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 Decided on : 16/04/2026
 Duration :05 Y, 08M, 08 D

EXH. NO.44

**BEFORE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL,
 GONDIA**

(Presided by M. T. Asim)

MOTOR ACCIDENT CLAIM PETITION NO.97/2020
(CNR No.MHGO010006542020)

Jitendra s/o Bhimraoji Sangode,
 Aged 47 years, Occu.: Nil
 R/o- Mahatma Fule Ward, Tirora,
 Tah.Tirora Dist. Gondia.

....PETITIONER

VERSUS

- 1) Markand Nanaji Patlem (*deleted*)**
 Aged 60 years, Occ. Agriculturist
 R/o Chulhad, Tah. Tumsar, Dist Bhandara
- 2) Anil Prabhuji Kirnapure**
 Aged 40 years, Occ. Driver
 R/o- Chulhad, Tah. Tumsar
 Dist. Bhandara.
- 3) The New India Assurance Co.Ltd.**
 Sai Mandir Road, Near Dayaram Kirana & General
 Stores, Tumsar, Tah. Tumsar, Dist. Bhandara

....RESPONDENTS

**PETITION UNDER SECTION 166 OF MOTOR VEHICLES
 ACT, 1988.**

.....
 Mr. P T. Tolani, Advocate for the Petitioner.
 Mr. H.L. Bhagat, Advocate for respondent No.2
 Mr. R.N. Bhajipale, Advocate for respondent No.3

J U D G M E N T

(Delivered on this 16th day of April, 2026)

The claim petition is filed under Section 166 of the Motor Vehicles Act, 1988 by petitioner Jitendra s/o Bhimraoji Sangode on account of permanent disability suffered by him as a result of injuries sustained by him in motor vehicular accident which occurred on 10-11-2013 at about 5.30 pm on Savartola to Tiroda road, within the jurisdiction of Police Station, Sihora due to involvement of vehicle i.e. tractor bearing registration No.MH-36-7361.

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

It is contented that petitioner was going to Tiroda from Sawartola on motorcycle bearing No.MH-35-T-2139 as second pillion rider on the said motorcycle and his friend Someshwar was riding said motorcycle. At about 5.30 pm tractor bearing registration No.MH-36-7361 came from front side and gave dash to the motorcycle of petitioner. As a result of it petitioner sustained severe injuries and his daughter sustained fracture injury and his friend also sustained injury. Police was just passing by the side and they took petitioner, his daughter and his friend to hospital at Sihora. From there petitioner was referred to IGMC, Nagpur for further treatment. Said accident occurred due to rash and negligent act on the part of respondent No.2. Police lodged FIR against respondent vide Cr. No.50/2013 for offence under sections 279, 337, 338 of IPC. At the time of accident petitioner was working as skilled labour and he was also mason and also he

used to work as agricultural labour. At the relevant time petitioner was 42 years old. He was earning Rs.500/- per day being the mason. He was maintaining of his family. Government of Maharashtra issued disability certificate on 09-06-2016 and petitioner was declared to be 48% disabled. He has calculated his claim to the tune of Rs.19,20,000/- however he has restricted his claim to the extent of Rs.1,00,000/-.

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

4. In view of order dated 18-12-2021 passed below application Exh.17 name of respondent No.1 is allowed to be deleted as he died in view of report of bailiff. Accordingly, name of respondent No.1 is deleted from array of respondents.

5. Respondent No.2 filed their written statement vide Exh.19 and denied age, occupation and income of petitioner. He denied the involvement of offending vehicle in alleged accident. He submitted that at the relevant time offending vehicle was insured with New India Assurance Co. He further submits that petitioner suppressed material facts from the Tribunal. Two vehicles bearing No. MH-35-T-2139 and MH-

36-7361 were involved in the accident. He further submits that driver of motorcycle No.MH-35-T-2139 was not wearing helmet or has not taken safety measure and has not followed procedure under sections 128 and 129 of M.V. Act and gave dash to tractor and himself got injured. This is case of contributory negligence. Said accident occurred due to own fault of injured. Said accident occurred on 10-11-2013 and petitioner filed case in the year 2020 so claim petition is barred by limitation. At the time of accident respondent no.1 was owner of offending vehicle and it was duly insured with respondent No.3. In case tribunal comes to the conclusion that accident has occurred by said vehicle then respondent No.3 is only responsible for payment of compensation. Accordingly, prayed for dismissal of claim petition.

6. Respondent No.3 filed their written statement vide Exh.23 and resisted the claim of petition. They denied name, age, occupation, annual income, place, date and time of accident. They further submit that petitioner has suppressed his fault in the accident and it was a case of contributory negligence. They specifically denied the involvement of offending vehicle in the accident. Driver of motorcycle bearing No.MH-35-T-2139 was riding vehicle in very high speed and in rash and negligent manner and without wearing helmet on highway carrying two pillion riders. There is no averment about holding of valid driving license. Calculation of petitioner is imaginary and hypothetical. From spot panchnama it reveals that due to fault of friend of petitioner

alleged accident took place. There is breach of condition of policy as offending vehicle was not having permit, so respondent No.3 is not liable to pay compensation. Petitioner mentioned falsely 48% disability. Accordingly, prayed to dismiss the claim petition.

7. In view of rival contention of parties, issues were framed by this Tribunal vide Exh.24. I reproduced those issues with my findings and reasons to follow as under:

<u>SR. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether petitioner proves that he sustained injury in motor vehicular accident occurred on 10-11-2023 at about 5.30 pm on Sawaratola to Tiroda Road within the jurisdiction of Sihora police station due to rash and negligence driving of tractor bearing registration No.MH-36-7361 by its driver ?	***Yes
2.	Whether petitioner proves that injury sustained by him resulted in permanent disablement ?	***Yes
3.	Whether respondent No.3 proves that there is breach of terms and conditions of insurance policy ?	***No
4.	Whether petitioner is entitled for compensation ? If yes, what is quantum and from whom ?	***Yes. Rs.2,43,000/- from respondent Nos.2 & 3
5.	What order?	As per final order.

: REASONS :

8. Claimant has filed his evidence affidavit at Exh.25. He has examined P.W.2 Dr. Digambar Shivram Maraskolhe at Exh.40. He relied upon police papers, papers relating to his treatment and permanent disability certificate. He closed his side vide purshis Exh.41. Respondent Nos.2 failed to adduce evidence so matter is proceeded further in pursuance of order dated 15-04-2026 passed below Exh.1. Respondent No.3 closed their side vide purshis Exh.42. Heard Learned advocate for petitioner and learned advocate for respondent No.3. None appeared on behalf of respondent No.2 at the time of hearing.

AS TO ISSUE NOS.1 & 2:-

9. Claimant in his evidence affidavit reiterated the facts mentioned in the petition. He stated that accident occurred on 10-11-2013 at 5.30 pm. At that time he was second pillion rider on motorcycle bearing No.MH-35-T-2139 being driven by his friend Someshwar Patle and returning from Savartola to Tirora. Suddenly tractor bearing registration No. MH-36-M-7361 (wrongly mentioned instead of MH-36-7361) came from front side and dashed to the said motorcycle rashly. As a result of it he sustained severe injuries while his daughter who was first pillion rider on said motorcycle sustained fracture injury. The police who were passing the side took him, his daughter and his friend to hospital at Sihora. Later on he was shifted to IGMC Nagpur for further treatment. He stated that said accident was caused due to

rash and negligent driving of offending tractor by respondent No.2. Therefore, police registered offence under section 279, 337 and 338 of IPC against respondent No.2 vide Crime No.50/2013. His evidence on the point of manner of happening of accident is not shaken. His evidence is well supported by police papers. Form AA Exh.29 shows that petitioner met with an accident on 10-11-2013 at about 18.00 hours on Tumsar Bapera road within jurisdiction of police station Sihora and said accident has arisen out of use of tractor bearing registration No. MH-36-7361 being driven by respondent No.2. True copy of FIR Exh.30 shows that offence has been registered against tractor bearing registration No. MH-36-7361 under section 279, 337 and 338 of IPC vide Crime No.50/2013 with police station Sihora in relation to said accident. Recitals in FIR indicate that there was head on collision between motorcycle No.MH-35-T-2139 and tractor bearing registration No. MH-36-7361. It also appears that driver offending tractor drove said vehicle in rash and negligent manner to his wrong side which caused said accident. True copy of spot panchnama Exh.31 shows the place where said accident occurred. It shows that said accident had taken place on Sindpuri Bapera road within vicinity of Sindpuri. Offending tractor was found near the spot of incident. So also vehicle of the friend of applicant was also found near the said spot. Situation on the spot itself demonstrate that respondent No.2 drove offending tractor to the wrong side and gave dash to the motorcycle of friend of

petitioner from front side. This fact itself suggests that respondent No.2 lost control over the offending tractor and as a result of it gave dash said tractor to the motorcycle on which petitioner was second pillion rider. It can be gathered that said accident occurred due to rash and negligent driving of offending tractor by respondent No.2.

10. As pointed earlier petitioner has stated that he was initially treated in hospital at Sihora and then shifted to IGMC Nagpur. Petitioner has filed on record true copy of injury report issued by Medical Officer of Rural Hospital Sihora at Exh.36 which shows that petitioner was taken to Rural Hospital Sihora on 10-11-2013 at about 10.35 pm with history of road traffic accident and that he has sustained fracture injury in lower limb and also sustained other injuries. Petitioner has also filed discharge card of IGMC Nagpur at Exh.37 which shows that he was treated in the said hospital for period from 12-11-2013 to 30-11-2013. He was treated for the injury sustained in the said accident during that period. Thus, his evidence on the point of injury sustained by him in the said accident is supported by true copy of injury report Exh.36 and discharge card Exh.37. Petitioner has also examined P.W.2 Dr. Digambar Maraskolhe who is specialist in Orthopedics and one of the Member of Medical Board which examined petitioner on 08-09-2016. They found that petitioner suffered with right knee joint stiffness and he calculated disability of petitioner to the extent of 48%. He stated that said disability is permanent disability. Accordingly,

disability certificate was issued under the signature of Medical Officer in the Medical Board. He identified his signature on disability certificate, copy of which is placed on record at Exh.35. I have gone through disability certificate at Exh.35 which shows that petitioner has sustained 48% permanent non progressive disability in relation to right lower limb. Thus, petitioner has established that he suffered from permanent disability as a result of injury sustained by him in an accident which had taken place on 10-11-2013 at 5.30 pm on Sawaratola to Tiroda road within the jurisdiction of police station Sihora due to rash and negligent driving of tractor bearing registration No. MH-36-7361 by its driver. Hence, I answer issue Nos.1 and 2 in affirmative.

AS TO ISSUE NO.3:

11. Respondent No.3 raised defence of breach of terms of policy on the count that offending vehicle was not having permit. Police papers does not suggest that offending vehicle was running without permit. Even respondent No.3 did not adduce evidence to establish their defence in that respect. Learned advocate for respondent No.3 argued that offending tractor was being run without permit so there is breach of terms and conclusions of policy in relation to said vehicle as contained in policy document at Exh.34. However, respondent No.3 failed to point as to what type of permit was required for the purpose of said tractor under the provision of M.V. Act. Even otherwise they have not led evidence to point out that offending tractor was not having valid permit to ply. Thus,

respondent No.3 failed to prove that there is breach of terms and conclusions of insurance policy. Hence, I answer issue No.3 in negative.

AS TO ISSUE NO.4:

12. In view of my findings to issue Nos.1 & 2 petitioner is entitled to get compensation. Hence, I answer first part of issue No.4 in affirmative.

13. Now I assess the quantum of compensation. As per petitioner as pointed earlier initially he was taken to hospital at Sihora and he was shifted to IGMC Nagpur. He has filed on record injury report Exh.36 of Rural hospital Sihora dated 10-11-2013 which indicate that initially petitioner was taken to Rural Hospital Sihora with history of road traffic accident and that it was found that he sustained multiple injuries including fracture lower end of femur. Discharge card at Exh.37 shows that petitioner was treated in IGMC & General Hospital Nagpur during the period from 12-11-2013 to 30-11-2013 for the injuries sustained in the said accident. Through his evidence and that of P.W.2 Dr. Digambar Maraskolhe it is established that petitioner has suffered from permanent disability to the extent of 48%. No doubt P.W.2 Dr. Digambar Maraskolhe admitted that said disability relate to right lower limb and it is not in relation to whole body. While assessing loss of future income functional disability is required to be considered. Petitioner in his cross-examination admitted that prior to accident he was doing the work of rolling of Bidi and

earning Rs.250/- per day and now he earns Rs.100 to Rs.150/- per day. It shows that his earning capacity has reduced after accident which suggests that his functional disability in view of permanent disability suffered by him is to the extent of 25%. Matter is of 2013. Petitioner has not filed any document about his income proof. Considering oral evidence of petitioner I consider his notional income as Rs.3000/- per month and annual income comes to Rs.36,000/-. Keeping in view functional disability of 25% annual loss of income comes to Rs.9000/-. As per petitioner at the time of accident he was 42 years old. In police papers his age is shown as 40 years but when petitioner himself stated that he was 42 years old at the time of accident, so considering the said age of petitioner at the time of accident multiplier of 14 is applicable in the present case. Thus, loss of future earning capacity comes to $\text{Rs.9000} \times 14 = \text{Rs.1,26,000/-}$. This is loss of earning capacity to the petitioner. Besides that petitioner is also entitled to amount towards loss of wages during the treatment. Keeping in view nature of injury suffered by petitioner and that his treatment was continued since 10-11-2013 to 30-11-2013, he must have lost wages for about 4 months. Considering his notional income as Rs.3000/- per month, loss of wages during treatment of petitioner comes of Rs.12000/-. Besides that petitioner is also entitled to pecuniary damages in the form of expenses in treatment, special diet, attendant charges. Although he was treated in the Government hospital but he

must have spent certain amount towards his treatment and conveyance as he was taken from Sihora to Nagpur so by guess work I award Rs.10,000/- towards conveyance and treatment. He must have spent certain amount towards nourishing food/ special diet. By guess work I award Rs.25,000/-towards special diet. Certainly, during his treatment at IGMC Nagpur for the period from 12-11-2013 to 30-11-2013 somebody must have taken care of him and amount must have been spent upon such caretaker. Therefore by guess work I award Rs.25,000/- towards attendant charges. Besides that petitioner is also entitled to non-pecuniary damages/general damages. Because of injuries suffered by petitioner he must undergone pain and agony, trauma and faced inconvenience, hardship or discomfort and mental stress as a consequence of those injuries. Therefore, I award Rs.25,000/- as damages for pain and suffering. Petitioner is also entitled for damages for permanent disability separately. I award Rs.20,000/- towards damages for permanent disability. Thus, petitioner is entitled to compensation as under:

Rs.1,26,000/-	Loss of earning capacity
Rs.10,000/-	Conveyance and treatment charges
Rs.12,000/-	Loss of wages during treatment
Rs.25,000/-	Special diet
Rs.25,000/-	Attendant charges

Rs.25,000/-	Pain and suffering
Rs.20,000/-	Damages for permanent disability
Total: Rs.2,43,000/-	

14. Now it is to be decided as to who is liable to pay said compensation amount to the petitioner. Petitioner has stated that offending tractor was being driven by respondent No.2 at the relevant time and respondent No.1 was owner of said vehicle and it was insured with respondent No.3. From documents on record it is clear that at the relevant time offending tractor was owned by respondent No.1 and it was driven by respondent No.2. True copy of police Exh.34 shows that offending tractor was insured with respondent No.3 during the period from 30-09-2013 to 29-09-2014 and an accident occurred on 10-11-2013. Thus, on the date of accident offending tractor was insured with respondent No.3. Although in policy registration number of offending tractor is mentioned as MH-36-M-7361 instead of MH-36-7361 but chasis number and engine number mentioned therein tallied with registration certificate of tractor No.MH-36-7361 as it is clear from true copy of registration certificate at Exh.33. Exh.33 also shows that offending tractor was standing in the name of Markandrao Nanaji Patle. It is to be noted that in pursuance of order dated 18-12-2021 passed below Exh.17

name of respondent No.1 has been deleted from array of respondents as bailiff report in relation to notice issued to respondent No.1 shows that respondent No.1 died on 13-11-2021 which indicates that respondent No.1 died after institution of claim petition on 28-07-2020. It is to be noted that section 155 of the Motor Vehicles Act speaks about effect of death on certain causes of action. It provides that notwithstanding anything contained in section 306 of Indian Succession Act 1925 the death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening an event which has given rise to a claim under the provisions of this Chapter, shall not be a bar to the survival of any cause of action arising out of such event against his estate or against the survivor. Keeping in view said provision, in present case death of insured occurred after institution of present claim petition, that being so claim petition is maintainable against the insurer without bringing on record legal heirs of deceased owner of offending tractor. However, petitioner cannot make claim against the estate of deceased owner as he has not brought on record his legal heirs. Respondent No.2 was driver of the offending tractor at the relevant time. He is prime tortfeasor. He is jointly and severally liable to pay compensation alongwith respondent No.3 insurance company. Respondent No.3 Insurance company being insurer of offending tractor and policy of the said vehicle was valid and effective on the date of accident so in the fact of matter respondent No.3 insurance company is

also liable to pay compensation to the petitioner. Hence, I answer second part of issue No.4 accordingly.

AS TO ISSUE NO.5:

15. Although petitioner has restricted his claim to the tune of Rs.1,00,000/- 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] The petition is allowed with costs.
- 2] The petitioner is entitled to total compensation of **Rs.2,43,000/- (Two Lakh Forty Three Thousand Rupees only)**, inclusive of no-fault liability amount, if any with future interest @ 7 % per annum from the date of filing of petition till realization of said amount under section 166 of Motor Vehicle Act.
- 3] Respondent Nos.2 and 3 shall pay jointly severally **Rs.2,43,000/- (Two Lakh Forty Three Thousand Rupees only)**, inclusive of no-fault liability amount, if any with future interest at the rate of 7% per annum from the date of filing of petition till realization of the said amount to petitioner.
- 4] Respondent Nos.2 and 3 do bear their own costs and pay the costs of petition to the petitioner.

5] Claimant to deposit deficit court fees if any.

6] An award be drawn up accordingly.

Date : 16-04-2026.

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