

Presented On : 14.02.2019
Registered On : 07.03.2019
Decided On : 20.04.2026
Duration : 7-Yrs., 2-Ms, 5-Ds.

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL,
MUMBAI
(PRESIDED OVER BY S.E. BANGAR)

M.A.C.P.No.539 OF 2019

Exh.

Mr.Shankar B.Jha

Aged about 32 years,

Residing at Saikrupa Chawel, Gavdevi Road,
Shivaji Maidan, Poisar Kandivali East, Mumbai
400 101.

Mobile 9867771907

....Applicant

V/s.

Mr.Deepakkumar S.Mishra

Residing at Boholaprasad Tiwari Chawl,
Gaondevi Road, Poisar Kandivali East,
Mumbai- 400 101.

Owner of M/Cycle bearing No.MH-02-DE-0514

...OPP.Patry No.1

AND

Mr.Arjun Pancham Singh

Pande Mishra Chawl, Near Ramakant Mishra
Shop, Indira Chowk, Gada Maidan, Poisar
Gavdevi Road, Kandivali East, Mumbai.

Driver of M/Cycle Bearing no.MH-02-DE-0514

...OPP.Patry No.2

Shri S.R. Patil, advocate for the Applicant.

Shri R.B.Pawar, advocate for the Opposite Party No.1.

Opposite Party No.2-Ex-parte.

J U D G M E N T

(Delivered on 20.04.2026)

1. The present application under Section 166 of the Motor Vehicles Act, 1988 is filed by the applicant seeking compensation on account of the injuries allegedly sustained by him in a road traffic accident dated 22.07.2018 involving motorcycle bearing registration No. MH-02-DE-0514.

I. FACTS OF THE CASE

2. The case of the applicant, as disclosed from the claim petition, is that on 22.07.2018 at about 3:30 p.m., he was travelling on a motorcycle from his residence towards Thakur Complex and when he reached near BMC Godown, 90 Feet Road, Poisar, Kandivali (East), Mumbai, the offending motorcycle bearing registration No. MH-02-DE-0514, driven by Opponent No.2 in a rash and negligent manner, came at high speed and dashed the motorcycle on which he was travelling. According to him, due to the impact, he fell down and sustained grievous injuries, including compound fracture of right first metatarsal and compound fracture of proximal phalanx of right little finger, besides other injuries.

3. It is further pleaded that immediately after the accident, he was shifted to Suchak Hospital, where he was treated as indoor patient. He has pleaded that he incurred medical expenses of about Rs.50,000/- and further expenditure of Rs.30,000/- towards special diet,

conveyance and incidental expenses. He has claimed that he was serving as a compounder in a pet clinic and earning Rs.40,000/- per month. On these averments, he has claimed just compensation, tentatively valuing the petition at Rs.1,00,000/- for the purpose of court fee, with liberty to enhance the claim.

4. Opponent No.1 filed written statement at Exh.7 and denied the material averments of the claim petition. He denied the applicant's age, occupation, income, nature of injuries, treatment and expenditure. He also denied negligence on the part of Opponent No.2. On the contrary, the defence set up by Opponent No.1 is that the applicant himself came rashly from a side lane, at high speed, under the influence of alcohol, without observing traffic rules, lost control over his motorcycle and dashed against the motorcycle of Opponent No.1. Thus, according to Opponent No.1, the accident occurred solely due to negligence of the applicant himself. Opponent No.2 remained absent and the matter proceeded ex parte against him.

II. ISSUES FOR DETERMINATION

5. The erstwhile learned Member, MACT, Mumbai, framed the following issues below Exh.12 on 28.07.2022, which are incorporated herein verbatim:

Nos.	Issues	Findings
1	Does petitioner proves that the accident took place on 22.7.2018	In the negative.

	due to rash and negligent driving of motorcycle bearing registration No.MH-02-DE-0514?	
2	Does petitioner proves that in said accident, he sustained injuries in vehicular accident?	In the affirmative.
3	Does petitioner is entitled for amount of compensation from opponents? If yes, what amount and from whom?	In the negative.
4	What order and award ?	As per final order.

III. EVIDENCE

6. The applicant did not enter the witness box. No affidavit in lieu of examination-in-chief of the applicant is on record. However, the applicant relied upon documentary evidence such as certified copy of FIR, statement recorded by police, spot panchanama and medical papers of Suchak Hospital

7. In enquiry by the Tribunal, Dr. Devavrat Vidhyadhar Shahasane was examined at Exh.18. He deposed as authorized representative of Suchak Hospital and proved the authority letter (Exh.21), list of documents (Exh.20), medical record (Exh.22 colly) and MLC intimation (Exh.23). His evidence establishes that patient Shankar Jha was brought to Suchak Hospital on 22.07.2018 at about 6:40 p.m. with history of road traffic accident at about 3:30 p.m.; that he had degloving injury on right foot, abrasion on right knee and right hand, and fracture of proximal

phalanx of right little finger; that he was treated by suturing the foot injury and fixation with K-wire; and that he was discharged in stable condition after treatment. He also stated that the injuries would normally require about three to four weeks for healing. He candidly admitted in cross-examination that he had not personally treated the patient, that he was deposing on the basis of record, that treatment was successful, and that he could not state the medical expenses or present condition of the patient.

8. Opponent No.1 examined himself as DW1 at Exh.24. He reiterated that he is the registered owner of motorcycle No. MH-02-DE-0514 and produced copies of Aadhaar Card and PAN Card at Exh.26 and Exh.27. According to him, at the relevant time Opponent No.2 was riding the motorcycle slowly, carefully and on the correct side; the applicant, being under the influence of alcohol and carrying two pillion riders, suddenly came from opposite side, took abrupt right turn without signal and dashed against the right side of his motorcycle. He further stated that the applicant sustained only minor injuries, that expenses were borne by him, and that FIR was wrongly registered against the rider of his motorcycle. This witness was not cross-examined by the applicant.

IV. DOCUMENTARY EVIDENCE

9. The certified copy of FIR in C.R. No.492/2018 of Samata Nagar Police Station shows registration of offence

under Sections 279 and 338 IPC in respect of the incident dated 22.07.2018 at about 15:30 hrs near BMC Godown, Poisar, Kandivali (East), Mumbai. The FIR mentions motorcycle No. MH-02-DE-0514 as the offending vehicle. The statement of the applicant recorded by police narrates that the said motorcycle came at high speed and dashed his motorcycle. The spot panchanama identifies the situs of accident near BMC Godown at the junction of Gaondevi Road and 10 Feet Road. These documents do establish that an accident was reported and investigated by police, and that the applicant's version from inception attributed blame to the rider of motorcycle No. MH-02-DE-0514.

10. The medical intimation from Suchak Hospital addressed to the Police Inspector, Samata Nagar Police Station, records that the applicant was brought with history of road traffic accident near Thakur Complex and had sustained injury to little finger, deep cut lacerated wound over right foot, abrasion over right lower limb, and that X-rays showed fracture of little finger and right first metatarsal. The discharge summary shows admission on 22.07.2018 and discharge after treatment, and refers to debridement, suturing and orthopedic fixation. These papers clearly prove that the applicant sustained bodily injuries in a vehicular accident and received medical treatment.

11. However, it is noteworthy that neither any charge-

sheet/final report against Opponent No.2 nor any disability certificate, medical bills, salary certificate, employer's evidence or proof of actual expenditure has been produced and proved in accordance with law.

V. SUBMISSIONS OF OPPONENT NO.1

12. Learned Advocate for Opponent No.1 argued that the applicant did not enter the witness box and did not prove the foundational facts pleaded in the petition. According to him, adverse inference deserves to be drawn against the applicant. It is further argued that the medical witness proves only treatment and successful discharge. Reliance is also placed on the testimony of DW1 to contend that the applicant himself was negligent and was under the influence of alcohol.

VI. LEGAL POSITION

13. It is well settled that in a petition under Section 166 of the Motor Vehicles Act, proof of rash and negligent driving is necessary; however, the standard of proof is not that of a criminal trial. The Tribunal is required to decide the issue on the touchstone of preponderance of probabilities, taking a holistic view of the evidence. Strict proof of accident in a particular manner may not always be possible. The Supreme Court has consistently reiterated this principle in **Bimla Devi v. Himachal Road Transport Corporation**, (2009) 13 SCC 530; **Kusum Lata v. Satbir**, (2011) 3 SCC 646; **Dulcina Fernandes v. Joaquim Xavier**

Cruz, (2013) 10 SCC 646; **Mangla Ram v. Oriental Insurance Co. Ltd.**, (2018) 5 SCC 656; **Mathew Alexander v. Mohammed Shafi**, (2023) 13 SCC 510; and most recently in **ICICI Lombard General Insurance Co. Ltd. v. Rajani Sahoo**, (2025) 2 SCC 599 / 2025 INSC 6.

14. In *Bimla Devi* the Supreme Court held that the Tribunal must take a holistic view and that strict proof of accident caused by a particular vehicle in a particular manner may not be possible; the claimants are required to establish their case on the touchstone of preponderance of probability. In *Rajani Sahoo*, the Supreme Court further held that police papers such as FIR and final report can be looked into by the Tribunal for determining negligence, and filing of charge-sheet prima facie points towards complicity in rash and negligent driving.

15. At the same time, the burden to establish negligence in a fault-liability claim under Section 166 still remains on the claimant. In *Mathew Alexander*, the Supreme Court observed that the parties must let in their respective evidence and if negligence is not established, the claim petition has to be disposed of accordingly. Thus, while the Tribunal is not to be hyper-technical, it cannot dispense altogether with proof of negligence where the record is insufficient.

16. So far as personal injury compensation is concerned,

the heads of compensation are authoritatively set out in **Raj Kumar v. Ajay Kumar**, (2011) 1 SCC 343, which classifies pecuniary and non-pecuniary heads, and also emphasizes that future loss of earnings, future medical expenses and loss of amenities in serious cases require specific medical evidence. The same decision also states that the Tribunal is an active explorer and seeker of truth while holding enquiry under Sections 168 and 169 of the Act.

17. On the question of non-appearance of a material witness, particularly the claimant himself, an adverse inference may in a given case be drawn under Section 114 illustration (g) of the Evidence Act / corresponding provision under the Bharatiya Sakshya Adhinyam, if the claimant is the best person to depose about the manner of accident and yet abstains without sufficient explanation. A recent judgment of the Bombay High Court in Pradeep Narayan Shelke v. Abasaheb Hanumant Ware, 2025:BHC-AUG:32616 (First Appeal No.2581 of 2023, decided on 18.11.2025) upheld such an adverse inference where the claimant, capable of deposing, avoided the witness box and the occurrence itself became doubtful on overall appreciation. That decision, though fact-specific, is apposite on the evidentiary principle.

18. The Tribunal is nevertheless bound to enquire into the claim on merits even where the claimant defaults in prosecution, rather than mechanically dismissing the claim

for default. That approach has been recognized in decisions such as **Saramma Scaria v. Mathai**, 2003 ACJ 213 (Ker), and other earlier authorities noticed in the order-sheet.

VII. FINDINGS ON ISSUES

Issue No.1

Does petitioner proves that the accident took place on 22.7.2018 due to rash and negligent driving of motorcycle bearing registration No.MH-02-DE-0514?

19. The applicant has not entered the witness box. Therefore, the pleaded version in the claim petition has not been proved by his substantive oath testimony. The police statement of the applicant is part of the police papers and does show the earliest version blaming the rider of motorcycle No. MH-02-DE-0514; however, in the present case, unlike Rajani Sahoo, there is no proved final report or charge-sheet against Opponent No.2 brought on record. There is also no eyewitness examined by the applicant. The medical witness from Suchak Hospital proves only the factum of injuries and treatment, not the manner of accident or negligence.

20. It is true that strict proof is not required in MACT proceedings and the FIR cannot be ignored. Equally, however, the Tribunal cannot presume negligence merely because an FIR was registered, especially where the claimant himself remains absent from the witness box and

no charge-sheet/final report against the rider is proved. The police papers on record in the present case stop at FIR, police statement and spot panchanama. They establish that an accident was reported and investigated, but do not, by themselves, conclusively tilt the balance of probability on negligence in favour of the applicant in the absence of supporting oral evidence.

21. On the other hand, DW1 has stepped into the witness box and put forward an alternative version attributing negligence to the applicant. His testimony is uncorroborated by independent evidence; still, it has also remained unchallenged because the applicant remained absent and did not cross-examine him. The Tribunal is conscious that untested testimony of an interested owner cannot automatically displace the FIR version. Yet, when the applicant himself abstains from the witness box and no independent ocular evidence is adduced, the evidentiary deficit on the side of the applicant becomes material.

22. In the facts of the present case, I am of the considered opinion that the applicant has failed to discharge the burden of proving, on the touchstone of preponderance of probabilities, that the accident occurred due to rash and negligent riding of motorcycle No. MH-02-DE-0514 by Opponent No.2. The FIR and allied police papers, without the applicant's own deposition, without any eyewitness, and without any charge-sheet/final report proved against

Opponent No.2, are insufficient in the peculiar facts of this case to record a positive finding of negligence. Hence, Issue No.1 is answered in the Negative.

Issue No.2

Does petitioner proves that in said accident, he sustained injuries in vehicular accident?

24. On this issue, the evidence is clear. The medical record proved through Dr. Shahasane (Exh.18, Exh.21, Exh.22 colly and Exh.23) establishes that the applicant was brought to Suchak Hospital on 22.07.2018 with history of road traffic accident and was found to have degloving injury to right foot, abrasions, and fracture of proximal phalanx of right little finger. The hospital intimation to police, discharge summary and treatment notes lend strong contemporaneous corroboration to the fact that the applicant sustained bodily injuries in a vehicular accident on the said date.

25. True it is that no permanent disability is proved and no quantified treatment bills are proved. But for answering Issue No.2, what is necessary is proof that the applicant sustained injuries in a vehicular accident. That fact stands established by the medical evidence and documents. Hence, Issue No.2 is answered in the Affirmative.

Issue No.3

Does petitioner is entitled for amount of compensation from opponents? If yes, what amount and from whom?

26. In a claim under Section 166 of the Motor Vehicles Act, entitlement to compensation is founded on proof of negligence. Since Issue No.1 has been answered in the negative, the claim under fault liability cannot succeed.

27. Even otherwise, the evidence regarding income, occupation, loss of earnings, permanent disability and medical expenditure is wholly insufficient. No employer is examined; no income proof is produced; no disability certificate is proved; and no treatment bills are proved. In the absence of proof of negligence and in the absence of proof of damages under the relevant heads explained in Raj Kumar v. Ajay Kumar, no compensation can be awarded in the present proceeding. Accordingly, Issue No.3 is answered in the Negative.

Issue No.4

What order and award ?

30. In view of the findings recorded above, the claim petition deserves to be dismissed on merits.

VIII. ORDER

ORDER

1. The claim application being M.A.C.P. No. 539 of 2019 stands dismissed on merits.

2. It is held that though the applicant has proved that he sustained injuries in a vehicular accident on 22.07.2018, he has failed to prove that the said accident occurred due to rash and negligent riding of motorcycle bearing registration No. MH-02-DE-0514 by Opponent No.2.

3. Consequently, the applicant is not entitled to compensation under Section 166 of the Motor Vehicles Act in the present petition.

4. In the facts and circumstances of the case, there shall be no order as to costs.

5. Award be drawn accordingly.

Pronounced in open Tribunal.

Date: 20/4/2026

Place: Mumbai

(Shashikant Eknathrao Bangar),
Member, C.R.3,
Motor Accident Claims Tribunal, Mumbai