


<b>MHNG010097542020</b> 	Presented on : 19/12/2020
	Registered on: 21/12/2020
	Decided on : 12/03/2026
	Duration : 5 Y : 2 M : 21 Days
	<b><u>Exhibit No.91</u></b>

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

[Presided over by Dinesh P. Surana]

**M.A.C.P. No. 784 of 2020**

Saurabh S/o Arvind Bhujade, **...Petitioner**  
Aged about 22 years, Occu. Nil,  
R/o. Ward No.12, At Post – Sawanga,  
Tah. Saunsar, Distt. Chhindwara (M.P.).

// **Versus** //

- 1] Yashwant S/o Mahadevrao Kullarkar, **...Respondents**  
Aged about Major, Occu. Not Known,  
R/o. Plot No.2014, Pragati Nagar, Ranala,  
Tah. Kamptee, Distt. Nagpur. (Owner of vehicle)
- 2] HDFC ERGO General Insurance Co. Ltd.  
Through the Branch Manager, 3<sup>rd</sup> Floor,  
Shri-Shyam Tower, Near NIT Building,  
Kingsway, Sadar, Nagpur. (Insurer of vehicle)

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

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**Appearances:**

Adv. U.A. Bhattad for the petitioner.  
Respondent No.1 - Ex-parte.  
Adv. H.N. Verma for the respondent No.2.  
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**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.13.20 Lacs is claimed by the petitioner, on account of vehicular accidental injuries resulting in his permanent disability and loss of earnings.

2] It is the case of the petitioner that on 01.12.2020 at about 2:35 pm, he was riding a moped motorcycle bearing No.MH40-BH-3397 (in short “moped”), which was driven at a moderate speed and on the correct side of the road from Sawanga towards Kelwad, within the territorial jurisdiction of Kelwad Police Station, Nagpur Gramin. When he reached near mouza Kelwad RTO Check post, the offending Alto 800 Car bearing No.MH40-AR-6313 (in short “Alto”), being owned by the respondent No.1 and insured with respondent No.2, being driven by its driver at high speed, gave dash to the petitioner’s moped from the opposite direction, due to which he sustained grievous injuries. He was admitted to Seven Star Hospital, Nagpur and thereafter took treatment in Government Hospital, Nagpur. He incurred medical expenses of Rs.3 lacs.

3] Crime No.242/2020 for the offences punishable under Section 279, 337 and 304-A of the I.P. Code was registered against the driver of the Alto at Kelwad Police Station for causing the said accident due to rash and negligent driving of the offending Alto.

4] As per the petitioner, at the time of the accident, he was 22 years old and was earning Rs.10,000/- per month from private service. Due to the vehicular accidental injuries, he suffered monetary loss and severe shock. Therefore, on several heads, the petitioner claimed the above amount of compensation jointly and severally from the respondents.

5] The respondent No.1, owner of the offending Alto, proceeded ex-parte.

6] The respondent No.2 insurance company of the Alto, by way of a written statement Exh.16, by taking general denials and defences, resisted the claim of the petitioner. They also contended that the Alto was not insured with them at the time of the accident. Its driver was not holding a valid and effective driving license to drive the Alto at the time of the accident, resulting in a breach of the terms and conditions of the policy. The rider/petitioner and the pillion rider of the moped were not wearing protective headgear/helmets. The petitioner/rider of the moped had contributed to the said accident. As per petitioner, the alleged accident occurred due to high speed, rash and negligent driving of the driver of the offending Alto, and there was a direct collision between the said Alto and the moped. Therefore, the said driver of the Alto and the owner and insurance company of the moped, which the petitioner was driving, are the necessary parties to the present petition. Therefore, the present claim petition is bad in law for non-joinder of the necessary parties. As such, they denied

their liability to pay such compensation to the petitioner.

7] To substantiate his contentions, the petitioner examined himself by way of an evidence affidavit Exh.19. He also deposed that Dr. Abhinav Bhatnagar, Orthopaedic Surgeon, has assessed his permanent disability to the extent of 15%. Apart from his oral testimony, he also placed his reliance on the following documents.

- (i) Exh.22 (Form Comp AA);
- (ii) Exh.23 (First Information Report);
- (iii) Exh.24 (Crime Details Form/spot panchnama);
- (iv) Exh.25 (Copy of Insurance);
- (v) Exh.26 (Medico Legal Certificate).

The petitioner also examined the following witnesses.

PW-2 Pankaj Shekhar Bode, at Exh.29, Pharmacist with Seven Star Hospital, who deposed that vide medicine/pharmacy bills Exh.31 to 47, medicines were purchased for the petitioner from their pharmacy for the worth of Rs.36,322/- (round up Rs.36,000/-).

PW-3 Kishor Sasankar, at Exh.49, Manager in Seven Star Hospital, who deposed that the petitioner was admitted to said Hospital on 01.12.2020 and was discharged on 11.12.2020. He also deposed that medicines vide bill Exh.51 to 63 were purchased by the petitioner from Seven Star Pharmacy attached to their Hospital,

worth of Rs.9,310/- (round up Rs.9,000/-).

PW-4 Dr. Niraj Gupta, at Exh.68, Medico Legal Consultant and CMO in Seven Star Hospital, who deposed that the petitioner was admitted to their Hospital on 01.12.2020, with a history of road traffic accident, as given by a four-wheeler near the Kelwad toll plaza and sustained fracture injury to the right femur shaft with head injury. He was operated on 05.12.2020 and was discharged from the hospital on 11.12.2020. He proved the discharge card Exh.69, of the petitioner issued by Seven Star Hospital.

PW-5 Dr. Abhinav Bhatnagar, at Exh.70, an Orthopaedic surgeon, who examined the petitioner on 12.08.2021 and assessed his permanent disability to the extent of 15% and accordingly, issued him disability certificate (Exh.71) in Form Comp. B.

8] The respondent insurance company relied on the deposition of RW-1 Pandurang Tulaskar, examined in connected MACP No.783 of 2020. He also filed the copy of evidence recorded of the said witness vide Exh.77. The said witness is a Junior Clerk in RTO, Chhinwara (M.P.), who proved the extract of driving license Exh.88 issued by the licensing authority Chhinwara, M.P., to Chandrashekhar Hingwe. He deposed that said Chandrashekhar was holding a learner's license valid from 08.11.2020 to 07.05.2021, i.e. the date of accident 01.12.2020 and was issued a permanent driving license after a month of issuance of the learning license Exh.91.

The respondent insurance company also examined the following witnesses.

RW-2 Rohit Pathak, at Exh.83, the Legal Manager of the respondent insurance company, who deposed on the line of the written statement of the insurance company. He also proved the policy of insurance Exh.84 of the Alto.

9] Heard arguments advanced by Adv. U.A. Bhattad for the petitioner. She submitted that the petitioner had incurred huge medical expenses. He was unmarried at the time of the accident, and therefore, his marriage prospects were affected due to the accidental injuries. Though the disability of the petitioner due to accidental injuries was assessed to the extent of 15%, the petitioner suffered 100% loss of income due to the accidental injuries. The notional income of the petitioner to the extent of Rs.10,000/- per month should be considered. The petitioner has to take treatment for a long period and was required to come from his village, Sawanga District Chhindwara (M.P.) to Nagpur for his treatment. Therefore, the petitioner is required to be paid huge compensation on account of pain and suffering and travelling expenses too. As such, she prayed for a grant of just compensation to the petitioner.

10] As against this, Adv. Hitesh Verma, for the respondent insurance company, contended that the disability assessed by Dr. Bhatnagar for the petitioner is 3% for mild pain. As such, for injury, the petitioner's disability cannot be more than 6%. It is an admitted

fact that the petitioner can do day-to-day routine work. The income of the petitioner is not proved. It requires six months for healing of the injuries to the petitioner. Therefore, the petitioner is entitled to loss of earnings based on the notional income for six months only. He also submitted that, admittedly, the RW-2 Chandrashekhar, driver of the Alto, was holding a learner's license at the time of the accident. RW-2 Chandrashekhar admitted that the person sitting beside him was not holding any driving license, and there was no 'L' mark/indicator attached or stuck to the Alto. Therefore, there is a breach of the terms and conditions of the policy of insurance of the Alto. As such, he prayed, that the respondent insurance company is not liable to pay compensation to the petitioner. He submitted that, at the most, the principles of pay and recovery should be applied in the case in hand.

11] Based on the rival contentions, evidence, and material on record, I record my findings on the Issues at Exh.18 for the reasons discussed thereunder.

	<b><u>ISSUES</u></b>		<b><u>FINDINGS</u></b>
1]	Does the petitioner prove that the Alto was being driven by its driver in a rash and negligent manner?	..	<b><u>In the affirmative.</u></b>
2]	Does the petitioner prove that he sustained permanent disablement /grievous injuries in a vehicular accident which took place out of the use of Alto?	..	<b><u>In the affirmative.</u></b>

3]	Do respondents prove that the accident took place due to the negligence of the petitioner himself, and he contributed to the accident?	..	<b><u>In the negative.</u></b>
4]	Does respondent No.2 prove that there was a breach of the terms and conditions of the insurance policy?	..	<b><u>In the affirmative.</u></b>
5]	Whether the petition is bad for the non-joinder of necessary parties?	..	<b><u>In the negative.</u></b>
6]	Whether the petitioner is entitled to the compensation as claimed, and from whom?	..	<b><u>As per the final order.</u></b>
7]	What order and award?	..	<b><u>As per the final order</u></b>

### **REASONS**

#### **As to Issue Nos.1 to 3:**

12] The petitioner himself is an eyewitness to the alleged accident. He pleaded and testified as to the manner of the accident. According to him, on the given date, time, and place, the Alto was being driven by its driver at high speed, and gave a dash to his motorcycle, which he was driving, with Devanand Ghatode as a pillion rider thereon, due to which he sustained grievous injuries, i.e. injury to the right femur with head & multiple bodily injuries. Except for suggestions put in his cross-examination by the respondent insurance company, which was denied by the petitioner, there is nothing more that was brought on record from

the testimony of the petitioner to disbelieve him regarding the manner of the accident.

13] Moreover, the testimony of the petitioner is corroborated by the police case papers. Crime No.242 of 2020 for the offences punishable under Section 279, 337 & 304-A of the I.P. Code was registered against the driver of the Alto for causing the said accident and accidental injuries to the petitioner and the pillion rider of the motorcycle, due to the rash and negligent driving of the Alto. The First Information Report was also given by the pillion rider of the motorcycle at Kelwad Police Station, stating that the accident took place due to rash, negligent, and high-speed driving of the Alto, by its driver.

14] On perusal of the sketch map, in column no.9 of the spot panchanama Exh.24, it seems that the spot of accident is shown on the extreme left-hand side of the road proceeding towards Kelwad. While drawing spot panchanama by the Police and panchas, both the vehicles were found on the extreme left-hand side of the road. Therefore, apparently, the Alto was being driven on the right-hand side, i.e. wrong side of the road, at the time of the accident. Therefore, I am of the view that the petitioner has probalilized his contention that the said accident took place due to the rash and negligent driving by its driver, wherein no negligence of the petitioner is seen.

15] The testimony of the petitioner that in the said

accident, he suffered injuries is corroborated by his medical case papers. PW-4 Dr. Niraj Gupta, the Medico Legal Consultant and CMO in Seven Star Hospital, deposed that the petitioner was admitted to his Hospital on 01.12.2020 with a history of road traffic accident, sustained fracture injury to the right femur shaft, and head injury. On 05.12.2020, surgery was performed, and nailing was done and was discharged on 11.12.2020. The testimony of PW-4 Dr. Niraj Gupta is further corroborated by the discharge card of the petitioner Exh.69, issued by Seven Star Hospital. Therefore, the petitioner has probalitized his contention that in the said vehicular accident, he sustained grievous injuries.

16] The petitioner also examined PW-5 Dr. Bhatnagar, the Orthopaedic Surgeon, who examined the petitioner on 12.08.2021 and assessed his permanent disability to the extent of 15% and issued him a permanent disability certificate Exh.71 in form Comp. B. However, the disability certificate Exh.71 does not bear either the signature of the petitioner or his photograph. The petitioner was examined by PW-5 Dr. Bhatnagar within a few months of the vehicular accidental injuries. However, PW-5 Dr. Bhatnagar has not mentioned in the permanent disability certificate (Exh.71), issued by him to the petitioner, on what assessment he has come to the conclusion that the petitioner has suffered permanent impairment of power to his right lower limb. Therefore, the permanent disability caused to the petitioner cannot be blindly accepted to be of 15%. As such, my answer to issue Nos. 1 & 2 in the affirmative and issue No.3 in the negative.

**As to Issue No.4:**

17] The respondents have not disputed that at the time of accident the Alto was owned by the respondent No.1 and insured with respondent No.2. The basic contention of the respondent insurance company is that at the time of accident the driver of the Alto was not holding a valid and effective driving license, authorizing him to drive the Alto, resulting into breach of terms and conditions of the policy of insurance of the Alto.

18] The respondent insurance company also relied on the deposition of RW-1 Pandurang, examined in connected in MACP No.783 of 2020. Wherein, RW-1 Pandurang, Junior Clerk in RTO Chhindwada (M.P.), has proved the extract of driving license Exh.88, issued by the licensing Authority Chhindwada (M.P.) in the name of Chandrashekhar. The RW-1 Pandurang deposed that Chandrashekhar was holding learners driving license valid from 08.11.2020 to 07.11.2021, i.e. on the date of the accident, 01.12.2020. Therefore, as per his testimony, the driver of the Alto was holding a learner's driving license on the date of the accident, i.e. 01.12.2020.

19] The extract of the driving license of Chandrashekhar Hingwe Exh.88 (in MACP 783/20), shows that he was issued a driving license authorising him to drive the light motor vehicle on 01.12.2020. But the fact remains that on the date of the accident, he was holding a learner's driving license authorising him to drive

the light motor vehicle, including the Alto.

20] The respondent insurance company also examined RW-2 Rohit Pathak, at Exh.83, the Legal Manager of the respondent insurance company, who deposed on the line of the written statement of the insurance company. He also proved the policy of insurance Exh.84 of the Alto. The respondent insurance company also relied on the deposition of RW-2 Chandrashekhar (examined in connected MACP No.783 of 2020), wherein he deposed that on the date of the accident, he was driving Alto. However, he also deposed that at the time of the accident, there were four persons sitting in the Alto Car. His cousin brother, Mayur Hingwe, was sitting beside him. Mayur Hingwe was not possessing driving license.

21] Rule 3 of the Central Motor Vehicles Rules, 1989 provides for the general conditions to be followed gaining experience in driving. Therefore, Rule 3 lays down the conditions to be followed by the person holding a learner's driving license. As per Rule 3(b), a person gaining experience in driving should be accompanied by an instructor holding an effective driving licence to drive the vehicle, and such instructor is sitting in such a position to control or stop the vehicle. Rule 3 is reproduced below.

**3. General** – *The provisions of sub-section (1) of section 3 shall not apply to a person while receiving instructions or gaining experience in driving with the object of presenting himself for a test of competence to drive, so long as -*

*(a) such person is the holder of an effective learner's licence issued to him in Form 3 to drive the vehicle;*

*(b) such person is accompanied by an instructor holding an effective driving licence to drive the vehicle, and such instructor is sitting in such a position to control or stop the vehicle; and*

*(c) there is painted, in the front and the rear of the vehicle or on a plate or card affixed to the front and the rear, the letter "L" in red on a white background.*

*Provided that a person, while receiving instructions or gaining experience in driving a motorcycle (with or without a side-car attached), shall not carry any other person on the motorcycle except for the purpose and in the manner referred to in clause (b).*

22] In the case in hand, the driver of the Alto RW-2 Chandrashekhar (examined in MACP No.783 of 2020) has admitted that his cousin brother Mayur was sitting beside him, while he was driving the Alto at the time of the accident, and Mayur was not possessing a driving licence. There is no cross-examination of RW-2 Chandrashekhar by the petitioner as to the said aspect. As such, the respondent insurance company has probabilized their contention that the driver of the Alto, Chandrashekhar, who was possessing a learner's driving licence at the time of the accident, was driving the Alto in violation of the statutory provisions of Rule 3 of the Central Motor Vehicles Rules, 1989, reproduced above.

23] In the policy of insurance of Alto Exh.84, the limitations as to use provide that, the person holding an effective learner's licence may also drive the vehicle and that such a person satisfies the requirements of Rule 3 of the Central Motor Vehicles

Rules, 1989. Therefore, in the case in hand, it is apparent that there was breach of limitations as to the use of Alto and breach of terms and conditions of the policy of insurance of Alto. However, there is no evidence on record to show that the respondent No.1 owner of the Alto was mindful of the fact that the driver of Alto was possessing only learner's driving licence and the person sitting beside him was not holding a valid and effective driving licence at the time of accident. As such, my answer to issue No.4 is in the affirmative.

**As to Issue No.5:**

24] The petitioner has rightly joined the owner and insurer of the Alto as parties to the claim petition. Therefore, I do not find that the petition is bad for the non-joinder of necessary parties. As such, my answer to issue No.5 is in the negative.

**As to Issue No.6:**

25] Relying on the well settled principles led down by the Hon'ble Supreme Court in the case of *National Insurance Co. Ltd. Vs. Swaran Singh ((2004) 3 SCC 297)*, though the respondent insurance company is not liable, but as per the principles of pay and recover (to be paid first by the insurer to the petitioner, the awarded just compensation, and then to recover the same in accordance with law from the owner of the offending insured vehicle at the time of accident). Therefore, the respondent insurance company is liable to pay the amount of awarded just

compensation to the petitioner on the principle of pay and recover.

26] As per the testimony of PW-2 Pankaj Bode, the petitioner has paid around Rs.36,000/- for the purchase of medicines from their pharmacy. As per the testimony of PW-3 Kishor Sasankar, Assistant General Manager of Seven Star Hospital, the petitioner has paid around Rs.20,000/- to the Hospital for radiological investigation and other expenses. As such, the petitioner is entitled to the medical expenses of around Rs.56,000/-, which he has proved to have incurred by him. Having regard to the nature of injuries caused to the petitioner, he is also entitled to compensation of Rs.30,000/- towards pain and suffering and Rs.20,000/- towards permanent disability.

27] The PW-4 Dr. Niraj Gupta, the treating Doctor of the petitioner, has admitted in his cross-examination by the respondent insurance company that the surgery of the petitioner was successful, and after six days of surgery, the petitioner was stable and was discharged. The head injury to the petitioner was minor. There were no blood clots for him. The knee injury caused to the petitioner requires a healing period of up to six months, after which the petitioner can perform his normal activities. PW-4 Dr. Niraj Gupta has not stated that the petitioner has suffered any permanent disability. The testimony of PW-4 Dr. Niraj Gupta is also corroborated by the Medico Legal Certificate (Exh.26) issued by the Medical Officer, Rural Health Centre, Saoner, wherein, the laceration on the forehead caused to the petitioner is referred to as

a simple injury in nature.

28] PW-5 Dr. Bhatnagar has admitted in his cross-examination by the respondent insurance company that the healing period of injuries to the petitioner is three months, and after that, the patient can perform his day-to-day activities. The disability caused to the petitioner is restricted to his particular limb and not to the whole body. He has specifically admitted that the disability assessed by him to the petitioner is only physical in nature and not functional. The petitioner, being of a young age, has faster bone recovery. His condition at the time of his discharge was stable. Therefore, there is no expert medical opinion to show that the vehicular accidental injuries caused to the petitioner resulted in permanent disability restricted to his injured limb and did not cause any functional disability to him.

29] The petitioner, in his cross-examination, has admitted that he came to the Court hall by walking and that he is doing his daily routine activities. Though the petitioner has stated that at the time of the accident, he was doing private work and getting a monthly income of Rs.10,000/-. However, the petitioner has not filed any document on record to show his income.

30] Under such circumstances, I am of the view that the petitioner is not entitled to any future loss of earnings, but is entitled to the loss of earnings of lumpsum amount of **Rs.80,000/-** during the period of his treatment, i.e. period required for healing

of the injuries and to perform his day-to-day activities. The petitioner was young, i.e. 25 years at the time of the accident and was unmarried; therefore, the petitioner is also entitled to compensation of Rs.1,00,000/- towards marriage prospects.

31] Having regard to the fact that the petitioner was resident of Sawanga, District Chhindwada (M.P.) and he is required to come to Nagpur for his treatment and having regard to the nature of pelvic injury caused to him, I am of the view that the petitioner is entitled for compensation of Rs.74,000/- towards conveyance charges, special diet and travelling expenses etc.

32] In the case of *Kajal Vs. Jagdish Chand and Others 2020 (1) T.A.C. 705 (S.C.)*, relied on by the petitioner, the Hon'ble Apex Court in para No.5 of the judgment has held that,

*“The damages may vary according to the gravity of the injuries sustained by the claimant in an accident”.*

In the case cited supra, serious injuries were sustained by the victim, resulting in damage to her brain. Her I.Q. was assessed at less than 20% of a child of her age, and her social age is only that of a 9-month-old child. Therefore, the permanent disability and functional disability were assessed as 100%. However, in the case in hand, having regard to the expert's evidence, the petitioner has not suffered any functional disability. Therefore, the facts of the case cited supra cannot be made applicable to the facts of the case

in hand. As such, the compensation to which the petitioner is entitled can be computed as follows.

Rs.80,000/-	..	Loss of earnings during the period of treatment.
Rs.56,000/-	..	Medical & Medicine expenses.
Rs.30,000/-	..	Pain and suffering.
Rs.20,000/-	..	Towards permanent disability.
Rs.1,00,000/-	..	Towards marriage prospects.
Rs.74,000/-	..	Special diet and travelling expenses, etc.
<b><u>Rs.3,60,000/-</u></b>	..	<b><u>Total amount of compensation (including NFL amount, if any)</u></b>

33] Having regard to my findings on issue No.4, on the principles of pay and recover, the respondent No.2 insurance company is liable to pay the above amount of just compensation to the petitioner, with liberty to recover the same from the respondent No.1 owner of the Alto. As such, my answer to issue No.6 is accordingly.

34] From R and P, it is apparent that the petitioner, too, is an instrument in dragging the claim petition from 2020. As such, the petitioner, in my view, is entitled to interest at the rate of 7% per annum only on the amount of compensation payable to him. As a result, I proceed to pass the following order.

### **ORDER**

- i] Claim Petition is partly allowed with proportionate costs.
- ii] The respondent No.2 at the first instance do pay to the

petitioner **Saurabh S/o. Arvind Bhujade**, an amount of compensation of **Rs.3,60,000/-** (Rupees Three Lakhs Sixty Thousand only) (including the amount received by the petitioner towards the 'No Fault Liability', if any), along with interest at the rate of 7 % per annum thereon, from the date of petition till its realization, which after payment as aforesaid, they may recover the same from the respondent No.1, in accordance with law.

- iii] The Registrar (MACT), Nagpur, to take the account details of the petitioner, which shall be of a Nationalised Bank only, and send it to the respondent No.2, insurance company, for compliance.
- iv] The respondent No.2 insurance company shall deposit the amount awarded in the said bank account of the petitioner, as per this order.
- v] Award be drawn accordingly, but only after the petitioner affixes the deficit court fees, if any, on the amount of awarded compensation.

Nagpur.  
Date : 12/03/2026

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

Case argued on	:	06/01/2026
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 the Judgment are word to word, as per the original Judgment.

Name of Stenographer     Ajay P. Bothe  
(Grade I)