

MHNG010012282022



Presented on : 02.02.2022  
Registered on : 03.02.2022  
Decided on : 04.05.2026  
Duration : 04Y. 03M. 02D.

**BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS  
TRIBUNAL-1, NAGPUR**

(Presided over by P. B. Naikwad)

**M.A.C.P NO.121/2022**

**Exh.47**

**PETITIONER :** Rajendra S/o Pundlikrao Koche (Dead)  
**Through LR's**

- 1) Varsha Wd/o Rajendra Koche,  
Age : 37 years, Occ : Household,
- 2) Ruchika D/o Rajendra Koche,  
Age : 17 years, Occ : Student,
- 3) Priyanka D/o Rajendra Koche,  
Age : 15 years, Occ : Student,
- 4) Sanskar S/o Rajendra Koche,  
Age : 13 years, Occ : Student,  
Applicant No.2 to 4 are minor  
through natural guardian app.No.1.
- 5) Kantabai Wd/o Pundlikrao Koche,  
Age : 65 years, Occ : Nil,  
All R/o : Kanhan Kandri,  
Tah : Parshivni, Dist : Nagpur.

**VERSUS**

- RESPONDENTS :** 1) The Tata AIG General Ins. Co. Ltd.,  
Vision, 2<sup>nd</sup> Floor, 9, VIP Road,  
Near Traffic Park square, Dharampeth,  
Nagpur.
- 2) Ramgovind S/o Ramsuresh Tiwari,  
Age : Major, Occ : Owner,  
R/o : Under Colony No.6, behind  
Shiv Mandir, Kamptee, Parseoni,  
Nagpur.

**CLAIM FOR COMPENSATION UNDER SECTION 166 OF THE  
MOTOR VEHICLES ACT 1988.**

.....  
Shri P. S. Mirache, Advocate for Petitioner.  
Shri H. N. Verma, Advocate for Respondent No.1.  
Respondent No.2 : Ex-Parte.  
.....

**J U D G M E N T**

(Delivered on 4<sup>th</sup> May 2026)

Initially the petition was filed claiming compensation on account of injuries sustained by petitioner Rajendra Koche in vehicular accident. However during pendency of petition he died, therefore his legal representatives are brought on record. Accordingly the claim is amended and petitioners claimed compensation on account of death of Rajendra due to vehicular accident.

2] The facts giving rise to the present petition in brief, are as under :

That on 24.11.2021 at about 19:45 a.m. Rajendra was riding Pleasure No. MH-40-AB-4523 and was proceeding towards Kanhan from Gahuhivra. At that time near Gahuhivra road, Kanhan Parshivni, Truck bearing No.MH-40-CD-5544 came at a high speed and in rash and negligent manner and gave forcible dash to his pleasure. As a result he sustained grievous injuries. He was admitted in Government Medical College Hospital, Nagpur and then in Relief Hospital and Mahure hospital. However during treatment he died due to accidental injuries. Police station Kanhan registered Crime No.429/2021 against the driver of Truck.

3] Rajendra was aged 42 years and was doing labour work and thereby earning of Rs.10,000/- per month. Due to his sudden

death petitioners have suffered physical, mental and monetary loss. They were dependent upon him. Respondent No.2 is owner and respondent No.1 is insurer of the offending vehicle therefore they are jointly and severally liable to pay compensation. Petitioners lastly prayed to grant compensation along with interest.

4] Respondent No.1 by written statement Exh.14 and 44 denied the contentions made by petitioners and averred that, accident occurred due to rash and negligent driving of Rajendra and he contributed the same. Alleged death of Rajendra dated 25.05.2024 is no way connected with the alleged accident dated 24.11.2021. Petition is bad for non joinder of necessary parties. There was breach of policy condition. There is no nexus between death and accident therefore respondent No.1 is not liable to pay any compensation. Respondent lastly prayed to dismiss petition with costs.

5] Respondent No.2 though duly served with notice vide Exh.16 but failed to appear therefore matter proceeded ex-parte against him as per order dated 07.05.2024.

6] In view of rival and amended pleadings issues are recast vide Exh.45 and I record my findings against each of them for the reasons, recorded hereinafter.

SR.No.	ISSUES	FINDINGS
1	Do petitioners prove that, at the time of incident/accident, the driver of offending vehicle i.e. Truck bearing registration No.MH-40-CD-5544 was driving his vehicle in rash and negligent manner ?	<b>Yes</b>

2	Do petitioners prove that Rajendra Pundlikrao Koche died due to accidental injuries arising out of the use of motor vehicle i.e. Truck bearing registration No.MH-40-CD-5544 and the same was involved in it ?	<b>Partly in the Affirmative, in respect of grievous injuries only</b>
3	Does respondent No.1 prove that accident took place due to negligence of deceased and he contributed the accident ?	<b>No</b>
4	Does respondent No.1 prove that there was breach of terms and conditions of the insurance policy ?	<b>No</b>
5	Whether petition is bad for non-joinder of necessary parties ?	<b>No</b>
6	Whether petitioners are entitled for the compensation as claimed and from whom ?	<b>Yes, From respondents</b>
7	What order and award ?	<b>As per final order</b>

### **REASONS**

7] In order to prove their claim petitioner No.1 Varsha Rajendra Koche examined herself as PW-1 at Exh.24 and closed their evidence vide pursis Exh.38.

8] In spite of sufficient opportunity given no evidence is adduced by respondents. Therefore evidence of respondent No.1 came to be closed as per order dated 23.04.2026. Thereafter argument of both the learned counsels were heard.

#### **As to Issues No.1 To 3 :**

9] It has come in the evidence of PW-1 Varsha that

deceased Rajendra was her husband. At the time of accident her husband was proceeding towards Kanhan from Gahuhivra. At that time near Gahuhivra road, Kanhan Parshivni, Truck bearing No.MH-40-CD-5544 came at a high speed and in rash and negligent manner and gave forcible dash to his pleasure. As a result he sustained grievous injuries i.e. fracture left leg first and third finger. He was admitted in Government Medical College Hospital, Nagpur and then in Relief Hospital and was shifted to Mahure hospital. After discharge he was treated in OPD and was bed ridden till his death. However during treatment he died due to accidental injuries. Police station Kanhan registered Crime No.429/2021 against the driver of Truck.

10] To support her oral testimony, petitioners also filed on record documents i.e. Form AA Exh.25, FIR Exh.26, spot panchnama Exh.27, driving license Exh.28, copy of insurance Article-A, injury report Exh.29, death certificate Exh.33 and postmortem report Exh.34 etc.

11] Learned counsel for petitioners argued that, from oral and documentary evidence it is proved that, Rajendra sustained grievous injuries in a vehicular accident and due to the same he died. Accident took place due to rash and negligent driving of the truck. No rashness or negligence of petitioner is proved. Therefore issues No.1 and 2 be answered in the affirmative and issue No.3 in negative.

12] Whereas learned counsel for respondent No.1 argued that, the claim itself is not tenable. No nexus of death of Rajendra

with accident dated 24.11.2021 is proved. He died on 25.04.2024. There is nothing on record to show that due to accidental injuries he was bed ridden and was undergoing treatment. PW-1 Varsha has given material admissions to that effect. Therefore it is not proved that death of Rajendra occurred due to accidental injuries. No rashness or negligence of the truck driver is proved. Neither original discharge summary nor disability certificate is filed on record nor any doctor is examined. Accident occurred due to sole negligence of Rajendra. Therefore issues No.1 and 2 are not proved. Hence the same be answered in the negative and issue No.3 in the affirmative.

13] Having regard to the submissions made by both learned counsels and after going through the material on record I found that respondents did not specifically deny the accident and the injuries sustained by Rajendra in it. On the contrary respondent No.1 relying upon the injury report Exh.29 and the copy of certificate issued by Dr. Mahure argued that only fracture injury to first and third toe of left foot were caused, which cannot cause death. Therefore it is clear that respondents have not disputed the accident so also the injuries sustained by Rajendra in it.

14] From FIR Exh.26 and spot panchnama Exh.27 so also DAR proceeding annexed to the claim it is established and proved that accident occurred due to rash and negligent driving of the driver of Truck No.MH-40-CD-5544 and the same was involved in it. Respondent No.1 though claimed that accident occurred due to negligence of Rajendra, still nothing material to that effect is brought on record. No evidence is laid by respondent to discharge

its burden in this respect. Therefore issue No.1 is duly proved but issue No.3 is not proved at all. Hence I record my findings to issue No.1 in the ***Affirmative*** and issue No.3 in the ***Negative***.

15] So far as issue No.2 is concerned, petitioners though claimed that Rajendra died due to accidental injuries out of the use of motor vehicle, however there is absolutely no evidence to establish and prove that Rajendra died due to injuries sustained in vehicular accident dated 24.11.2021. It is pertinent to note here that petitioners though have filed the postmortem report Exh.34, still it disclosed date of death of Rajendra as 25.05.2024. No nexus of death of Rajendra with accident dated 24.11.2021 is established and proved. Petitioners though claimed that since discharge from hospital Rajendra was bed ridden and was undergoing OPD treatment, still not a single document is filed on record to establish and prove that due to accidental injuries Rajendra was undergoing continuous treatment and was bed ridden.

16] On the contrary PW-1 Varsha in her cross examination has candidly admitted that after 2021 her husband was not admitted in any hospital. After one year of the accident her husband was able to walk and was doing his personal work. Three toes of left leg of her husband were only injured. She has not filed on record any document to show that from the date of accident till death her husband was bed ridden.

17] Therefore in view of material admissions given by PW-1 Varsha and for want of hospital or medical treatment papers, no nexus of death of Rajendra with accidental injuries dated

24.11.2021 is established and proved. Mere filing postmortem report Exh.34 is not sufficient for petitioners to prove that death of Rajendra is the result of accidental injuries dated 24.11.2021. After about more than 2½ year of the accident Rajendra died. Therefore it was incumbent upon petitioners to prove that there is direct nexus of death of Rajendra with accidental injuries. However there is nothing material on record in this respect. Even the treating doctor who provided treatment to Rajendra till his death is not examined. No hospital and discharge summary or OPD papers are filed on record.

18] Moreover from injury report Exh.29 it is established that Rajendra had sustained only fracture injuries to two toes of the left feet, which certainly are not sufficient to cause death of any person. Therefore death of Rajendra due to accidental injuries is not proved at all. However from Exh.29 which is not disputed and also relied by respondent No.1, it is proved that Rajendra had sustained grievous injuries only as his two toes were fractured in the said accident. Therefore though death due to accident is not proved, still it is proved that Rajendra sustained grievous injuries in an accident arising out of the use of motor vehicle. Therefore I record my findings to issue No.2 *partly in the Affirmative* in respect of grievous injuries only.

**As to Issue No.4 :**

19] Respondent No.1 averred that, there was breach of terms and conditions of insurance policy as driver of offending truck was not holding valid and effective driving license and truck was

plied without fitness and permit. However to discharge its burden no evidence is adduced by respondent No.1. On the other hand documents on record particularly Exh.28 shows contrary. Therefore no breach of policy condition is made out and proved. Hence I record my findings to issue No.4 in the ***Negative***.

**As to Issue No.5 :**

20] Respondent No.1 though contended that petition is bad for non joinder of necessary parties, however from record it is clear that owner and insurer of the offending vehicle are joined as party. Though Pleasure No.MH-40-AB-4523 was also involved in the said accident, still from record it is established that accident took place due to negligence of the driver of offending truck only. As owner and insurer of truck are joined as party, therefore petition cannot be said to be bad for non joinder of necessary parties. Offence is also registered against driver of offending truck only. Therefore owner and insurer of Pleasure so also driver of truck cannot be termed to be necessary parties. At the most they are proper parties, in absence of whom also present claim can be decided legally and correctly. Hence I record my findings to issue No.5 in the ***Negative***.

**As to Issue No.6 :**

21] Learned counsel for petitioners argued that, as Rajendra died due to accidental injuries, petitioners are entitled to compensation as claimed. Deceased was labourer and was aged 42 years. He was earning Rs.10,000/- p.m. No breach of policy condition is made out and proved. Petitioners have incurred expenses on medical treatment. Therefore respondents are jointly

and severally liable to pay compensation to petitioners. Hence petition may kindly be allowed and just and reasonable compensation be awarded.

22] Whereas learned counsel for respondent No.1 argued that, petition itself is not tenable, as no nexus of death of Rajendra with accident dated 24.11.2021 is established and proved. Neither any doctor is examined nor hospital or medical papers are filed on record. Therefore petitioners are not entitled to compensation as claimed. As Rajendra had sustained fracture injuries to toes of left leg, therefore at the most compensation on account of pain and suffering may only be awarded.

23] As discussed earlier, I have recorded my findings to issue No.1 in the affirmative and issue No.2 in partly affirmative in respect of grievous injuries. Therefore petitioners are only entitled to certain compensation on account of medical expenses incurred and the pains and agony suffered and nothing more than that. As nexus of death of Rajendra with accidental injuries is not established and proved and as now Rajendra is no more, therefore question of grant of compensation on other heads does not arise at all and petitioners are only entitled to medical expenses and compensation on account of pains and suffering.

24] However petitioners though claimed that Rajendra was indoor patient, but neither original discharge summary is filed nor any doctor is examined. Even original treatment papers i.e. hospital bill pharmacy bills are not produced on record. Therefore no medical expenses of Rs.50,000/- as claimed can be awarded.

25] However from record and DAR proceeding it is clear that Rajendra was indoor patient for two days. Therefore certainly petitioners incurred expenses on medicine, treatment, diet, attendance and conveyance etc. Therefore in absence of documents in this respect, being social and beneficial legislation petitioners are entitled to get Rs.10,000/- only for the said expenses and the same is accordingly awarded.

26] Due to accidental injuries of Rajendra and his admission in hospital certainly petitioners suffered pains and agony. Therefore interest of justice also require to grant certain compensation for the same. Considering facts of the present case and material on record Rs.15,000/- will be just and fair for the pains and agony suffered by petitioners. Thus petitioners are only entitled to get total compensation of Rs.25,000/- on account of pains and agony and other expenses and the same will be just, fair and reasonable compensation.

27] As ownership and insurance of the offending vehicle is not disputed and no breach of policy condition is made out and proved, therefore respondent No.2 being owner and respondent No.1 being insurer are jointly and severally liable to pay said compensation to petitioners.

28] Thus petitioners have established and proved their claim to the extent noted above. Hence I record my findings to issue No.6 ***Accordingly*** and in sequel, pass the following order.

**ORDER**

- 1) Petition is partly allowed with proportionate costs.
- 2) Respondents shall jointly and severally pay the compensation of **Rs.25,000/- (Twenty Five Thousand Rupees only)** to petitioners inclusive of the amount of 'No Fault Liability', along with simple interest @ 7.5% per annum from the date of petition i.e. from 02.02.2022 till its final realization.
- 3) Respondents are hereby directed to transfer the said amount into the Bank account MACT, in the name of petitioner No.1 Varsha by NEFT/RTGS, details of which are furnished as under, on due verification and identification :

Sr. No.	Name of petitioner	Name of Bank, Branch and IFSC Code	Savings Account Number	Amount
1	Varsha Rajendra Koche In the name of Member, MACT, Nagpur	State Bank of India, Branch at Akashwani square, Nagpur SBIN0051191	40799142551	<b>₹.25,000/-</b> + Interest

- 4) Petitioner is at liberty to withdraw the said amount from MACT and the same be paid to her on due identification and verification.
- 5) Award be drawn up accordingly by giving details of the savings account of MACT in it, as above.

Dictated and pronounced this in open Tribunal, today.

Date : 04.05.2026

(P. B. Naikwad)  
Member, M.A.C.T-1,  
Nagpur.

**Endorsement**

Case Argued on	30.04.2026
Judgment dictated on	04.05.2026
Transcription ready on	04.05.2026
Judgment checked and signed on	04.05.2026

Date : 04.05.2026

(P. B. Naikwad)  
Member, M.A.C.T-1,  
Nagpur.

**CERTIFICATE**

I affirm that the contents of this P. D. F. file of judgment are word to word, as per original judgment.

(S.S.Bordikar)  
Junior Clerk