


MHNG010029532019 	Presented on : 28/03/2019
	Registered on : 06/06/2019
	Decided on : 12/03/2026
	Duration : 6 Y : 11 M : 12 Days
	<u>Exhibit No. 77</u>

**BEFORE THE CHAIRMAN, MOTOR ACCIDENT CLAIMS TRIBUNAL,
NAGPUR**

[Presided over by Dinesh P. Surana]

M.A.C.P. No.425 of 2019

- 1] Nikita D/o Ganesh Gaykawad, ... **Petitioners**
Aged about 21 years, Occu. Student,
- 2] Harsh S/o Ganesh Gaykawad,
Aged about 17 years, Occu. Student,
Petitioner No.2 is a minor, so C.P. filed
through guardian sister, i.e. petitioner
No.1, R/o. Plot No.17, Bhandara Road,
Vanjari Building, Satnami Nagar,
Nagpur, OR
Plot No.68, Pardi Road, Nr. Bhawani
Mata Mandir, Pardi Punapur Square,
Bhandewadi, Nagpur.

// **Versus** //

- 1] Shriram S/o Chhotelal Baghel, ... **Respondents**
Aged about Major, Occu. Not known,
R/o. At GE Road, Tatibandha,
Raipur (C.G.) (Owner of vehicle).
- 2] Reliance General Insurance Co. Ltd..
Through its Branch Manager, 1st Floor,
Akruti Furniture Building, Bajaj Nagar,
Nagpur (Insurer of vehicle).

- 3] Ganesh Namdeo Gaykawad,
Aged Major, Occu. Nil,
R/o. Nagpur.
- 4] Ulhas Parasmal Pagariya,
Aged Major, Occu. Not known,
R/o. 289, Pagariya House,
Wardhaman Nagar, Lakadganj, Nagpur.

**[CLAIM PETITION FOR GRANT OF COMPENSATION U/SEC. 166 OF THE
MOTOR VEHICLES ACT, 1988]**

Appearances:

Adv. U.A. Bhattad for the petitioners.
Respondent No.1 - Ex-parte
Adv. U.J. Mairal for the respondent No.2.
Respondent No.3 – Ex-parte.
Adv. N.R. Jadhav for the respondent No.4.

J U D G M E N T
[Delivered on 12.03.2026]

By this petition under Section 166 of the Motor Vehicles Act, 1988, compensation of Rs.21.50 Lacs is claimed by the children of the deceased Anita Gaykawad, on different heads, on account of her vehicular accidental death.

2] It is the case of the petitioners, that on 20.03.2019 at 06:30 a.m., Anita was proceeding by bicycle from her home to Prajapati Nagar. When she reached near H.B. Town Square, Kalmana, the offending truck bearing No. MH-49/AT-7528 (in short, “truck”), being driven by its driver, namely Jaypal Tupate, at high speed and negligently, and gave dash to the bicycle of Anita, due to which she sustained injuries and died. As per the petitioners, at the time of the accident, Anita was 42 years old. She was

doing tailoring work and earning Rs.12,500/- per month. At the time of the accident, the truck was owned by respondent No.1 or respondent No.4, and insured with the respondent No.2 insurance company. As such, they prayed for the above amount of compensation from the said respondents. They also arrayed Ganesh Gaykawad, husband of the deceased Anita, as the respondent No.3 in the claim petition.

3] The respondents Nos 1 and 3 proceeded ex-parte.

4] The respondent No.4, who was added in the claim petition in view of the order dated 19.03.2025 below Exh.55, by way of written statement Exh.67, by taking general denials and defences, resisted the claim of the petitioners. He also contended that at the time of the alleged accident, the truck was insured with the respondent No.2; therefore, respondent No.2 is liable to pay compensation. He further submitted that the registration particulars of the truck show that his name was registered as owner on 25.03.2019, i.e. after the accident, and therefore, statutorily, he is not being reflected as the registered owner of the truck, and is not liable to pay compensation to the petitioners. The deceased herself was responsible for causing the said accident.

5] The respondent insurance company, by way of written statement Exh.14, by taking general denials and defences, resisted the claim of the petitioners. They denied the involvement of the truck with the said registration number in the said accident. They also contended that there is a breach of the terms and conditions of the policy of insurance of the truck.

6] Based on the rival contentions, Issues at Exh.28 were framed.

7] To substantiate their claim, petitioner Nikita Gaykawad, daughter of the deceased Anita, examined herself on oath and reiterated the pleadings in the claim petition by way of evidence affidavit at Exh.30. Apart from her oral testimony, she also placed her reliance on the following documents.

- i] Exh.37 (Form Comp AA);
- ii] Exh.38 (First Information Report / F.I.R.);
- iii] Exh.39 (Crime Details Form / Spot panchnama);
- iv] Exh.40 (Inquest panchnama held on the dead body of Anita);
- v] Exh.41 (police report);
- vi] Exh.42 (Post mortem examination report of Anita);
- vii] Exh.43 (Arrest panchnama);
- viii] Exh.44 (Registration certificate);
- ix] Exh.45 (Fitness certificate);
- x] Exh.46 (Permit);
- xi] Article-A (Policy of insurance);
- xii] Article-B (Vehicle particulars); and
- xiii] Article-C (Missing report of respondent No.3 Ganesh).

8] The petitioners also examined the PW-2 Gajanan Dadmal at Exh.49 – Senior Clerk with RTO, Nagpur (East), who deposed about the earlier registration number of the truck. He also proved No Objection Certificate Exh.51 issued by the State Transport Department, RTO, Raipur (Chhattisgarh) for transfer of the truck, in the name of the respondent No.4, vehicle particulars of the truck Exh.52 and certificate of registration of the truck Exh. 53 issued by RTO Raipur.

9] None was examined for and on behalf of the respondents.

10] Heard arguments advanced by Adv. U.A. Bhattad for the petitioners, and Adv. U.J. Mairal for the respondent insurance company. Adv. Bhattad prayed for the grant of just compensation to the petitioners. Whereas, Adv. Mairal submitted that the respondent No.4 – owner of the truck was added in March 2025; therefore, the claim petition is to be considered to have instituted in 2025. She further submitted that the documents show that the truck involved in the said accident was CG-04/JA-8153 and not MH-49/AT-7528. As such, there is a mistaken identity of the vehicle, and therefore, the respondent insurance company is not liable to pay compensation to the petitioners.

11] Based on the rival contentions, evidence and the material available on record, I record my findings on the Issues at Exh.28, for the reasons discussed thereunder.

I S S U E S

Findings

- | | | |
|---|-----|---------------------------|
| 1. Do petitioners prove that Anita died in a vehicular accident, which took place out of the use of the truck? | ... | <u>In the affirmative</u> |
| 2. Do petitioners prove that at the time of the incident/accident, the driver of the truck was driving it in a rash and negligent manner? | .. | <u>In the affirmative</u> |
| 3. Does respondent No.2 prove that the deceased was responsible for the said accident, and she contributed to the same? | .. | <u>In the negative</u> |
| 4. Does respondent No.2 prove that there was a breach of the terms and conditions of the insurance policy? | .. | <u>In the negative</u> |

5. Whether petitioners are entitled to the ... **Yes.**
compensation as claimed and from whom? **In the**
affirmative
6. What order and award? ... **As per the final**
order

REASONS

As to Issue Nos.1 to 3:

12] Admittedly, petitioners are not eyewitnesses to the alleged accident. However, their testimony as to the manner of the accident is based on the documentary evidence. PW-1 Nikita deposed that on the given date, time, and place, the truck was being driven at high speed and negligently by its driver and gave dash to the bicycle of her mother Anita. However, she denied in her cross-examination that the accident took place due to the fault of her mother.

13] Based on information given by Dilip Thavre, within half an hour of the accident, Crime No.194 of 2019, for the offence punishable under Sections 279, 338, 304-A of the I.P. Code was registered at police station Kalmana, Nagpur, against the driver of the truck for causing the said accident and accidental death of Anita, due to rash and negligent driving of the truck. Informant Dilip has also informed the police that the driver of the truck, namely Jaypal Tupate, was also brought to the police station. Jaypal Tupate was arrested in the said crime under the Arrest panchnama Exh.43 by the police.

14] The sketch map in column No.9 of the spot panchnama Exh.39, prepared by the police in the presence of panchas, shows that the accident took place on the East-South corner of the square. The truck had

crossed most of the portion of the square. But the driver of the truck ought to have been more cautious while driving the truck near such a square with no divider in between.

15] It is seen from the inquest panchnama Exh.40 and the memorandum of post mortem examination Exh.42 held on the dead body of Anita, that she had suffered several injuries to vital organs. Her cause of death was opined by Dr. S.S. Giri, who conducted an autopsy on her dead body as “injuries to vital organs”. The 2nd to 9th ribs on the right side of the deceased Anita were fractured with laceration to her right lung too. The manner of fracture injuries caused to Anita by itself shows the severe impact given by the truck to her. Under such circumstances, I am of the view that petitioners have probalilized that (i) the said vehicular accident took place due to rash and negligent driving of the truck by its driver; (ii) no negligence or contributory negligence of Anita was there in causing the said accident; and (iii) Anita died in the said vehicular accident.

16] The contention of the respondent insurance company as to the mistaken identity of the truck is concerned, from the evidence of PW-2 Gajanan Dadmal, it is apparent that the engine number and Chassis number of the truck bearing Nos.MH-49/AT-7528 and CG-04/JA-8153 are same. PW-2 Gajanan Dadmal also deposed that both registration numbers are of the same vehicle. No Objection Certificate Exh.51 dated 14.12.2018 was issued by the State Transport Department, RTO, Raipur, in respect of the truck No.CG-04/JA-8153 to transfer the truck to Ulhas Pagariya – respondent No.4. As per the vehicle particulars Exh.52, the date of conversion of the said truck is 25.02.2019. From the vehicular particulars Exh.52 and the testimony of PW-2 Gajanan Dadmal, it is apparent that the

process of transfer of ownership of the truck from the respondent No.1 to the respondent No.4 was started well in advance before the accident and such conversion of change of ownership from the respondent No.1 to the respondent No.4, change of registration number from CG-04/JA-8153 to MH-49/AT-7528, and change of State and RTO from Raipur (Chattisgarh) to Nagpur City (East) (Maharashtra) was done before the date of accident. The registration No.MH-49/AT-7528 of the truck in F.I.R. Exh.38 and Form Comp. AA Exh.37 is mentioned as No.MH-49/AT-7528. From the vehicle particulars of the truck, it is apparent that the respondent No.4 and not the respondent No.1 was its registered owner at the time of the accident. Therefore, I do not find that this is a case of mistaken identity of the vehicle in the said accident. Therefore, based on the evidence on record, I am of the view, that the petitioners have also proved that the said accident has taken place out of the use of the truck bearing No. MH-49/AT-7528. As such, my answer to Issue Nos. 1 and 2 is in the affirmative, and Issue No.3 is in the negative.

As to Issue No.4:

17] The respondent insurance company has not examined any witness to prove the breach of terms and conditions of the policy of insurance of the truck, thereby failing to discharge their burden as to the said issue. As such, my answer to Issue No.4 is in the negative.

As to Issue No.5:

18] The multiplier of "14" applies to the age group of the deceased, Anita. Before the accident, her husband (respondent No.3) was reported to the police by his father to be missing since 26.10.2013. Therefore, petitioners can only be said to be the legal representatives and

dependent on their mother Anita. As per the petitioners, Anita was doing tailoring work and was earning Rs.12,500/- per month. They have not filed any document to show either the said self-employment of Anita, or her income. Still her husband being missing and she was maintaining her 2 children, which is not possible without her earnings, and therefore, I consider her notional income to the extent of Rs.10,000/- per month (i.e. Rs.1,20,000/- per annum). 1/3rd amount is required to be deducted towards the personal expenses of Anita, and 25% increase is required to be considered towards her future prospects, as she was self-employed.

19] The Hon'ble Supreme Court of India in the case of **Saroj and others Vs. Iffco-Tokio General Ins. Co. Ltd. and others**, [2024 ACJ 2523, decided on 24.10.2024] in terms of the principles laid down in **National Insurance Co. Ltd. Vs. Pranay Sethi**, [2017 ACJ 2700], has recalculated and granted Rs.18,150/- towards loss of estate, Rs.18,150/- towards funeral expenses and Rs.48,400/- to each dependent towards loss of consortium. Under such circumstances, I am of the view that Petitioners are entitled to the following amount of just compensation.

	Rs.1,20,000/- p.a.	(Loss of income)
X	<u>14</u>	(Multiplier applied)
	Rs.16,80,000/-	
+	<u>Rs. 4,20,000/-</u>	(added 25% towards future prospect)
=	Rs.21,00,000/-	
-	<u>Rs. 7,00,000/-</u>	(1/3 rd deduction towards personal expenses)
=	<u>Rs.14,00,000/-</u>	
+	Rs. 36,300/-	(Loss of Estate & funeral expenses)
+	Rs. 96,800/-	(Consortium for 2 dependents)
	<u>Total Rs.15,33,100/-</u>	(round figure Rs.15.35 Lacs including NFL amount, if any)

20] As discussed and held above, the respondent No.4 was the owner of the offending truck, and it was insured with the respondent No.2 insurance company at the time of the accident. Therefore, respondent Nos.2 and 4 are jointly and severally liable to pay the above amount of just compensation to the petitioners.

21] The petitioners have dragged the claim petition from 2019 till date. In view of the order dated 19.03.2025 below Exh.55, respondent No.4 – registered owner of the truck was added as party to the claim petition. Hence, the petitioners are entitled to interest at the rate of 7.5% per annum only, from 19.03.2025 till its realisation. As such, I answer Issue No.5 accordingly in the affirmative. As a result, the following order.

ORDER

- i] Petition is partly allowed with proportionate costs.
- ii] The Respondent Nos.2 and 4 jointly and severally do pay to the petitioners, an amount of just compensation of **Rs.15.35 Lacs** (Rupees Fifteen Lacs Thirty-Five Thousand only) (including the amount received by the petitioners towards the 'No Fault Liability', if any) along with interest thereon at the rate of 7.5% per annum, from 19.03.2025, till its realization.
- iii] The petitioners Nos 1 and 2 shall be equally (50% share each) entitled to the above compensation.
- iv] The Registrar (MACT), Nagpur, to take the account details of the petitioners, which shall be of any Nationalised Bank only, and send it to the respondent Nos.2 and 4, for compliance.

- v] The respondent Nos.2 and 4 shall deposit the entire amount of the aforesaid compensation in the respective bank accounts of the petitioners.

- vi] The Manager of the concerned Bank is directed to deposit one-half (½ / 50%) share of the petitioner Nos. 1 and 2, in the FDRs in their respective names for 5 years, and the remaining half (½ / 50%) share shall be paid to them after due identification and verification. On maturity of the said FDRs, the concerned bank shall directly pay the maturity amount to the petitioner Nos. 1 and 2, after due identification and verification, without insisting for further orders of this Tribunal.

- vii] Award be drawn accordingly, but only after petitioners affix the deficit court fees on their respective shares, if any, on the amount of awarded just compensation.

Nagpur.
 Date : 12.03.2026

[Dinesh P. Surana]
 Chairman, MACT &
 Principal District Judge, Nagpur

Case argued on	:	20/02/2026
Judgment dictated on	:	12/03/2026
Transcription ready on	:	13/03/2026
Judgment checked and digitally signed on	:	16/03/2026

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CERTIFICATE

I affirm that the contents of this PDF file of Judgment are word to word, as per the original Judgment.

Name of Stenographer : Prashant P. Yenukar
 Grade I