

Presented on: 06.10.2021.  
Decided on : 13.03.2026  
Duration : 4Y 5M 7D

Ex.

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, MUMBAI**

(Presided over by Smt. Monica I. Arland)

**Motor Accident Claims Petition No.1292 of 2021**

1. Mr. Sushil Suresh Kadam  
Aged about 35 years,  
(Husband of the deceased)
  
2. Master Vihaan Suresh Kadam  
Aged about 3 years  
(Son of the deceased)

(Applicant no.2 being minor under the age of 18 years represented by his father Suresh as a natural guardian and next friend)

Residing at:

654, Panchal Kirana Store,  
Morivali Gaon, Ambarnath (W),  
Netaji Bazar, Ambarnath,  
Thane-421 505.

... Applicants

**-Versus-**

Mr. Suhas Suresh Kadam  
Residing at :  
Room No.654, Morivali Village,  
Ambarnath (W),  
Dist. Thane.  
Maharashtra-421 505.

...Opposite party No.1

(Owner of M/Vehicle No.MH-06-AF-0640)

And

Maharashtra State Transport Corporation,  
Vahatuk Bhavan,  
Bombay Central Depot,  
Mumbai Central,  
Mumbai-400 008.  
(S.T. Bus No.MH-14-BT-3281)

...Opposite party No.2

And

IFFCO TOKIO General Insurance Co. Ltd.  
Having their office at :  
Mumbai Business Centre,  
Tower-1, Elphinstone (West),  
1201, 12<sup>th</sup> floor,  
Indio Bull Finance Centre,  
Senapati Bapat Road,  
Mumbai, Maharashtra-400 013. ... **Insurer**  
(Insurer of Motor Vehicle No.MH-06-AF-0640)

**Petition for compensation amount Rs.1,00,000/-**

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Mr. S.B. Gadge - Advocate for applicants.  
Opposite party No.1 – Exparte  
Mr. Rajesh Pawar – Advocate for the Opposite party No.2  
Mr. Sanjay Meshram - Advocate for the Insurer.  
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**JUDGMENT**

(Delivered on 13<sup>th</sup> March, 2026)

1. This petition has been filed by the applicants under Section 166 of the Motor Vehicles Act for grant of compensation of Rs.1,00,000/- along with interest from the opposite parties and Insurer.

2. According to the applicants, the applicant no.1 is the husband and the applicant no.2 is the minor son of the deceased.

3. On 15.09.2021 at about 14:00 hrs. the deceased was proceeding along with her family members in Car No.MH-06-AF-0640 which was being driven by the driver in rash and negligent manner. When the said Car reached Mumbai-Goa Highway, in front of Suruchi Hotel, Khavti, Tal. Khed, Dist. Ratnagiri, at that time the Car dashed S.T. Bus No.MH-14-BT-3281 which was parked wrongly without its parking light. Due to the impact deceased sustained serious injuries. He was taken to Hospital, at Ratnagiri for medical treatment.

4. The Police Station, Khed Police station registered an offence against Suhash Suresh Kadam, the driver of the Car No.MH-06-AF-0640 vide Cr.No.0438/2021 for offence punishable U/s.279, 337, 338 of Indian Penal Code and Section 184 of the Motor Vehicles Act, 1988.

5. At the time of accident, the deceased was aged about 30 years. She was self employed doing work of Beauty Parlor and thereby earning Rs.20,000/- p.m. According to the applicants, the offending Car No.MH-06-AF-0640 is owned by opposite party No.1, the S.T. Bus No.MH-14-BT-3281 is owned by Opposite party No.2 and the Car of Opposite party no.1 is insured with the Insurer at the time of the accident. Therefore, the applicants have filed the present petition and claimed compensation of Rs.1,00,000/- from the Opposite parties and Insurer along

with interest.

6. The Opposite party No.1 though duly served with notice vide Exh.13 but failed to appear. Hence, by order dated 19.07.2022 vide Ex.1, the matter was proceeded Ex-parte as against the opposite party No.1.

7. The Opposite party No.2/MSRTC has filed written statement vide Ex.25 and resisted the claim of the applicants. It is contended that the accident occurred due to rash and negligent driving of the driver of the Car No.MH-06-AF-0640 who dashed their S.T. Bus No.MH-14-BT-3281 from backside. It is further contended that the application suffers for non-joinder of necessary party as the applicants have not impleaded the Owner and Insurer of Car No.MH-06-AF-0640 as a party to the proceeding. Hence prayed for dismissal of the petition.

8. The Insurer has filed written statement vide Ex.12 and resisted the claim of the applicants. It is contended that the deceased was travelling as an occupant in a private vehicle and the risk was not covered under the policy issued by the Insurer. It is further contended that the vehicle No.MH-06-AF-0640 was not involved in the accident so also there was no rashness and negligence on the part of the driver of the said vehicle. Hence prayed for dismissal of the petition.

9. In pursuance of order dated 28.01.2025 on

Ex.17, I have re-casted Issues on 11.09.2025. I reproduce the same and record my finding thereon for the reasons given below.

<b>Sr.No.</b>	<b><u>Issues</u></b>	<b><u>Findings</u></b>
1.	Whether the accident took place on 15.09.2021 due to rash and negligent driving of the Motor Car bearing registration No.MH-06-AF-0640 and MSRTC Bus No.MH-14-BT-3281 and as a consequence thereof, deceased Rakhi Kadam died?	<b>Affirmative</b>
2.	Whether the Insurer prove that risk of passengers was not covered as the offending vehicle was having Act only policy and so Insurer is not liable to pay the compensation?	<b>Affirmative. However, Insurer to pay first and then to recover the award from Opposite party No.1</b>
3.	Whether MSRTC Corporation proves that accident caused due to sheer negligence on the part of driver of Motor Car No.MH-06-AF-0640?	<b>Negative</b>
4.	Whether the claimants are entitled to get compensation ? If yes, what should be the quantum?	<b>Yes, Rs.9,48,000/-</b>
5.	Who is liable to pay the compensation?	<b>Opposite party No.1 &amp; Insurer and Opposite party No.2 are liable to pay compensation</b>
6.	What Award?	<b>As per final order</b>

### **REASONS**

#### **As to Issue No.1 and 3:-**

10. In order to prove the contentions made in the

petition, the applicants have examined Sushil Suresh Kadam (AW1) vide Ex.29 who proved the documents Ex.30 to Ex.39.

11. On the other hand, the Opposite Party No.2/MSRTC has examined Ankush Lad (DW1), driver of the bus vide Ex.41 and Nandkumar Jadhav (DW2), Depot Manager vide Ex.42 to prove its defence who proved sketch map of the spot Ex.43.

12. The Insurer has also examined one witness namely, Vaibhav Salunke (DW3) vide Ex.46. He proved documents Ex.50 to Ex.53.

13. Perused the record. Heard Learned Counsel Shri. S.B. Gadge for the applicants, learned counsel Shri Rajesh Pawar for the Opposite party No.2 and learned counsel Shri Sanjay Meshram for the Insurer.

14. Perused the written notes of arguments filed by the learned counsel for the applicants, Opposite party No.2/MSRTC and Insurer vide Ex.55, Ex.57 and Ex.58 respectively.

15. It is argued by the learned counsel for the applicants that the deceased died in an accident which has taken place on 15.09.2021 due to rash and negligent driving of the Motor Car bearing registration No.MH-06-AF-0640 and negligence of the MSRTC Bus No.MH-14-BT-3281 which was parked wrongly on the road without parking

light or indicator and there is no negligence on the part of the deceased who was occupant of the Car.

16. It is also argued that Police station, Khed registered Cr.No.0438/2021 against Suhash Suresh Kadam, driver of the Car for the offence punishable U/s.279, 337, 338 of Indian Penal Code and Sec.184 of Motor Vehicles Act. In support of the contentions, the learned counsel for the applicants has referred and relied on following citation :

- **Khenyei V/s. New India Assurance Co. Ltd. & Ors. 2015 ACJ 1441 S.C.**
- **Yashwant Krishna Kumbar V/s. Divisional Manager, United India Insurance Co. Ltd. & Ors. 2025 ACJ 2687 S.C.**
- **Sameer S. Desai V/s. Jeevan Narayan Naik & Anr. 2018 ACJ 2312 H.C. (Bom.)**
- **Himmat Kaur & Ors. V/s. National Insurance Co. Ltd. 2023 ACJ 601 S.C.**
- **Kiran V/s. Divisional Manager, United India Insurance Co. Ltd. & Anr. 2025 ACJ 2748 S.C.**
- **Cholamandalam MS General Insurance Co. Ltd. V/s. Tanushree Chakraborty & Ors. 2020 ACJ 2335 H.C. (Calcutta)**
- **Magma General Insurance Co. Ltd. V/s. Nanu Ram & Ors. 2018 ACJ 2782 S.C.**

17. Per contra it is argued by the learned counsel for the Opposite party No.2/MSRTC that the accident

occurred due to negligence of the driver of the offending Car which dashed the stationary S.T. bus which was parked by extreme side of the road so also the offence is registered against the driver of the offending Car and that the MSRTC bus has been unnecessarily and mechanically impleaded as a party to the present proceeding. In support of his contention he relied on following citation:

- **Manorama & Ors. V/s. Lukmanshah Kasamshah & Ors. 2006 ACJ 820 H.C. (Bom.)**

18. The learned counsel for Insurer argued that the accident occurred due to negligence of the driver of S.T. bus as the same was parked wrongly on the road without the head lights and there was no negligence on the part of the driver of the Car. The learned counsel for the Insurer relied on following citations :

- **United India Insurance Co. Ltd. V/s. Tilak Singh 2006 ACJ 144 S.C.**
- **Oriental Insurance Co. Ltd. V/s. Sudhakara (SC) decided on 16.05.2008**
- **National Insurance Co. Ltd. V/s. Balkrishnan 2013(1) SCC 731 S.C.**

19. Sushil Suresh Kadam (AW1) testified vide Ex.29 and reiterated all the facts pleaded in pleadings. According to him, the accident occurred on 15.09.2021 at 14:00 hrs. on Mumbai-Goa Highway, in which the deceased sustained injuries and died. He deposed that on the day of the accident, deceased was proceeding along with her family

members in Car No.MH-06-AF-0640. When they reached in front of Suruchi Hotel, Khavti, Tal. Khed, Dist. Ratnagiri, at that time the Car dashed the S.T. Bus No.MH-14-BT-3281 which was parked wrongly without its parking light. Due to the impact the deceased sustained serious injuries. She was taken to Civil Hospital, where she died on the same day due to accidental injuries.

20. It is his evidence that the accident occurred due to negligence of the drivers of Car No.MH-06-AF-0640 and S.T. Bus No.MH-14-BT-3281 and it is a case of composite negligence.

21. He also testified that the Police station, Khed registered Cr.No.0438/2021 against Suhash Suresh Kadam, driver of the Car for the offence punishable U/s.279, 337, 338 of Indian Penal Code and Sec.184 of Motor Vehicles Act. He filed and proved FIR Ex.30, spot panchnama Ex.31, sketch map of the spot Ex.32, inquest panchnama Ex.33, letter to police station Khed for enhancement of Penal Section Ex.34, MLC of deceased Ex.35 and autopsy report Ex.36.

22. He was cross examined from the side of the Insurer. He was confronted about his travelling, driver of the vehicle and number of lanes on express highway wherein he replied that he was occupant in the alleged vehicle at the time of the accident which was being driven by Suhas Kadam who is his brother and the express

highway was having two lanes. However, volunteered that at the time of the accident the work of road was going on. He admitted that the accident took place around 2:00 p.m. on Mumbai-Goa Highway.

23. He denied that his vehicle was proceeding from Mumbai to Goa. He admitted that the S.T. bus was stationed in the midst of the road and there was no parking light which was on and his vehicle was proceeding in speed. He also admitted that suddenly the vehicle came in front of his vehicle therefore his vehicle dashed the ongoing vehicle and the accident occurred due to fault of the driver of S.T. bus.

24. He was also cross examined from the side of the Opposite party No.2/MSRTC. He admitted that in the year 2021 when he had filed the claim it was against the owner and Insurer of Tavera Car. He admitted that in the said accident the police had registered an offence against the driver of Tavera Car. He also admitted that the enhancement of penal section was added by the police after the death of his deceased wife.

25. He admitted that the accident took place in day light and that in the alleged accident the front portion of his Tavera vehicle got damaged. He denied that his Tavera vehicle came in contact with S.T. bus on the right rear side. However, volunteered that it came in contact at the left side beside the driver of the bus.

26. He was confronted about recording of his statement and the side at which the Tavera touched the bus wherein he replied that his statement was recorded and the bus was touched by Tavera on driver side.

27. He admitted that the bus was stationed. However, volunteered that it was stationed on wrong side. It is his admission that they were proceeding from Goa to Bombay and the direction of the bus was towards Mumbai from Goa. He denied that the bus was parked at Kaccha road. However, volunteered that it was parked half on the parking strip and half on the kaccha road.

28. He admitted that when his vehicle came in contact with S.T. bus it crossed the divider and came on Mumbai-Goa Highway. He further admitted that the spot of accident is a straight road. However, volunteered that there was a turning.

29. He was confronted about the distance of watching the S.T. bus wherein he replied that he was sitting in the rear seat of the Tavera therefore he did not understand anything. He admitted that as he was sitting at the rear seat in Tavera and he understood when the Tavera came in contact with the S.T. bus.

30. He admitted that he did not make any complaint about registration of false FIR, false investigation or drawing the false sketch map of the spot of accident to any authority. He admitted that in the year

2021 he had filed the petition but had impleaded MSRTC as a party in the year 2025 on the say of his counsel. However, volunteered that in the year 2021 he was represented by another counsel and after he changed the counsel, there was discussion about the case and he apprised his counsel and accordingly the addition of MSRTC is done in the matter.

31. He denied that while making the amendment his counsel told him that the insurance company of Tavera is denying the liability therefore MSRTC should be made party in the said petition.

32. Ankush Rohidas Lad (DW1) is examined by the Opposite party vide Ex.41. He deposed that on 15.09.2021 he was driving S.T. Bus No.MH-14-BT-3281 on Guhagar to Bhandup direction. When the said S.T. bus reached near Khavti Phata in front of Hotel Ruchira, there was some sound from S.T. Bus and hence the S.T. driver parked the S.T. bus on kaccha road by extreme side of the road. He deposed that at that time one Motor Car No.MH-06-AF-0640 came from behind in a fast speed, and negligent manner towards kaccha road and dashed against right side rear portion of stationary S.T. bus.

33. It is his evidence that because of the high speed, the driver of the Tavera Car after giving dash to the S.T. bus turned to the right side and went on the other flank of the road by crossing the cement constructed divider which was

12 feet wide. He deposed that the accident took place because of absolute negligence on the part of driver of the Car No.MH-06-AF-0640. He further deposed that after detailed investigation, police has registered the offence against driver of the Car No.MH-06-AF-0640 U/s. 279, 337, 338 of Indian Penal Code.

34. He was cross examined from the side of the applicants. He was confronted on the point of his deputation and route at the time of the accident wherein he replied that on the date of accident he was deputed at Pet Depot from Guhagar to Bhandup.

35. He admitted that there was some technical snag therefore he stopped the bus on the way and there was a side strips on the road. He was confronted on the point of width of the side strip wherein he replied that it was approximately 1 feet.

36. He admitted that when he halted the bus the wheel of the driver side was on the road. He denied that he did not take the steps as per the rule which is required for stopping the bus. He was confronted about the steps taken by him wherein he replied that he kept the stones behind the bus so also the branches of leaf so also kept the indicators on.

37. He admitted that he informed the police about the accident and after he went to the police station the

police registered offence as per the information provided by him. He denied that as the accident took place due to his fault therefore, he went and provided the wrong information to the police and on the basis of it the offence is registered in the matter. He also denied that he shown the spot to police for the purpose of conduction of spot panchnama. He admitted that he was present at the spot at the time of spot panchnama. He was questioned about signing on spot panchnama wherein he replied in affirmative.

38. He admitted that as per his information the police prepared the spot panchnama and there is no mention in the spot panchnama about keeping the stone at the backside of the bus, branches of leaves so also indicators in the spot panchnama so also the same is also not mentioned in the affidavit Ex.41. He denied that since he has never kept the stone at the backside of the bus, branches of leaves so also indicators therefore the same is not mentioned in the spot panchnama and the affidavit filed by him. It is his denial that the accident took place due to fault of both.

39. He was also cross examined from the side of the Insurer. He denied that as he is a Government servant therefore there is a rule that any time if accident happens they are required to click the photograph. However, volunteered that he has taken the photograph after the accident took place but he lost his mobile phone.

40. He admitted that after the accident he had sent those photographs to his department. However, volunteered that it was not sent but it was shown to his superior. He was confronted on the point of initiation of any inquiry for the said accident and filing of the report wherein he replied in affirmative.

41. He denied that he had parked his bus in the midst of the road as per the photographs and that he did not keep the stone at the backside of the bus, branches of leaves so also given any indicator after the accident. He was questioned on the point of informing the police after the accident wherein he replied that in 20 -25 minutes.

42. He also denied that in a span of 20 – 25 minutes he removed the bus which was standing in the midst of the road towards side of the road. He further denied that when he realized that he violated the rules, thereafter he did the same. He denied that for such breach and lapses the departmental inquiry was initiated against him and he was found guilty in that. He denied that he did the same in order to evade the inquiry.

43. It is his denial that he gave false statement to the police so also gave the false contents for the purpose of execution of spot panchnama. He further denied that the accident occurred solely due to his fault and negligence and that since he failed to follow the rules and regulations

therefore the accident occurred.

44. The Opposite party No.2 has also examined one more witness namely Nandkumar J. Jadhav (DW2) vide Ex.42. He deposed that he is working as a Depot Manager with MSRTC. It is his evidence that on 15.09.2021, he received the information about the vehicular accident of the S.T. Bus No.MH-14-BT-3281 and Car No.MH-06-AF-0640. He deposed that the said S.T. Bus was running on Guhagar to Bhandup route. He further deposed that immediately after receiving the information about the said accident he reached near the spot of accident and found that the offending Tavera Car No.MH-06-AF-0640 dashed against right rear portion of the S.T. bus and then went on the other flank of the road by crossing the constructed road divider. He also found that right rear tin portion of the S.T. bus was damaged and front portion of the Tavera Car was badly damaged. It is his evidence that after detailed investigation, it was found that the said accident took place because of absolute negligence on the part of driver of Motor Car. He filed and proved sketch map of the spot Ex.43.

45. He was cross examined from the side of the applicant. He was questioned about his present posting so also posting at the time of the accident wherein he replied that at present he is working as a Manager with Islampur, Sangli and at the time of the accident he was posted at Khed, Ratnagiri. He denied that he did not witness the

accident, therefore he cannot state as to whose mistake the accident took place. However, volunteered that he had visited the spot of accident. He was confronted about the time required to reach to the spot and presence of the police at the spot wherein he replied that it takes 15 – 20 minutes and the police were also present at the spot of the accident.

46. He denied that the police was informed about the accident after 3 – 4 hours and thereafter the police arrived to the spot of accident. He admitted that the driver was of Nashik depot. He was questioned about the place of posting where the inquiry was initiated against him wherein he replied in Khed depot.

47. He denied that as the driver was belonging to Nashik depot, therefore Khed Depot had no jurisdiction to make any report concerning the accident. However, volunteered that his depot will prepare the report and would forward the same to Nashik.

48. He admitted that the Inquiry was initiated by Nashik depot. However, denied that the accident took place due to fault and negligence of drivers of both the vehicles. He further denied that he did not draw the sketch map of the place of the accident. He was questioned about non production of the sketch map drawn by him wherein he replied that he cannot assign any reason. He denied that he is stating false that after the

accident he visited the spot of accident and drawn the sketch map.

49. He was also cross examined from the side of the Insurer. He was confronted about the adoption of procedure concerning the occurrence of the accident. He was also confronted on the point of the inquiry wherein he replied that on 15.9.2021 inquiry was conducted in detailed by Depot Manager and Workshop Superintendent wherein no action was taken against the driver.

50. He denied that as there was some technical fault in the bus, therefore the driver of the bus had stationed the bus in the midst of the road which created obstruction on the highway and because of which the same resulted in the dashing of the rear side of the bus by the Car. He also denied that the accident took place solely due to negligence on the part of the bus driver.

51. At the outset, it is to be seen as to whether the deceased died in the accident, which took place on 15.09.2021 at about 14:00 hrs. while she was proceeding in Car No.MH-06-AF-0640. In this respect, the police papers are required to be scrutinized. On perusal of the FIR (Ex.30), it discloses that the offence was registered against Suhash Suresh Kadam, the driver of the Car No.MH-06-AF-0640 vide Cr.No.0438/2021 for offence punishable U/s.279, 337, 338 of Indian Penal Code and Section 184 of the Motor Vehicles Act, 1988. The Police visited the spot of

accident and prepared the Spot Panchanama (Ex.31) in presence of panchas namely, Nandkumar Jadhav and Anil Khopatkar. The Inquest Panchnama (Ex.33) is conducted on 15.09.2021 in presence of Sushma Dolkar and Sachin Pawar. The letter to Police station Khed for enhancement of Penal Section (Ex.34) discloses that the request was made for adding Section 304(A) of Indian Penal code in the matter. The Post Mortem Report Ex.36 discloses that the Cause of death of the deceased is “Death due to injury to vital organ (brain, liver) with fracture distal end femur.”

52. Here in the present matter, the applicant has contended that the accident occurred due to rash and negligent driving of the Car No.MH-06-AF-0640 as well as the negligent act of the driver of the Bus No.MH-14-BT-3281 belonging to Maharashtra State Road Transport Corporation. On the other hand, the Opposite party No.2/MSRTC has taken the defence that the bus was stationed on the road side and that the accident occurred solely due to negligence of the driver of the Car. It is also pointed out that the FIR is lodged against the driver of the Car No.MH-06-AF-0640.

53. At the outset, it is necessary to note that the mere registration of the FIR against the driver of the Car is not conclusive proof of negligence in a claim petition under the provision of the Motor Vehicle Act, 1988. The Tribunal is required to assess the negligence on the basis of the entire evidence placed on record such as spot panchnama,

oral testimony and other circumstances of the case. The spot panchnama placed on record and duly proved by Sushil (AW1) vide Ex.31 indicates the position of the vehicles after the accident. However, the said document does not disclose that any precautionary measures were taken by the driver of the MSRTC Bus No.MH-14-BT-3281 while stationing the bus on the road side. When a heavy vehicle like a bus is stationed on a public road, the driver is expected to take reasonable precautions such as parking the vehicle at a safe place, switching on parking indicators or hazard lights and ensuring that the vehicle does not cause obstruction or danger to the moving traffic.

54. In the present case except the oral evidence led by the Opposite party no.2/MSRTC there is no material on record to show that such precautions were taken by the driver of the MSRTC Bus No.MH-14-BT-3281. However, parking or stationing a heavy vehicle on the road without taking adequate precaution is itself a negligent act as it poses danger to other road users.

55. At the same time the material on record including the FIR and the oral evidence indicates that the driver of the Car had also contributed to the occurrence of the accident. Thus, the circumstances on record indicates that the accident occurred due to negligence attributed by both the drivers. Therefore, I hold that the accident in question occurred due to composite negligence of the driver of Car No.MH-06-AF-0640 as well as the driver of

the Bus No.MH-14-BT-3281 belonging to Maharashtra State Road Transport Corporation.

56. On going through the documents filed on record, evidence adduced and the submissions of applicant, it appears that the accident took place on 15.09.2021 at about 14:00 hrs., on Mumbai-Goa Highway, in front of Suruchi Hotel, Khavti, Tal. Khed, Dist. Ratnagiri, due to rash and negligent driving of the driver of the Car No.MH-06-AF-0640 and negligence of S.T. Bus. No.MH-14-BT-3281 wherein the deceased sustained injuries and succumbed to the accidental injuries on the same day. Therefore, I hold that the accident took place due to rash and negligent driving of driver of the Car No.MH-06-AF-0640 and negligence of S.T. Bus. No.MH-14-BT-3281. Hence, I answer Issue No.1 in affirmative and 3 in negative.

**As to Issue No.2 :-**

57. According to the insurer, the applicant was travelling as an occupant in a private vehicle and the risk of the applicant was not covered under the policy issued by it.

58. The Learned Counsel for the Insurer argued that the policy relied upon by the applicant and issued by it being a "Act only" policy does not cover risk of the passenger of the vehicle in question i.e. the deceased under section 147 of Motor Vehicles Act.

59. Per contra learned counsel for the Opposite party No.2 argued that merely because the Insurance

company has raised a statutory defence, the applicant has unnecessarily and mechanically impleaded MSRTC as a party to the present proceedings, without there being any material to attribute negligence to the S.T. bus driver.

60. The Learned Counsel for the applicants also argued that the vehicle No.MH-06-FA-0640 involved in the accident is duly insured with the Insurer at the time of the accident and the deceased being the occupant in the vehicle, the liability of the Insurance company is covered as per provisions of Motor Vehicles Act.

61. In the present matter the Insurance company has raised a specific defence that the offending vehicle was covered under “Act only policy” and that no additional premium was paid to cover the risk of occupants of Car No.MH-06-FA-0640. The Insurer has produced the Insurance policy on record and examined its Officer Vaibhav (DW3) who deposed that the policy relied by the applicant is “liability only/act policy” covering only statutory risk under the provisions of Motor Vehicles Act and the risk of passengers or the occupants of the vehicle was not covered. He proved authority letter Ex.50, Policy Ex.51, letter dated 18.10.2024 issued to Mr. Suhas Kadam along with postal receipt Ex.52, letter issued to Suhas Kadam on 7.12.2024 along with the Tracking Report Ex.53.

62. He was cross examined at length from the side of the Insurer. He admitted that his department do not

issue the policy and it only takes care of TP and at the time of issuance of policy the proposal form is required to be taken. He was confronted about the procedure for issuance of policy wherein he replied in negative. He was also confronted about the name of the branch which has issued the policy Ex.53 wherein he replied that it is issued from the portal of policy bazar.

63. He stated he cannot state as to whether after taking the proposal form, the contents of the form is required to be explained to the owner and the endorsement to that effect is to be made. He admitted that in the present case he cannot state whether the proposal of form from the owner of the vehicle was taken or not.

64. He admitted that the third party liability is covered under the said policy and that there are two type of policy one is third party and another is comprehensive. He further admitted that in third party policy, if the premium towards own vehicle damage claim is paid then it can be termed as comprehensive policy.

65. He was confronted on the point of mentioning in the terms and conditions of the policy Ex.51 that the occupants are not covered under said policy wherein he replied that it is not written. He denied that under the said policy the occupants are covered.

66. It is to mention that the Insurer has produced the Insurance policy on record vide Ex.51 and examined

Vaibhav (DW3) to prove that the policy issued was a statutory policy in terms of Section 147 of Motor Vehicles Act, 1988 and that the risk of the passengers travelling in the vehicle was not covered under the said policy. Moreover, the applicants have also placed reliance upon the same policy which is duly proved by Sushil (AW1) vide Ex.37.

67. The material on record indicates that the deceased was travelling as an occupant in Car No.MH-06-AF-0640. However, the premium schedule of the policy at Ex.37 relied upon by the applicants so also at Ex.51 relied upon by the Insurer does not disclose payment of any additional premium for covering the risk of occupants of the vehicle.

68. Further more, in view of the law laid down by the Hon'ble Supreme court in **New India Assurance Company Ltd. V/s. Asha Rani and National Insurance Company V/s. Baljeet Kaur**, the Insurer cannot be held statutorily liable to indemnify the owner in respect of the risk of such passenger under an Act only Policy. However, the Hon'ble Supreme Court of India in **National Insurance Co. Ltd. V/s. Balkrishnan** clarified that :

- Act Only Policy covers only the statutory third party risk U/s.147 of the Motor Vehicles Act, 1988.
- Occupants of a Private Car are not automatically covered under such policy.
- Coverage of occupants exist only if additional

premium for “Legal Liability to occupants” or “Comprehensive/Package Policy is taken”.

Therefore, even if the applicant is described as an occupant and not a gratuitous passenger the Insurer may avoid liability if the policy is Act only Policy and no additional premium is paid for occupant.

69. Here in the present matter though the deceased was travelling in the said car as an occupant, the premium schedule of the policy does not disclose coverage for such risk. However, U/s.147 of the Motor Vehicles Act, 1988 an Act Policy covers only third party liability and does not extend to occupant of a private car unless additional premium is paid.

70. It is to mention that in a third party/Act only Policy under the Motor Vehicles Act, 1988 the term “Basic Premium” means the statutory premium charged by the Insurer to cover the minimum compulsory liability required U/s.147 of the Act. It is the amount paid for complying with the mandatory Insurance requirement. The policy at Ex.37 relied upon by the applicants so also at Ex.51 relied upon by the Insurer reflects that basic premium was paid for the said Act only policy. However, when only Basic Premium is paid the Policy covers Third party death or bodily injury who are any person other than the insured which includes pedestrians and occupants of other vehicle, etc. Moreover, under the Act only/ Third

Party Policy, the occupants of the insured vehicle, passengers in the insured vehicle, damage to the insured vehicle are not covered. Therefore, if only basic Third Party premium is shown in the policy then the policy is Act only policy and the Insurer may avoid liability for occupants/passengers.

71. The Insurer has produced the Insurance policy vide Ex.51 which is also relied upon by the applicants vide Ex.37 which indicates that only basic third party premium was paid to cover the risk of the occupants of the Car No.MH-06-AF-0640. Therefore, the policy is an Act only policy and the Insurer cannot be held liable to indemnify the owner for the risk of such occupants. Hence, I answer Issue no.2 in affirmative.

**As to Issue Nos.4 , 5 and 6 :-**

72. *“The principle of torts “Restitution in integrum” signifies that a person entitled to damages and compensation pursuant to an accident, should, as nearly as possible, get such sum of money which would put him in the same position as he would have been, if he had not sustained the injury in the civil wrong. The accident occur on account of rash and negligent act. Though there is no intention to cause the injury, the wrong doer is under an obligation to pay damages to the victim or his dependents. The idea of paying damages is to put the dependents financially in the same condition, had the victim not suffered injury and lived his natural span of life.”*

73. According to the applicants, due to the sudden and unexpected accidental death of the deceased who was aged about 30 years, they have suffered mental, physical and monetary loss and therefore, applicants have claimed compensation of Rs.1,00,000/- from the Opposite parties and the Insurer. As per the applicants, deceased was self employed and doing work of Beauty Parlour and was earning Rs.20,000/- p.m.

74. It is argued by the learned counsel for the applicants that the deceased was aged 30 years and at the time of the accident she was self employed and doing beauty parlor and earning Rs.20,000/- p.m.

75. Per contra it is argued by the Learned Counsel for the Opposite party that the applicants have not produced any document to prove the occupation and income of the deceased so also he has stated in his cross examination that he was earning Rs.2,00,000/- p.a. and he was not dependent on the income of his wife.

76. Sushil Suresh Kadam (AW1) vide Ex.29 deposed that the deceased was aged about 30 years and she was working in Urvashi Beauty Parlour owned by Manisha Hulwankar at Navre Nagar Ambarnath, Dist. Thane and was earning Rs.20,000/- p.m. He further deposed that they have spent Rs.50,000/- for the funeral and last rites. He filed and proved Aadhaar Card of the deceased Ex.39.

77. He was cross examined from the side of the Insurer. He denied that his deceased wife was not working and she was the housewife and stated false in his affidavit that his deceased wife was working in beauty parlour and she used to earn Rs.20,000/- p.m. as an income.

78. He was also cross examined from the side of the Opposite party No.2/MSRTC. He was confronted about his occupation and income at the time of alleged accident wherein he replied that he was having his own business and was earning Rs.2,00,000/- p.a. He admitted that he was earning and therefore he was not dependent on the income of his deceased wife. He denied that his deceased wife was not working in beauty parlor and she was not earning Rs.20,000/- p.m.

79. On going through the oral as well as documentary evidence, it can be seen that except the pleading no evidence is led from the side of the applicants on the point of occupation and income of the deceased. As the applicants failed to prove the occupation and income of the deceased therefore the notional income of Rs.6,000/- p.m. is required to be taken into consideration for the determination of compensation in the matter.

80. On going through the Aadhaar card of the deceased Ex.39, it can be seen that the date of birth of the deceased is entered as 2.12.1991. Therefore considering the

same being the authentic document, it can be safely held that the date of birth of deceased is 2.12.1991 and the deceased died on 15.9.2021, it means, at the time of the accident the age of the deceased was 29 years 9 months and 13 days. Therefore, for determination of compensation, the age of the deceased can be taken into consideration within the group of 26 to 30 years.

81. Thus, in view of ratio laid down in **Smt. Sarla Verma & Ors. -Vs- Delhi Transport Corporation & anr. (AIR 2009 Supreme Court 3104)**, the actual multiplier for the age between 26 to 30 years comes as 17. Hence, the loss of dependency comes to **Rs.8,16,000/-** [Rs.6,000/- p.m. x 12 months less 1/3rd personal expenses x 17 multiplier].

82. Moreover, as per the ratio of **National Insurance Co. Ltd. Vs Pranay Sethi and others, [2017 ACJ 2700 (SC)]** applicants are entitled to **Rs.18,000/-** towards funeral expenses, **Rs.18,000/-** towards loss to estate. The applicant No.1 being husband is also entitled to **Rs.48,000/-** towards spousal consortium and applicant no.2 being son of the deceased is entitled to **Rs.48,000/-** towards parental consortium. Thus, the total amount of compensation comes to **Rs.9,48,000/-**.

83. I have gone through the ruling cited and relied upon by the learned counsel for the applicants and Opposite party No.2/MSRTC. They are not helpful to the case in hand as the facts and circumstances of the cases cited supra are different than the case in hand. However,

the ruling cited relied upon by the learned counsel for the Insurer are squarely applicable to the case in hand.

84. It is already held that the accident occurred due to composite negligence of the driver of Car No.MH-06-AF-0640 as well as the driver of the Bus No.MH-14-BT-3281 belonging to Maharashtra State Road Transport Corporation. It is to mention that the offending Car No.MH-06-AF-0640 was owned by the Opposite party No.1 on the date of the accident and Insured with the Insurer and the Bus No.MH-14-BT-3281 was owned by the Opposite party No.2.

85. It is also held that the offending vehicle was covered under "Act only Policy" and that no additional premium was paid to cover the risk of occupant of the said vehicle. However, considering the beneficial object of the Motor Vehicles Act, 1988 and in order to ensure that the claimants are not left remediless, it would be just and proper to direct the Insurer to first satisfy the award and thereafter recover the same from the owner of the offending vehicle.

86. The applicants have claimed interest @12% p.a. on the compensation amount. It is the general principle that in the petition under Motor Vehicles Act, interest should be granted equal to the rate of interest on fixed deposits of Nationalised banks. Therefore, I think it proper to grant interest @ 7.5% p.a. on the amount of

compensation. The Opposite party No.1/Insurer is liable to pay interest from the date of application till its realisation. However, as the Opposite party No.2 is added party to the proceeding on 28.1.2025. Therefore the Opposite party no.2 is liable to pay interest from 28.1.2025 till its realisation. Hence, I answer Issue No.4 and 5 accordingly and pass the following order.

**-: ORDER :-**

1. The petition is hereby allowed with costs against the opposite parties and Insurer.
2. The Opposite parties and Insurer are liable to pay an amount of **Rs.9,48,000/- (Rupees Nine Lakhs Forty Eight Thousand only)** to the applicants along with interest @ 7.5% per annum **as per their apportioned liability.**
3. The Opposite party No.1/Insurer is liable to pay interest from the date of application till its realisation. However, as the Opposite party No.2 is added party to the proceeding on 28.1.2025. The Opposite party no.2 is liable to pay interest from 28.1.2025 till its realisation.
4. Amount of Rs.50,000/-, if any, granted towards no fault liability to the applicants shall be adjusted from the above said amount of compensation.
5. **Apportionment of liability :**
  - 50% of compensation amount along with interest accrued thereon be paid by

Opposite party No.2.

- 50% of the compensation amount along with accrued interest thereon be paid by the Insurer. After satisfying the award the Insurance company shall be entitled to recover the said amount from the Opposite party No.1, the owner of the offending vehicle in accordance with law considering that the policy issued was a Liability only Policy U/s.147 of Motor Vehicles Act, 1988.

6. The opposite parties and Insurer are directed to deposit the awarded amount to the credit of the below stated bank account of this Tribunal directly by NEFT/RTGS.

<b>Account Name</b>	MOTOR ACCIDENT CLAIMS TRIBUNAL, MUMBAI	
<b>Account No.</b>	<b>IFSC</b>	<b>MICR</b>
00000040777482356	SBIN0030002	400002273

7. Apportionment order is as under :

- Rs.5,00,000/- be invested in FDR of nationalised bank in the name of the minor applicant No.2 till he attains his age of majority with **standing instruction** to the bank to renew said fixed deposit after its maturity for every 5 years, till further order of this Tribunal.
- Balance amount along with accrued interest be paid to the applicant No.1,

husband of the deceased by NEFT/RTGS.

8. On depositing the aforesaid amount, it be **directly** paid to the applicants as per apportionment order in their bank account of the Nationalised bank of their choice against proper identification and by following the necessary office procedure, subject to payment of deficit Court fees, if any.
9. The applicants are hereby directed to deposit deficit court fees if any within 15 days from the date of award.
10. Award be drawn up accordingly.

Date: 13/03/2026  
\*sb

[M. I. Arland]  
CHAIRMAN  
MACT, Mumbai