



Presented on : 15-01-2021
Registered on : 16-01-2021
Decided on : 04-05-2026
Duration : 05 Y.02 M.19D.

BEFORE MEMBER, MOTOR ACCIDENT CLAIM TRIBUNAL, NAGPUR
(BEFORE AEJAZ H SAYYED)

Exhibit No. : 38

M. A. C. P NO. : 66/2021

CNR NO. :MHNG010006402021

Sheshrao S/o. Dama Khokre,
Aged 55 Years, Occ. Security Guard,
Through Power of Attorney Holder,
Pankaj S/o. Sheshrao Khokre,
Aged – 25 Years, Occ.-Mechanic,
R/o. Ward No. 02, Mandri Post,
Musewadi, Tahsil-Ramtek,
District-Nagpur. : **Petitioner.**

/// Versus ///

1. The New India Assurance Co. Ltd.
Through its Manager,
Riyan House, Mohan Nagar,
Near Kasturchand Park, Nagpur. :
2. Rajinder Kaur Mundi,
Aged about – Major, Occ-Owner,
R/o. C/o. Khusi Road Lines,
MIG-60, Veersawarjar Nagar, Hirapur,
Tatiban, Raipur. : **Respondents**

Under Section 166 of the Motor Vehicles Act Rs. 1,00,000/-.

APPEARANCE :

Mr. P. S. Mirache : Advocate for petitioner
Mrs. Mitali Lokhande : Advocate for Respondent No. 1
Exparte : Respondent No.2

JUDGMENT

(Delivered on this 04th day of May -2026)

This proceeding is filed, under Sections 166 of Motor Vehicles Act, 1988, for compensation, in respect of injuries and permanent disability suffered by claimant Sheshrao S/o. Dama Khokre in the motor vehicle accident.

A brief resume of case of the claimant is as under:

02. According to claimant, on 11/12/2020 at about 8:00 hours, he was riding on Motorcycle bearing bearing registration No. MH-31-AQ-0968. When he reached near Bhandara Nagpur Road, Wadoda Shivar, Kamptee, at that time one Trailer bearing registration No. CG-04-HS-9027 came in a high speed and in a rash and negligent manner and gave dash to his motorcycle and accident occurred. He suffered multiple injuries. He was taken to Government Medical College & Hospital, at Nagpur for treatment.

03. Matter was reported to Police Station Mouda, District Nagpur. Accordingly, Crime No.0615/2020 for the offences punishable under Sections 279, 337, 338 of Indian Penal Code and Sections 134, 177 and 184 of the Motor Vehicle Act was registered against the Trailer driver (Omkar Singh Sindhu Pita Kartat Singh Sindhu).

Respondent No. 1 is the insurer and Respondent no. 2 is the owner of the Trailer.

04. According to claimant, in the aforesaid accident he suffered multiple bodily injuries. He spent huge amount on his treatment. He suffered permanent disability of 27%. At the time of accident, he was 55 years of age. He was working as security guard and earning Rs.10,000/- per month. Due to permanent disability suffered in accident, he suffered monetary loss and mental shock and deformity. His earning capacity has been reduced. He, accordingly, prayed for compensation under pecuniary and non pecuniary heads.

05. Respondent No. 1 (Insurance Company) filed its written statement at Exh.12 and denied the petition in toto. According to insurance company at the time of accident driver of the trailer was not having valid and effective driving license to drive the trailer and there is a breach of condition of policy and on the this sole ground petition is liable to be dismissed. Insurance company further denied age, occupation, income, permanent disability and resultant loss of the claimant and prayed for dismissal of the petition.

06. In spite of issuance of paper publication (Exh.17), Respondent No.2 did not appear. Hence, petition proceeded ex parte against him.

07. On material proposition of facts and law, affirmed by one party and, denied by another, following issues are framed and I have given my findings for the reasons that follows:

S No	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Does petitioner prove that on 11/12/2020 at about 8:00 hours an accident occurred due to fault of the driver of Trailer bearing registration No. CG-04-HS-9027?	...In Affirmative
2.	Does petitioner prove that he sustained permanent disability in the said accident?	... In Affirmative
3.	Whether respondent No.1 (Insurance Company) proves that Respondent No.2 has committed breach of terms and condition of policy?	...In Negative
4.	Whether petitioner is entitled for compensation? If yes, to what extent and from whom?	As per final order
5.	What order?	As per final order

08. Claimant, Sheshrao S/o. Dama Khokre (CW-1) has filed his affidavit of examination-in-chief at Exh.21 and also, examined Dr. Abhinav Bhatnagar (CW-2) at Exh.32 for proving disability certificate at Exh.33.

09. Claimant has also filed following documents on record:

S.N.	Particulars	Exh. No.
1	Copy of Form AA	23
2.	Copy of FIR	24
3.	Copy of spot panchanama	25
4.	Photocopy of insurance policy	26
5.	DAR report	27

6.	Treatment papers of Government college and Operation Notes	28/1 & 28/2
7.	Short case record and OPD receipt	28/3 & 28/4
8.	Aadhar card of the claimant	29
9.	Disability certificate	33
12.	Discharge summary	50

10. Respondent No. 1 (Insurance Company) has not filed any oral or documentary evidence on record.

11. I have heard learned advocate Shri P. S. Mirache, for claimant. According to him, accident occurred due to sole negligence of Trailer driver. Claimant has suffered injuries which resulted in permanent disability of 27%. He was in Private Service as security guard. Due to disability he is not in a position to perform his work properly and same has affected his earning capacity. He spent huge amount on his treatment. Looking to the nature of permanent disability suffered by claimant, he is entitled for the compensation under pecuniary and non-pecuniary heads. Hence, respondent No. 1 and 2 are jointly and severally liable to pay the compensation.

12. I have also heard learned advocate Mrs. Mitali Lokhande for Respondent no. 1. It is mainly urged that there is nothing on record to infer negligence of Trailer driver. At the most, it is a matter of contributory negligence. Dr. Abhinav Bhatnagar, who has issued disability certificate has not mentioned methodology or formula of ascertaining permanent disability. Claimant has

suffered minor injuries and same has not affected his earning capacity. There is breach of condition of policy as claimant has not filed driving license and fitness certificate of the vehicle. He ultimately prayed for dismissal of the petition.

REASONS

AS TO ISSUE NO.1 :

13. At the very outset, it is important to note that factum of accident, as well as, registration of the case against driver of Trailer bearing registration No. CG-04-HS-9027 has not been seriously disputed.

14. Claimant Sheshrao S/o. Dama Khokre (CW-1) has deposed at Exh.21. According to him, he was riding on a Motorcycle. At that time one Trailer bearing registration No. CG-04-HS-9027 was came and gave dash to motorcycle. He sustained grievous injury on his person.

15. Claimant was cross-examined by Learned Advocate for insurance company. However, nothing significant could be brought on record.

16. Copy of Form AA (Exh.23) shows that police has registered a Case vide Crime No. 615/2020 for the offence punishable u/s 279, 337, 338 of the Indian Penal Code and Sections 134, 177 and 184 of the Motor Vehicle Act. FIR (Exh.24) shows that information of accident was given by son of the claimant Mr. Pankaj Sheshrao

Khokare after the accident and crime was registered. Spot panchanama (Exh.25) shows that spot of incident is on National Highway No. 53, Bhandara Nagpur Road, Wadoda Shivar, Nagpur. Registration number of Trailer is mentioned in FIR (Exh.24). Police has registered a case of negligent driving against Omkar Singh for the offence punishable under Sections 279, 337 and 338 of the Indian Penal Code and Sections 134, 177 and 184 of the Motor Vehicle Act.

17. Claimant is an eye witness to the incident. It appears that Trailer driver did not exercise proper care and gave dash to his motorcycle. I have no reason to disbelieve sworn statement of claimant and the police papers filed on record. Considering the sworn statement of the claimant. Police papers filed on record and, the conclusion drawn by the police authority, it can be said that accident is a result of sole negligence of driver of Trailer bearing registration No. CG-04-HS-9027. **Issue No. 1 replied in affirmative.**

AS TO ISSUE NO. 2 :-

18. In order to prove disability, claimant has examined Dr. Abhinav Bhatnagar (CW-2) at Exh.32. According to him, on 11/12/2020, he clinically examined one Mr. Sheshrao Khokare for assessing permanent disability. He had sustained right mid shaft tibia fracture compound Grade 3-B. On clinical examination, he found that patient may have difficulty in walking, in riding two wheeler and climbing stair case. He assessed permanent disability to **27%**. In cross examination, Dr. Bhatnagar admitted that 27% disability is with reference to affected part only and not with reference to whole body.

19. Hon'ble Supreme Court in case of **Uttar Pradesh Road Transport Corporation Vs. Vibhor Fialok and another, Civil Appeal No (S) 1337-1338 of 2019, Decided on 18-02-2025**, has observed in Para 13 as under;

‘Thus, this court will have to undertake the exercise of assessing the whole body disability and as per almanco manual, the whole body disability when compared to the particular limb disability would be 1/4th in respect of that of the lower limb. In the instant case, the lower limb disability assessed by Dr. Lalit PW-3 is 48% and 1/4th of the same would be 12% and accordingly the compensation is being determined’.

20. Dr. Abhinav Bhatnagar has assessed the disability of 27%. He suffered a permanent disability and deformity in right leg. Claimant was doing a private job as a security guard, which is an arduous nature of work and this disability would be a functional disability with reference to his nature of work. Considering the above law laid down in **Vibhor Garg (Supra)** and considering that Dr. Bhatnagar has admitted that **27%** disability is with reference to affected part only then it would be 1/4th i.e. **6.75 rounded off 7%** with reference to whole body. **Issue No.2, thus replied in affirmative.**

AS TO ISSUE No. 3 :

21. Insurance Company has taken plea of breach and terms and conditions of policy. However, said issue has not been seriously contested. Insurance Company could not prove any kind of breach. **Issue No. 3 replied in negative.**

AS TO ISSUE No. 4 :

22. At the time of deciding the claim about the injuries and permanent disability, the Tribunal is required to assess the extent of disability and its impact on the person making claim. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps as under:

- (i) The Tribunal has to first ascertain what activities the claimant could carry on in spite of his permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life).
- (ii) The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age.
- (iii) The third step is to find out whether :
 - (a) the claimant is totally disabled from earning any kind of livelihood, or
 - (b) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he earlier carrying on, or
 - (c) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood.

23. In the instant case, according to claimant, at the time of accident, he was doing a private service. In view of permanent disability, it is imperative that he is not in a position to work as effectively as, he used to work prior to suffering of injury. Being a self employed person, it goes without saying that, this deficiency, in his

capacity, has resulted in the loss of income or capacity of earning, in future.

24. Age of claimant Sheshrao, as claimed by him, is 55 years. Same is not disputed. Hence, his age is considered as 55 years.

25. According to claimant, He was doing a private job and earning Rs.10,000/- per month. Considering the nature of work this income seems to be just and probable and same is considered as monthly income of the claimant.

26. In the circumstances, monthly income of claimant is considered as Rs.10,000/- per month, for the purpose of computation of loss of earning. At the time of accident, claimant was 55 years of age, hence, multiplier of '11' will have to be applied in view of the observation of the Hon'ble Supreme Court in case of, "*National Insurance Vs Pranay Sethi decided on 31/10/2017*". In above referred case, Hon'ble Supreme Court has, also, granted future prospects. Here, claimant is a private worker or in other words self-employed person, between 51-60 years of age. Hence, 10% of amount will have to be added as future prospects.

27. Claimant was hospitalized for about a month. He has suffered pain. He has undergone a surgery and he is entitled to an amount of **Rs.75,000/-** for pain and suffering and **Rs.75,000/-** for special diet, loss of income during hospitalization and attendance charges etc.

28. It is, thus, observed that the claimant is entitled to receive compensation, which can be computed as under:

S N	Heads	Calculation
<i>i</i>	Monthly income	10,000/-
<i>ii</i>	10% of the income is added as future prospect	10,000/- (+) <u>1,000/-</u> 11,000/-p. m. <i>i.e.</i> Rs.1,32,000/-p.a.
<i>iii</i>	Compensation after multiplier of '11' is applied	1,32,000/- (x) <u>11</u> (=) 14,52,000/-
<i>iv</i>	7% of Rs. 14,52,000/- (<i>as permanent disability is 7%</i>)	1,01,640/-
<i>v</i>	Towards pain and suffering	75,000/-
<i>vi</i>	Special diet & loss of income and attendance charges.	75,000/-
	Total (<i>iv</i> to <i>v</i>)	2,51,640/-

Issue No.4 is replied, in affirmative and following order is passed.

ORDER

- i) The petition is allowed with costs against **respondent Nos. 1 and 2**. Claimant is entitled to receive compensation of **Rs. 2,51,640/- (Rupees Two Lakh Fifty One Thousand Six Hundred and Forty Only)**.
- ii) Respondent Nos. 1 and 2, jointly and severally do pay an amount of **Rs. 2,51,640/- (Rupees Two Lakh Fifty One Thousand Six Hundred and Forty Only)** with interest at the rate of 7.5%

per annum from the date of filing of this petition till realization of entire amount towards compensation to the claimant.

- iii) It appears that claimant has deposited the Court fees on the amount of Rs. 1,00,000/-. Hence, he is directed to forthwith deposit the Court fees on the amount of **Rs. 1,51,640/-**.
- iii) On failure to pay, deficit court fees stamp by claimant within 15 days from the date of this order, interest would stop running from the 16th day.
- iv) Today judgment has been delivered and same is to be uploaded on CIS but in spite of repeated directions, learned advocate for claimant has not supplied the bank details of the claimant. Consequently, in terms of direction of Hon'ble Supreme Court in case of *Suo Moto Writ Petition (C) No. 7 of 2024* and *Parminder Singh V. Honey Goyal & Ors. Respondent Nos.1 and 2* are directed to deposit the aforesaid amount in the following account of the Tribunal :-

Name of Account : Motor Accident Claims Tribunal,
Nagpur.

Bank Name : State Bank of India, Branch Akashwani
Chowk, Poonam Plaza, Civil Lines,
Nagpur.

Type of Account : Saving Account

Account No. : 40799142551,

IFSC Code : IFSC Code No. SBIN0051191

v) After deposit of aforesaid amount by insurance company in the account of MACT same be transferred in the account of the claimant by Online Process.

vi) After deposit of the deficit portion of court fees, award be drawn up, accordingly.

(AEJAZ H SAYYED)

Dated : 04/05/2026

Member, M.A.C.T. -4, Nagpur.

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I certify that the contents of this PDF File are word to word as per original Judgment/Order.

Name of the Steno : K. Harde
Name of the Court : Aejaz H Sayyed
Member, M.A.C.T.-4, Nagpur.
Judgment delivered on : 04/05/2026
Judgment signed by P.O. : 04/05/2026
PDF Uploading Date : 04/05/2026
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