

MHKO010003952017



Received on :- 31/01/2017
Registered on :-04/02/2017
Decided on :-16/03/2026
Duration :- Y. M. Ds.
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BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL,
AT KOLHAPUR.

[Presided over by **Smt. Kavita B. Agrawal, CHAIRMAN**]

M.A.C.P. No. 65 OF 2017
Exh. No.65/A

Shri. Pandurang Yashwant Patil,
Age 60 Yrs., Occu. Nil,
R/o. Bhokare Lane, Kaneri,
Tal. Karveer, Dist. Kolhapur.

Applicant.

Versus

1. Shri. Guru Balkrishna Kumbhar
(Dead)

Owner and driver of Hero HF
Delux motorcycle.

Through Legal heirs.

1/A. Shri. Balkrishna Gundu Kumbhar
(Father),

Age : 48 Yrs., Occu. Labourer,

1/B. Sou. Shanubai Balkrishna Kumbhar
(Mother)

Age : 45 Yrs., Occu. Housewife,

1/C. Shri. Pravin Balkrishna Kumbhar
(Brother),

Age : 24 Yrs., Occu. Labourer,
All R/o. Chikhali, Tal. Kagal,
Dist. Kolhapur.

Opponents.

Shri.C. B. Kore - Adv. For the applicant.

Shri. M. S. Joshi - Adv. For the opponent No.1/A to 1/C.

JUDGMENT

(Delivered on 16th March 2026)

This application is filed under Section 166 of the Motor Vehicles Act, 1988 (hereinafter referred as “the Act” for short), seeking compensation of Rs.5,20,000/- with interest @ 18% p.a., on account of accidental injuries and disability caused to the applicant in a motor vehicular accident.

02. **The applicant's case is that :**

(a) That on 10/01/2016 at about 7.10 a.m. the applicant was ridding his two wheeler bearing No. MH-09-CR-4348 along with his grandson as pillion rider towards his house at Kaneri. He was ridding motorcycle slowly, cautiously and along with correct side of road. When they reached on Wadiratnagiri (Jotiba) to Kerli road, near Danewadi Phata, one Hero HF motorcycle bearing No. MH-09-CQ-4956 (offending motorcycle) driven by opponent No. 1 Guru came from opposite side and gave dash to motorcycle of applicant. Due to said dash, applicant and his grandson fell on road and applicant sustained injuries over right leg, face, cheek and forehead. Applicant was immediately shifted to ‘City Hospital’ for treatment. Thereafter, for better medical treatment applicant was shifted to ‘Om Fracture and Joint Replacement Center’, Kolhapur. There he was operated and discharged on 22/01/2016. He incurred total medical expenses of Rs. 65,000/-. Applicant also sustained 10% permanent physical disability. The accident took place only due to the negligent riding of offending motorcycle i.e.

opponent No. 1 Guru.

(b) On information, Kodoli police registered C.R.No.4/2016, for the offences punishable u/Secs.279, 337, 338, 427 of the Indian Penal Code (hereinafter the 'I.P.C.' for short) and u/Sec. 184 of the Act, against the motorcyclist Guru.

(c) It is contended that the applicant was agriculturist and was also doing Milk-Vending business to Revansiddha Co-operative Dudh Sangh, Kaneri. He was earning Rs. 5,000/- per month from said business. Due to accidental injuries, he is unable to do work as previous. Even after the treatment he is not completely cured and he has sustained physical permanent disability and he will suffer great hurdle in future life. Due to disability, the applicant has sustained loss of earning capacity. Thus, the applicant claimed total compensation of Rs.5,20,000/- with interest at the rate of 18% p.a. from the date of accident, till the realization of whole amount from the opponents, under various heads.

(d) The opponent No.1 was the owner and motorcyclist of the offending motorcycle. During treatment on 17/01/2016 he was died and hence, his legal heirs opponent Nos. 1/a to 1/c were added as party to the present application and they are jointly and severally liable to pay the compensation with interest. Hence, the application.

03. Opponents No.1/a to 1/c have appeared and filed their written statement (Exh.18) and strongly opposed the application. They have denied the accident, the injuries

sustained to the applicant in the accident, his medical treatment and the expenses incurred by him for the treatment as well his permanent disability. It has also denied the age, occupation and income of the applicant. It is contended that the amount claimed is baseless, imaginary and exorbitant.

04. It is further contended that the opponent Nos. 1/a to 1/c do not stand as legal representative of the deceased opponent Guru. The opponent Guru was not having any estate or property which was inherited by his heirs opponent Nos. 1/a to 1/c. All properties possessed by the opponent Nos. 1/a to 1/c are their independent and self acquired properties. Hence, the present application for compensation is not maintainable against them. Lastly, opponents prayed to dismiss the application with costs.

05. The former Ld. Member of this Tribunal has framed the issues (Exh.19). I have recorded my finding against each issue as under for the reasons to follow:

Sr. No.	ISSUES	FINDINGS
1.	Whether applicant proves that, he sustained permanent disability in an accident arising out of the use of motor vehicle i.e. motorcycle No. MH-09-CQ-4956?	Yes.
2.	Whether applicant prove that, motor vehicle i.e. motorcycle No. MH-09-CQ-4956 was being driven in rash and negligent manner by opponent No.1 ?	Yes.
3.	Whether applicant is entitled for compensation, if yes, from whom and to what extent?	Partly Yes, as per final order.

4.	What award ?	See, final order.
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- REASONS -

06. To prove the claim, the applicant has presented following evidence;

Sr. No.	Name of witness	Exh. No.	Nature of evidence.
1	Pandurang Yashwant Patil	AW1/ Exh.20	applicant
2.	Dr. Sandeep Tukaram Patil	AW2/ Exh.46	Medical Officer who examined the applicant

07. Evidence of the applicant is closed by order below Exh. 1 dtd. 23/02/2024.

08. The opponent has presented following evidence;

Sr. No.	Name of witness	Exh. No.	Nature of evidence.
1	Pravin Balkrishna Kumbhar	DW1/ Exh.59	Legal heirs of owner of offending motorcycle.

The evidence of opponent is also closed by passing order below Exh.1.

09. The applicant has relied upon following documents;

Sr. No.	Description of document	Exhibit number
1.	Copy of Charge sheet	Exh. 28
2.	Report dtd. 19/01/2016	Exh.29
3.	Spot panchanama dt.20/01/2016	Exh.30
4.	Intimation of City hospital	Exh.31
5.	Vehicle Particulars	Exh.32
6.	Ration Card details of opponent	Exh.33
7.	Discharge summary	Exh. 47
8.	Hospital Bill	Exh. 48
9.	Medicine Bills and Investigation	Exh. 49
10.	Permanent Disability Certificate	Exh.50

10. In support of the contentions, the applicant has placed reliance on following judgments:

1)	National Insurance Co. Ltd. Vs. Birender and Ors. Civil Appeal No. 242-243 of 2020
2)	Pannalal and Anrs. Vs. Mst. Naraini and Ors. 1952 AIR 170

11. I have anxiously gone through the above citations relied upon by both the sides. Taking into consideration the ratio laid down in the above cases, I have appreciated the evidence brought on record.

As to Issue Nos.1 and 2:

12. The applicant Pandurang has filed the present application U/Sec. 166 of the Act, therefore, the burden lies on the applicant to prove the fact of accident and negligence. To prove the negligence on part of offending motorcyclist. The applicant has filed affidavit of examination below Exh. 20 and reiterated the contents of

application in his affidavit. It is contended that, on 10/01/2016 at about 7.10 a.m. he along with his grandson has gone to village Jotiba by two wheeler as a pillion rider. When the reach Danewadi Fata, offending vehicle came from opposite side and gave heavy dash to his motorcycle. Due to said dash, applicant fell on road and sustained injury to his right femur and right side of face, cheek and forehead. He was shifted to City hospital. There he was treated and operated and was discharged on 22/01/2016. He incurred total medical expenses of Rs. 65,000/-. Due to accidental injuries he sustained 10% permanent disability. The offending motorcyclist is the responsible for accident.

It is necessary to see as to how this witness face the test of cross-examination. During cross-examination, the applicant has admitted that, his date of birth is 01/06/1953 and at the time of accident he was not wearing helmet. He admitted that, the road proceeding towards Jotiba is having many turns (Ghat road) and hence, no one can drive the vehicle in high speed and that, on the spot of accident there is turn. However, the applicant has denied the suggestions that, the opponent was riding the motorcycle slowly and was not having any fault in causing the accident. The suggestions as regards the medical treatment and injury were denied by the applicant. The suggestions as regards the income and permanent disability were also denied by applicant.

13. Considering the above testimony, it is necessary to go through the police papers. The applicant has relied on the police papers filed below Exh. 28 to 31. The report

(Exh. 28) was lodged by the applicant on 19/01/2016. The report (Exh.28) and spot panchanama (Exh.30) corroborates the contentions of the applicant, about the nature of the accident and rash and negligence on the part of the offending vehicle. The report was lodged on 19/01/2016 and the accident has occurred on 10/01/2016 there is six days delay in lodging the report. However, considering the injuries sustained by the applicant, said delay would not be fatal to the case of applicant.

14. To find out the negligence, it is necessary to go through the spot panchanama (Exh.30). The panchanama was conducted on 20/01/2016 by police Naik Shri. S.T. Shinde of Kodoli Police Station. It is mentioned that, the spot of accident is Jotiba to Kerli road which is east-west road, having 20 feet width. The spot of accident is situated on the road 3 feet from northern side. The applicant was returning to his house at Kaneri, therefore, his right side is northern side. The spot of accident clearly shows that, the offending vehicle has come on wrong side and gave dash to the motorcycle of the applicant. Moreover, the headlight and front portion of motorcycle of the applicant has been damaged and hence, it can be infer that it was head on collusion. The registration number of offending motorcycle is clearly mentioned in the spot panchanama, therefore, it can be infer that the offending motorcycle was involved in the accident. During arguments opponent has submitted that, still he possess offending motorcycle. Thus, from the above facts, this Court is of the opinion that, the offending motorcyclist was negligent in causing the accident. It has

come on record that, the motorcyclist has succumbed in said accident.

15. The applicant has also filed on record the medical certificates and the discharge summary issued by City Hospital, Kolhapur, wherein the history of road traffic accident has been given. The discharge summary (Exh.47) states that the applicant has sustained fracture injury to his right femur, at leg.

16. In this regard, applicant has examined Dr. Sandeep Patil (AW2/Exh.46). He has treated the applicant on 10/01/2016 for the above injuries caused in road traffic accident. The applicant was operated on fractures and other injuries and was discharged on 22/01/2016. Accordingly, he has issued discharge summary (Exh.47). Applicant was regularly visiting to his hospital and on 22/02/2018, implant removal surgery was done. During treatment he issued medical bill (Exh. 48 and 49) to the applicant. He has opined that, the applicant has sustained permanent disability of 10%. Hence, he had issued the certificate (Exh.50). According to him, the applicant is having trouble while sitting and squatting.

17. During cross-examination Doctor agreed that except the injury to right femur applicant has not sustained any other injury. He admits that, at the time of issuing disability certificate, the patient was walking without support. He further admits that, after rejoining of bones there is no problem to knee and hip. He cannot explain as to on what basis he has calculated the percentage of

disability as 10%, as he has not brought the relevant chart. Considering the nature of the injuries and fracture on right femur bone, I have no hesitation to place reliance on the disability certificate (Exh.50), which discloses that the applicant has sustained 10% permanent disability.

18. The applicant has sustained the injuries on the important bones i.e. femur which would naturally affect his walking and other day-to-day activities. Due to old age, there are the least chances of restoring of joints to its formal efficiency. Thus, I have no hesitation to hold that the applicant has sustained permanent disability in the accident dated 10/01/2016 due to rash and negligent driving of offending vehicle. Hence, I answer Issue No.1 and 2 in the **affirmative**.

As to issue Nos.3 & 4:

19. It is the contention of the applicant that, at the time of accident, he was doing agriculture work in his own land. He also get income from milk vending business and was earning Rs. 5,000/- per month. Due to accidental injuries, the applicant has lost his income from agriculture work and milk business. However, the applicant has not filed any documentary evidence as regards the agriculture income and milk business. Thus, considering the age of the applicant, it can be said that, the applicant was earning notional income of Rs. 5,000/- per month from agriculture work.

20. Though in the pleading it was initially contended that the applicant was admitted at City Hospital

from 10/01/2016 and discharged on 22/01/2016 and that he has incurred medical expenses of Rs.65,000/-. Latter on the applicant was required to remove the nails and rod implanted during the operation. Though the doctor was not aware of all details, but naturally the patient would incur expenses for such treatment and hospitalization. He would be entitled for the expenses incurred for the treatment and pains and agony. However, in spite of passage of long time, the applicant was not required to undergo any further operation except minor treatments. Considering the nature of injury, applicant is entitled for compensation.

21. As held in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi and others**, [2017 ACJ 2700 (SC)], no addition can be made to his notional income as the injured was aged about 62 years.

22. In view of the principles laid down in the case of **Raj Kumar Vs. Ajay Kumar, 2011 ACJ 1 (SC)** the injured applicant would be entitled for compensation under following heads :

<i>A) Pecuniary damages (Special damages) :-</i>		
Sr.No.		Amount.
i]	Expenses relating to treatment, hospitalization, medicines, nourishing food, removal of nail and miscellaneous expenditure. (As the receipts are not filed on record and all are not admissible and hence, the proportionate amount of the expenses mentioned therein is taken into consideration.)	Rs.60,000/-

ii]	Loss of earnings (and other gains) which the injured would have made, had he not been injured, comprising :	
a]	Loss of earnings during the period of treatment/rest (for about three months) = 5000 X 2 months = Rs.10,000/- .	Rs.10,000/-
<i>B) Non-pecuniary damages (General damages)</i>		
iii]	Damages for pain, suffering and trauma as a consequence of the injuries and loss of amenities of life.	Rs.50,000/-
Total Compensation granted : =		Rs.1,20,000/-

23. Thus, the applicant would be entitled for total compensation of **Rs.1,20,000/-** including NFL amount of Rs.25,000/-. Hence, I answer issues Nos. 3 & 4, accordingly.

As regards the liability :-

24. It is argued on behalf of the heirs of the opponent Nos. 1/a to 1/c that, the opponent No. 1 Guru is not possessing any ancestral property and he was not owning any property and hence, they are not liable to pay any compensation to the applicant. Per contra, it is submitted by the applicant that, the opponent Guru is the owner and driver of the offending vehicle and hence, he is liable to compensate the third party i.e. applicant for the losses caused due to his negligent act. As the opponent Guru has died in the accident, his legal heirs are also liable to compensate the applicant.

25. I have gone through the provisions of the MV Act. It is settled that, the legal heirs of the negligent rider cannot claim compensation from the other side. However, the offending vehicle is owned and ridden by the opponent and the opponent himself is negligent in causing the accident, the legal heirs of opponent are liable to compensate the third party. Whether the opponents 1/a to 1/c possesses any ancestral property from the share of deceased opponent Guru or not is the question to be dealt at the time of execution. Thus, this Court does not find any substance in the argument raised by the opponents.

26. Some interest is required to be awarded in addition to the compensation. There is no straight jacket formula to award such interest at a particular rate. It depends on fact and circumstances of the individual case and prevailing rates of interest in nationalized banks. Hence, considering the above facts and circumstances of the case, in my opinion, grant of interest @ 6% p.a. will be just and proper. Thus, applicant is entitled to receive compensation of **Rs.1,20,000/-** (inclusive of NFL) with interest @ 6% p.a. from the date of application till realisation. Thus, the application succeeds in part. Hence, following order.

ORDER

1. MACP No.65 of 2017 is allowed against the opponent Nos.1/a to 1/c in part, with costs.
2. The applicant to deposit deficit Court fee, if any, within 10 days.
3. The Opponent Nos.1/a to 1/c do jointly and severally pay to the applicant a sum of **Rs.1,20,000/-** (*Rs. One Lakh Twenty Thousand Only*) inclusive of NFL, along with interest @ 6 % p.a. from the date of application till realisation, within three months of this order, failing which, the future rate of interest would be @ 7.5% p.a..
4. The Opponent Nos.1/a to 1/c are directed to deposit the awarded amount to the credit of the below stated bank account of this Tribunal directly by NEFT/RTGS.

Name of the Account and the Bank	MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLHAPUR, (M.A.C.T. KOLHAPUR).
	STATE BANK OF INDIA, TREASURY BRANCH, KOLHAPUR.
Account No.	40819980059
IFSC	SBIN0007249

5. **On deposit of the amount -**
10% amount with accrued interest shall be invested in fixed deposit, in the name of applicant with any Nationalized Bank for a period of three years with liberty to receive quarterly interest.

6. Remaining amount with accrued interest be disbursed to the applicant by NEFT or RTGS in his bank account with a Nationalized bank of his choice, against proper identification and by following the necessary office procedure, subject to payment of the deficit/additional Court fees, if any, within ten days from the date of this order. Failing, the interest shall stop to run till such payment.
7. Award be drawn accordingly.
8. MACP No.65/2017 stands disposed of.

(pronounced in open Court)

Kolhapur.
Date : 16/03/2026

(Smt. Kavita B. Agrawal)
CHAIRMAN, MACT, Kolhapur.