that respondent Nos.1 to 3 may jointly and severally be directed to pay compensation amount to him.

4. Respondent No.1 appeared in the court but did not file his written statement. Hence matter was proceeded without written statement against him vide order dated 12.09.2023 passed below Exh.1.

5. Respondent No.2 filed her written statement vide Exh.24 and denied the contention of applicant. She denied involvement of her truck bearing registration No. MH-35-748 in the said accident. She has not disputed that at the relevant time respondent No.1 was driver on the said truck and it is owned by her. She submits that aforesaid truck was insured with respondent No.3 insurance company vide policy No.181301/31/2012/9254 for the period from 29-02-2012 to 28-02-2013. She submits that petitioner was driving his vehicle in rash and negligent manner which caused said accident. Due to that he fell down and sustained injury. Respondent No.1 never drove the vehicle in rash and negligent manner. False report has been filed against respondent No.1 for getting benefits under Motor Vehicles Act. The petitioner and his family members in collusion with police filed false case against respondent No.1 and involved vehicle

of respondent No.2 in the said case although said vehicle was not involved in the said accident. Therefore, requested to dismiss the claim petition.

6. Respondent No.3 filed written statement vide Exh.14 and submitted that the alleged TATA Truck bearing registration No. MH-35-0748 was not insured with it and policy filed by petitioner on record is fake and prepared after thought. The policy bearing No.181301/31/2012/9254 was never issued by respondent No.3 in favour of alleged TATA Truck bearing No.MH-34-0748. It is submitted that from the office record of respondent No.3, it is ascertained that on 28-02-2012 a motor vehicle insurance policy bearing No. 181301/31/2012/9254 was issued in the name of Ravindrarao L.Puliaya by respondent No.3 for the period from 29-02-20212 to midnight of 28-02-2013. There is no contract of indemnity in between respondent Nos.2 and 3 hence, there is no liability to indemnify the liability of respondent No.2. It is submitted that Shreyas Ninave was driving his motorcycle in rash and negligent manner without holding driving license and petitioner was pillion rider thereon. They denied that petitioner has suffered any total or partial permanent disabilities. Therefore, made prayer to dismiss the claim petition.

7. In view of rival contention of parties, issues were framed by this Tribunal vide Exh.36. I reproduced those issues with my findings and reasons to follow as under:

<u>SR. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Does claimant prove that on 04-12-2012 respondent No.1 drove truck bearing No. MH-35-748 in rash and negligent manner and gave dash to motorcycle No. MH-35-V-6700 due to which claimant suffered grievous injury?	...Yes.
2.	Does claimant prove that he sustained permanent disability of 55 %?	...Yes.
3.	Whether claimant is entitled to get compensation amount as claimed? If yes, of what amount and from whom?	In terms of final order. Rs.14,35,358/- Respondent nos.1 & 2.
4.	What order?	As per final order.

: REASONS :

8. Claimant has filed his evidence affidavit at Exh.38 and examined one witness Dr. Suhas Chavan at Exh.76. He closed his side vide purshis at Exh.78. He relied upon police papers, medical treatment papers and permanent disability certificate. On the other hand, respondent No.2 Shashi filed evidence affidavit of herself at Exh. 89 (R2W1), that of her husband Sunil at Exh.95 (R2W2) and examined Anil Roshanlal Nirvikar at Exh.104 (R2W3) and closed their side vide purshis Exh.106. On the other hand, respondent No.3 filed evidence affidavit of their Branch Manager Sachin Padole at Exh.80 (R3W1) and examined Babulal Ishwardas Mendhe at Exh.108 (R3W2) by filing his evidence affidavit and closed their said by filing purshis vide Exh.109. Heard Learned

advocate for petitioner, learned advocate respondent Nos.2 and 3. None appeared on behalf of respondent No.1 at the time of hearing. Also perused written notes of argument filed on behalf of claimant and respondent no.3.

AS TO ISSUE NOS.1 & 2:-

9. Claimant in his evidence affidavit reiterated the facts mentioned in the petition. He stated that on 04-12-2012 at about 18.30 hours he was returning to his home from tuition classes at Mama Chowk, Gondia on motorcycle bearing registration No. MH-35-V-6700 along with his friend. He was proceeding from his correct side and in normal speed. When he reached near Kasturba Bar, offending truck bearing registration No.MH-35-0748 came from behind being driven in rash and negligent manner by respondent no.1 and gave dash to his motorcycle. Due to which he and his friend fell down on the road and sustained serious injuries to their body. He sustained injuries over his whole body and his left leg was badly injured due to the wheel of offending truck. There was heavy bleeding from his left leg. He was taken to Central (Bajaj) Hospital, Gondia. Doctors provided first aid to him there and on same day he was referred to Hope Hospital, Nagpur. He was treated in Hope Hospital during the period from 04-12-2012 to 14-12-2012. As he sustained crush injury to his left leg, same was amputated. Even after discharge from hospital his treatment was continued. He suffered permanent disability of 55% as a result of injuries sustained in the said

accident. Accordingly, Medical Board of Government Hospital issued permanent disability certificate to him. His evidence also shows that in relation to said accident offence has been registered against respondent No.1 who drove the offending vehicle rashly and negligently at the time of accident vide Crime No.179/2012 for offence under sections 279, 337, 338 of IPC and criminal prosecution has been launched against respondent No.1 vide SCC No.126/2013.

10. He was cross-examined on behalf of respondent Nos.2 and 3 but his evidence on the point of manner of happening of accident is not shaken. There is reason to disbelieve his testimony on the point of accident. Moreso his evidence is well supported by police papers. Form-AA Exh.44 shows that petitioner met with an accident on 04-12-2012 at 18.30 hours at Manohar Chowk, Gondia due to involvement of truck No.MH-35-748 being driven by respondent No.1. It also shows that after investigation charge-sheet has been filed against respondent No.1 vide SCC No.126/2013 in relation to Crime No.179/2012 for offence punishable under sections 279, 337 and 338 of IPC. The filing of charge-sheet against respondent No.1 the driver of offending truck in relation to said accident itself suggests that he was driving offending truck rashly and negligently at the relevant time. For this I draw the support from authority in the case of *Ranjit and another vs. Asul Kayam Meb and another, SLP (C)10351 of 2019 decided on 25.02.2025* wherein it is observed that it is settled in law that once charge-sheet has been filed and driver

has been negligent, no further evidence is required to prove that bus was being driven by the bus driver even if eye witnesses are not examined, that will not be required to prove the case of deceased due to negligence of bus driver.

11. True copy of FIR in Crime No.179/2012 Exh.45 shows that offence has been registered against driver of truck No. MH-35-748 in relation to said accident. It can be gathered that rear wheel of the offending truck bearing registration No. MH-35-0748 rubbed to the motorcycle of the petitioner while it was coming from behind. It can be gathered that applicant and his friend sustained injuries in the said accident and applicant was taken to Bajaj Hospital for treatment. True copy of spot panchnama Exh.46 shows the place where said accident occurred. It can be gathered that applicant was driving his motorcycle by his correct side and said accident has occurred at the eastern edge of the road. It seems that he has not taken due care and caution while driving the said truck. It seems that respondent No.1 drove his vehicle rashly and negligently which caused said accident.

12. From referral letter dated 04-12-2012 Exh.59 of Central Hospital which is also known as Bajaj Hospital, it is clear that petitioner was referred for further treatment. Discharge summary of Hope Hospital Nagpur Exh.60 shows that applicant was treated in the said hospital from 04-12-2012 to 14-12-2012 and his left leg has been amputated on 06-12-2012.

13. From evidence of P.W.2 Dr. Suhas Chavan who was attached to KTS Hospital, Gondia as orthopedic surgeon, it is apparent that applicant was examined on 22-05-2013 by him and found that there is amputation of his left lower limb and he assessed his disability to 55 % which is permanent in nature. Accordingly, disability certificate was issued by Medical Board vide Exh.77. He stated that inadvertently in Exh.77 amputation is shown as that of right leg instead of left leg. It is clerical error. From the Discharge Summary Exh.60, it is clear that left lower limb of the petitioner was amputated. Even from the photograph of petitioner affixed to the permanent disability certificate Exh.77 which is duly attested by the Medical Officer, it is apparent that left leg of the petitioner has been amputated. So, version of P.W.2 Dr Suhas Chavan that inadvertently in certificate Exh.77 amputation is shown as of right leg instead of left leg which is clerical mistake inspire my confidence in view of other evidence placed on record as discussed above.

14. In light of discussion made above, the petitioner has established that on 04-12-2012 respondent No.1 drove truck bearing No. MH-35-0748 in rash and negligent manner and gave dash to the motorcycle no. MH-35-V-6700 due to which he suffered grievous injury and as a result of said injury he sustained permanent disability of 55%. Hence, I answer issue Nos.1 and 2 in affirmative.

AS TO ISSUE NO.3:

15. Claimant Aatish in his affidavit has stated that after accident he was taken to Central (Bajaj) Hospital, Gondia where first aid was provided to him and then he was referred to Hope Hospital, Nagpur where he was treated during the period from 04-12-2012 to 14-12-2012 and his left leg was amputated and suffered permanent disability of 55%. He stated that his father has incurred expenditure of Rs.15,00,000/- for his treatment, diet and traveling. He calculated his claim to the tune of Rs.57,50,000/-. However, he restricted his claim to the tune of Rs.8,00,000/-. From the reference letter Exh.59, it can be gathered that initially petitioner was treated in Central Hospital, Gondia and on same date i.e. 04-12-2012 he was referred to Hospital at Nagpur. His father must have spent certain amount towards his initial treatment in the Central Hospital, Gondia. From discharge summary Exh.60, it is clear that petitioner was treated in the said hospital from 04-12-2012 to 14-12-2012 and his left leg has been amputated. His father must have spent certain amount towards his treatment in Hope Hospital and conveyance charges from Gondia to Nagpur and vice-versa. Petitioner has filed on record bills and receipts of Central Hospital, Gondia, Hope Hospital, Nagpur and Sanjivini Hospital of different dates to show that amount of Rs.27,150/- was spent towards hospital charges in relation to his treatment. Petitioner has stated that he could not produce all the bills as some have been lost. Possibility cannot be ruled out as petitioner has only filed one receipt of Rs.15,000/- towards advance payment of Hope Hospital, although he was

treated in said hospital from 04-12-2012 to 14-12-2012. Considering said fact by guess work, I award total Rs.40,000/- to the petitioner towards hospital charges. Petitioner has filed on record pharmacy bills of different pharmacies amounting to Rs.10,438/- which are part of Exh.66 to Exh.68. He has also filed one Ambulance receipt which is part of Exh.61 amounting to Rs.500/-. His father must have spent amount for traveling of applicant from Gondia to Nagpur & vice-versa. By guess work I award Rs.2,000/- to the petitioner towards Ambulance charges/traveling charges. Somebody must have attended petitioner during his treatment in hospital at Nagpur. I award Rs.10,000/- towards attendant charges. Certain amount must have been spent towards special diet. I award Rs.25,000/- in that respect. As per petitioner at that time he was taking education and he was 18 years old. In discharge summary Exh.60 also age of petitioner is mentioned as 18 years. There is no reason to disbelieve oral evidence of petitioner in that regard. Considering the age of petitioner as 18 years at the time of accident, multiplier of 18 is applicable in present case. Considering the age of petitioner and that accident occurred in the year 2012, I consider his notional income as Rs.6000/- per month which comes to Rs.72,000/- per annum. Keeping in view petitioner was below the age of 40 years and also considering law laid down by the Hon'ble Apex court in the case of ***National Insurance Co. Ltd vs Pranay Sethi AIR 2017 SUPREME COURT 5157***, I add 40% of his income towards future prospects. Thus, annual income of petitioner is calculated as Rs.72,000 + Rs.28,800/- (future

prospects) = Rs.1,00,800/-. It is established that petitioner has suffered 55% of permanent disability because of left leg amputation which I treat as functional disability. That being so, he suffered loss of future income at the said rate. Thus, he suffered annual loss of income to the tune of Rs.55,440/. Considering that multiplier of 18 is applicable so his loss of future earning capacity is calculated as Rs.55440/- X 18 = Rs.9,97,920/-. Thus, under the head of pecuniary damages petitioner is entitled to following amount towards compensation:

Rs.9,97,920/- towards loss of future earning capacity.

Rs. 40,000/- towards hospital charges

Rs. 10,438/- towards pharmacy bills

Rs. 2000/- towards Ambulance charges.

Rs. 10,000/- towards attended charges

Rs. 25,000/- towards special diet

Total amount Rs.10,85,358/-.

16. Petitioner must have undergone pains and suffering because of injuries suffered by him. He continues to face hardship and inconvenience as a result of his left leg amputation. Therefore, petitioner is also entitled to amount of compensation under non-pecuniary damages as under:

Rs.50,000/- towards pains and suffering

Rs.50,000/- towards loss of amenities

Rs.50,000/- towards loss of life expectancy

Rs.50,000/- towards damages for permanent disability

Total Rs.2,00,000/-.

17. In future petitioner would require, to spend amount towards prosthetic limb. In that regard by guess work I award Rs.1,50,000/-. Thus, petitioner is entitled to total compensation amount of Rs.14,35,358/- inclusive of NFL amount if any. Hence, I answer first part of issue No.3 accordingly.

18. Petitioner has stated that offending truck was being driven by respondent No.1 at the time of accident and respondent No.2 was registered owner of the vehicle at the relevant time. He further stated that respondent No.3 was insurance company of offending vehicle and policy was valid and in force at the time of accident. Respondent No.2 has not disputed this fact. From Form AA Exh.44 it is clear that offending truck was being driven by respondent No.1 at the time of accident and charge-sheet has been filed against him in relation to said accident. It is also clear from Form AA Exh.44 that offending vehicle is owned by respondent No.2. From true copy of registration particulars Exh.48 this fact is apparent. So far as insurance policy of offending truck is concern, respondent No.3 insurance company has come with specific case that offending truck was not insured with it at the time of accident and policy placed on record at Exh.91 is fake. Owner respondent No.2 adduced her evidence by filing

her evidence affidavit at Exh.89 and that of her husband Sunil Chauhan at Exh.95. They reiterated that offending truck was insured with respondent No.3 insurance company during the period from 29-12-2012 to 28-12-2013 vide policy No.181301/31/2012/9254. From cross-examination of R2W1 Shashi, it is clear that she is not aware as to whom her husband had paid money in relation to documents at Exh.91 and 92 and as to from where her husband has brought those policies. She is not aware whether policy is issued in the name of Ravindra L. Puliaya at the number mentioned in Exh.91. She also admitted that insurance company had issued letter to her on 28-05-1991 vide Exh.93 and she had given reply to it vide Exh.94. Thus, it seems that R2W1 Shashi is not personally aware about alleged transaction.

19. R2W2 Sunil Chavan in cross-examination stated that he has paid premium of Rs.12,000/- and Rs.14,000/- in relation to policies at Exh.91 and Exh.92. However, he has not filed receipt about payment of premium allegedly made by him. Although he stated that agent A.R. Nirvikar has issued aforesaid policy at Exh.91. However, R2W3 Anil Nirvikar has not corroborated his testimony in that respect. He denied that policy at Exh.91 was issued through him. It is to be noted that on the contrary insurance company have filed evidence affidavit of their Branch Manager Sachin Padole at Exh.80 (R3W1) and examined their then Development Officer who worked from 1986 till 2014 at Gondia Branch by filing his evidence affidavit at Exh.108 (R3W2 Babulal Mendhe) to

show that policy at Exh.91 was not issued by their company. From their evidence it is apparent that policy at Exh.91 was not issued by their company in relation to truck No.MH-35-0748. Their evidence also shows that policy No.181301/31/2012/9254 mentioned in Exh.91 relates to insurance policy issued by their company in relation to Tipper bearing registration No.MH-26-H-7684 for the period from 29-02-2012 to 28-02-2013. Respondent No.3 has also filed on record said policy at Exh.105 which corroborates his testimony. So also respondent No.3 has filed copy of premium collection report for 27-02-2012 and 28-02-2012 at Exh.107 collectively. On perusal of collection report of 28-02-2012 it is clear that company has received premium towards policy at Exh.105. Even then Development Officer Babulal Mendhe has categorically stated said fact. It is to be noted that although in Exh.91 name of agent is mentioned as A.R. Nirvikar and that of Development Officer as B.I Mendhe but both of them denied the said policy as genuine. Learned advocate for claimant has placed reliance upon authorities in the case of *The Manager, HDFC ERGO General Insurance Company vs Smt. Shirmabai Vithoba More and ors.*, Law Finder Doc Id # 2701738 , *HDFC ERGO General Insurance Company Ltd, Jodhpur -vs- Smt Nimaji w/o Ladhe Khan and others*, 2017 (2) TAC 311 Rajasthan and *HDFC ERGO General Insurance Company Ltd. Vs Parshini Kaur and others*, Law Finder Doc Id # 2593388 to submit that respondent No.3 insurance company have not brought sufficient evidence to establish their defence of fake policy. I would like to mention that respective the Hon'ble High Court

rejected contention of insurance company therein considering the facts of concern case.

20. In present case insurance company has brought sufficient material to show that policy No.181301/31/2012/9254 was issued by it in relation to Tipper No.MH-26-H-7684 for the period from 29-02-2012 to 28-02-2013 in favour of Ravindrarao L. Puliaya and policy at Exh.91 is not genuine. There is no reason to disbelieve version of witnesses of respondent No.3 insurance company. In the facts of matter authorities cited supra by claimant are not of assistance to him. When respondent No.2 failed to show any contract between her and respondent No.3 in relation to offending truck bearing registration No.MH-35-0748 then question of indemnifying respondent No.2 by respondent No.3 does not arise. Therefore, liability cannot be fasten upon respondent No.3 insurance company to pay compensation to petitioner. Respondent Nos.1 and 2 being driver and owner of the offending vehicle are jointly and severally liable to pay compensation. Hence, I answer second part of issue No.3 accordingly.

21. Although petitioner has restricted his claim to the tune of Rs.8,00000/- but is settled law that tribunal can award just and fair compensation so I am inclined to award compensation determined to the claimant. However, he has to pay deficit court fees if any. In light of discussion made above,

claim petition deserves to be allowed. Hence, this order.

ORDER

1. Claim Petition is allowed with costs.
2. Petitioner is entitled to total compensation of **Rs.14,35,358/- (Fourteen Lakhs Thirty Five Thousand Three Hundred Fifty Eight only)** inclusive NFL amount if any under section 166 of the Motor Vehicles Act with future interest @7% p.a. from the date of filing of petition till realization of said amount from respondent Nos.1 and 2.
3. Respondent Nos.1 and 2 do pay jointly and severally **Rs.14,35,358/- (Fourteen Lakhs Thirty Five Thousand Three Hundred Fifty Eight only)** inclusive NFL amount if any under section 166 of the Motor Vehicles Act with future interest @7% p.a. from the date of filing of petition till realization of said amount to the petitioner.
4. Respondent Nos. 1 and 2 do bear their own costs and pay costs of petition to the petitioner.
5. Respondent No.3 shall bear their own costs.
6. Claimant is directed to pay deficit court fees if any.
7. An award be drawn up accordingly.

Date : 11-08-2026.

(M. T. Asim)
Member,
Motor Accident Claims Tribunal,
Gondia.