


MHNG010123892023 	Presented on : 04/11/2023
	Registered on: 07/11/2023
	Decided on : 15/04/2026
	Duration : 2 Y : 5 M : 11 Days
	<u>Exhibit No.43</u>

BEFORE THE CHAIRMAN, MOTOR ACCIDENT CLAIMS

TRIBUNAL, NAGPUR

[Presided over by Dinesh P. Surana]

M.A.C.P. No. 1146 of 2023

Neesha D/o Yashwant Meshram,
(Married Name: Neesha W/o
Sandeep Dupatte),
Aged 39 years, Occu. Service,
Through Power of Attorney
Sandeep S/o Walmik Dupatte,
Aged 41 years, Occu. Pvt. Job,

...Petitioner

Both R/o. Plot No.56-A, Amrawati Road,
Near Drugdhamna High School,
Samrat Ashok Nagar, Dawlameti,
Wadi, Nagpur.

// Versus //

- 1] The HDFC Ergo General Ins. Co. Ltd., **...Respondents**
Through its Manager,
Shriram Tower, Behind NIT Build.
Kingsway, Sadar, Nagpur.
- 2] Sheshrao Kashinath Tandulkar,
Aged about Major, Occu. Owner,
R/o. H.No. 1070, Narayan Peth, Near
Wadekar Premnagar, Nagpur.

**[CLAIM PETITION FOR GRANT OF COMPENSATION U/SEC. 164
OF THE MOTOR VEHICLES ACT, 1988]**

Appearances:

Adv. P.S. Mirache for the petitioner.
Adv. Aditya Joshi for the respondent No.1.
Respondent No.2 - Ex-parte.

J U D G M E N T
[Delivered on 15.04.2026]

By this petition under Section 164 of the Motor Vehicles Act (in short "M.V. Act"), compensation of Rs.2.50 Lacs is claimed by the petitioner, on account of vehicular accidental grievous hurt/injury caused to her.

2] It is the case of the petitioner that on 15.09.2023 at 04:00 p.m., she was riding a Honda Activa bearing No. MH-40/BT-0738 (in short, "Activa") from Japanese Garden Square to Telankhedi Futala Road, Nagpur. When she reached near Gajanan Temple, a Car bearing No. MH-40/A-8113 (in short, "Car") came from the opposite direction and gave a forcible dash to her Activa, due to which she suffered grievous injuries. She was admitted to Alexis Hospital, Nagpur, and took further treatment in Kingsway Hospital, Nagpur. Contending that at the time of the accident, the Car was owned by the respondent No.2 and insured with the respondent No.1, insurance company, the petitioner claimed the

statutory fixed compensation of Rs.2.50 Lacs, jointly and severally from the respondents.

3] The respondent No.2 proceeded ex-parte.

4] The respondent insurance company, by way of a written statement Exh.11, by taking general denials and defences, resisted the claim of the petitioner. They specifically contended that the First Information Report was filed belatedly, without a satisfactory explanation for such delay, which raises legitimate doubt about the occurrence of the accident. The driver of the car was not holding a valid and effective driving licence at the time of the accident, resulting in a breach of the terms and conditions of the policy of insurance of the Car, and therefore, they are not liable to pay compensation to the petitioner.

5] To substantiate her contention, the petitioner has examined herself on oath and reiterated her pleadings in the claim petition by way of an evidence affidavit Exh.13. Apart from her oral testimony, she also placed her reliance on the following documents.

- (i) Exh.14 (Form Comp AA);
- (ii) Exh.15 (First Information Report (FIR));
- (iii) Exh.16 (Crime Details Form / Spot panchnama);
- (iv) Exh.17 (Certificate of registration of the Car);
- (v) Exh.18 (Policy of insurance of the Car);
- (vi) Exh.19 (Her Aadhar card);

- (vii) Exh.20 (Her Bank Account);
- (viii) Exh.22 (Certificate of registration of marriage);
- (ix) Exh.24 (Discharge Summary).

6] The respondent insurance company examined RW-1 Mohan M. Kanade at Exh.29, Senior Clerk at RTO Gramin, Nagpur, who deposed that on search in their system, no driving licence was found to be issued in the name of Navinya Ramchandra Shete throughout India. He proved his system search report Exh.31, and the letter issued by ARTO Anup Sanap Exh.32, informing that no driving licence is issued in the name of Navinya Ramchandra Shete.

7] The respondent insurance company also examined Rohit Pathak (RW-2), their Legal Manager, who, by way of evidence affidavit Exh.35, reiterated their pleadings that the driver of the Car was a minor and not holding a valid and effective driving licence on the date of the accident, resulting in breach of policy conditions. He also proved the private car liability only policy Exh.38 of the Car, and a certified copy of the Final Report/Charge-sheet Exh.39, filed against Ramchandra Shete, father of Navinya Shete, for allowing his minor son to drive the Car without holding a driving licence.

8] Heard arguments advanced by Adv. P.S. Mirache for the petitioner. He submitted that the injuries caused to the petitioner are grievous in nature, and is arising out of the use of the Car. That the driver of the Car was a minor and not holding a valid

driving licence at the time of the accident, still there is no evidence to show that the respondent No.2, owner of the Car was mindful of the said fact, and therefore, on the principle of “pay and recover”, respondent insurance company should be ordered to pay the statutory fixed compensation to the petitioner, which they may recover from the owner of the Car.

9] As against this, Adv. Aditya Joshi for the respondent insurance company submitted that the driver of the Car was admittedly a minor at the time of the accident, and therefore, was not eligible to get a driving licence at the time of the accident. As such, there is an apparent breach of the terms and conditions of the policy of insurance of the Car, and therefore, they are not liable to pay compensation to the petitioner.

10] Based on the rival contentions, evidence, and material on record, I record my findings on the Issues at Exh.12 for the reasons discussed thereunder.

	<u>I S S U E S</u>		<u>F I N D I N G S</u>
1]	Does the petitioner prove that on the given date, time, and place, she suffered grievous injuries in an accident arising out of the use of the Car?	..	<u>In the affirmative</u>
2]	Whether the respondent insurance company proves that the driver of the Car was not holding a valid and effective driving licence at the time of the accident, resulting in a breach of the	..	<u>In the affirmative</u>

	terms and conditions of the insurance policy of the Car?		
3]	To what compensation and from whom, the petitioner is entitled?	..	<u>As per the final order</u>
4]	What award?	..	<u>As per the final order</u>

REASONS

As to Issue No.1:

11] Petitioner herself is an eyewitness to the alleged accident. She pleaded and testified as to the manner of the accident. According to her, on the given date, time, and place, the Car gave a dash to her Activa. The testimony of the petitioner as to the manner of the accident is corroborated by the police case papers. The FIR Exh.15 shows that based on the information given by the petitioner about the accident within an hour of the alleged accident, offence vide Crime No.641 of 2023, punishable under Sections 279, 338 of the I.P. Code, was registered against the driver of the Car for causing the said accident and accidental injuries to the petitioner. The police, in the presence of the panchas, also prepared a spot panchnama of the spot of the accident, where they noticed both the vehicles, i.e. Activa and the Car, at the spot of the accident. Moreover, from the final report Exh.39, it is apparent, that after due investigation in the said crime, police filed Final Report/Charge-sheet against the driver of the Car, as a child in conflict with law, before the Juvenile Justice Board, and against

Ramchandra Shete for allowing his minor son to drive the Car, though he was not holding a valid and effective driving licence at the time of the accident. As such, the petitioner has probalibilized that the said accident took place out of the use of the Car.

12] The petitioner pleaded and testified that in the said vehicular accident, she suffered abdominal injury, right shoulder fracture, left femur fracture, right pelvic fracture, and polytrauma. Her testimony is corroborated by her discharge summary Exh.24, issued by KIMS – Kingsway Hospitals, wherein the petitioner was diagnosed with a road traffic accident, abdominal injury (MD81), shoulder fracture right (S42.11), femur fracture left (NC72), pelvic fracture right (NB52) and polytrauma.

13] Section 164 of the M.V. Act was substituted by the Motor Vehicles (Amendment) Act, 2019 (Act 32 of 2019), and came into force with effect from 01.04.2022. It provides for grant of fixed amount of compensation of Rs.5 Lacs in the case of death to the legal heirs, or Rs.2.50 Lacs in the case of grievous hurt to the victim, to be paid by the owner of the motor vehicle, or authorised insurer, if the accident is proved to be caused arising out of the use of the motor vehicle. Section 164(2) of the M.V. Act gives an immunity to the claimant not to plead or establish that the death or the grievous hurt, in respect of which the claim is made under Section 164 of the M.V. Act, was due to a wrongful act, neglect or default of the owner of the vehicle. Section 164 of the M.V. Act is reproduced below.

164. Payment of compensation in case of death or grievous hurt, etc. –

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or grievous hurt due to any accident arising out of the use of motor vehicle, a compensation, of a sum of five lakh rupees in case of death or of two and a half lakh rupees in case of grievous hurt to the legal heirs or the victim, as the case may be.

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or grievous hurt in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or of the vehicle concerned or of any other person.

(3) Where, in respect of death or grievous hurt due to an accident arising out of the use of motor vehicle, compensation has been paid under any other law for the time being in force, such amount of compensation shall be reduced from the amount of compensation payable under this section.

14] The term “grievous hurt” is defined in Chapter XI, Section 145(c) of the M.V. Act and is given the same meaning as assigned to it in section 320 of the I.P. Code.

145. Definitions. - *In this Chapter, - (c). “grievous hurt” shall have the same meaning as assigned to it in section 320 of the Indian Penal Code.*

15] Therefore, grievous hurt defined in Section 320 of the I.P. Code is to be taken into consideration for the grant of compensation under Section 164 of the M.V. Act. Section 320 of the I.P. Code is reproduced below.

320. Grievous hurt. - *The following kinds of hurt only are*

designated as “grievous”:

First. - Emasculation.

Secondly. - Permanent privation of the sight of either eye.

Thirdly. - Permanent privation of the hearing of either ear.

Fourthly. - Privation of any member or joint.

Fifthly. - Destruction or permanent impairing of the powers of any member or joint.

Sixthly. - Permanent disfiguration of the head or face.

Seventhly. - Fracture or dislocation of a bone or tooth.

Eighthly. - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

16] In the case in hand, the petitioner has proved that she has suffered fracture injuries to her bones, which fall under the definition of grievous hurt. As such, the petitioner has also probalilized her contention that in the said vehicular accident, she suffered grievous hurt/injury. As such, my answer to Issue No.1 is in the affirmative.

As to Issue No.2:

17] There is no bar for the respondent insurance company, under Section 170 of the M.V. Act, if impleaded as a party to the claim petition, to contest the claim on all or any of the grounds available to the person against whom the claim has been made. Section 170 of the M.V. Act is reproduced below.

170. Impleading insurer in certain cases. - *Where in the course of any inquiry, the Claims Tribunal is satisfied that -*

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 150, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made.

18] Irrespective of the fact that the petitioner under Section 164(2) of the M.V. Act is not required to plead or establish that the vehicular accident has occurred due to any wrongful act, or neglect, or default of the owner of the motor vehicle, or of the vehicle concerned, or of any other person, still there is no bar for the respondent insurance company to contest the claim against all or any of the available grounds. As such, the respondent insurance company can contest the claim on the grounds of breach of the terms and conditions of the policy of insurance.

19] To substantiate their contention that the driver of the Car was not holding a valid and effective driving licence at the time of the accident, the respondent insurance company has examined RW-1 Mohan Kanade, Senior Clerk at RTO Gramin, Nagpur. He deposed that from the search taken by him in their system, it was found that no driving licence was issued in the name of Navinya Ramchandra Shete throughout India. His testimony is corroborated by the documentary evidence, i.e. letter Exh.32 issued by ARTO, Nagpur Gramin, who has informed this Tribunal about the non-possession of the driving licence by the driver of the Car. In Form

Comp AA Exh.14, police had specifically mentioned that at the time of the accident, the driver of the Car was Navinya Ramchandra Shete, and he was 17 years old (i.e., a minor), and was not possessing any driving licence. Moreover, in the Charge-sheet Exh.39 filed by the police in respect of the said accident, offence punishable under Sections 3 r/w 181 and 5 r/w 180 of the M.V. Act are also registered against the driver of the Car, i.e. child in conflict with law, for driving the Car without holding a driving licence, and his father Ramchandra Shete, for allowing his minor son to drive the Car, though he was not holding a valid and effective driving licence. As such, from the oral evidence as well as the documentary evidence, it is apparent that the driver of the Car was not holding a valid and effective driving licence, and was not even eligible to get the driving licence for driving the Light Motor Vehicle, including the car. By way of cross-examination of both the witnesses, examined by the respondent insurance company, the petitioner was unable to discharge the burden, which was shifted on him, as to whether the driver of the Car was holding a driving licence at the time of the accident.

20] The policy of insurance of the Car Exh.38 clearly lays down the limitations as to use, which is reproduced herein below.

Persons or Class of Persons entitled to drive: Any person including the insured, provided that a person driving holds an effective driving licence at the time of the accident and is not disqualified from holding or obtaining such a licence. Provided also 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.

21] As such, the respondent insurance company has probabilized their contention of breach of terms and conditions of the policy of insurance by proving that the driver of the Car was not holding a valid and effective driving licence at the time of the accident. As such, my answer to Issue No.2 is in the affirmative.

As to Issue No.3:

22] Petitioner, in my view, is entitled to statutory fixed compensation of Rs.2.50 Lacs. However, having regard to my findings on Issue No.2, the core question is, who is liable to pay compensation to the petitioner?. Like Section 164, Section 150 was also substituted by the Motor Vehicles (Amendment) Act, 2019 (Act 32 of 2019), and came into force with effect from 01.04.2022. It imposes a duty on insurers to satisfy judgments and awards against persons insured in respect of third party risks. Section 150 of the M.V. Act is reproduced below.

150. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks. -

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 164 is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the award any sum not exceeding the sum assured payable

thereunder, as if that person were the decree holder, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as its execution is stayed pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto, and to defend the action on any of the following grounds, namely: -

(a) that there has been a breach of a specified condition of the policy, being one of the following conditions, namely: -

(i) a condition excluding the use of the vehicle –

(A) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward; or

(B) for organised racing and speed testing; or

(C) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle; or

(D) without side-car being attached where the vehicle is a two-wheeled vehicle; or

(ii) a condition excluding driving by a named person or by any person who is not duly licenced or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification or driving under the influence of alcohol or drugs as laid down in section 185; or

(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by nondisclosure of any material fact or by representation of any fact which was false in some material particular; or

(c) that there is non-receipt of premium as required under section 64VB of the Insurance Act, 1938.

(3) Where any such judgment or award as is referred to in sub-section (1) is obtained from a court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 conclusive as to any matter adjudicated

upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 and whether or not that person is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment or award were given by a court in India:

Provided that no sum shall be payable by the insurer in respect of any such judgment or award unless, before the commencement of the proceedings in which the judgment or award is given, the insurer had notice through the court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby, by reference to any condition other than those in sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect.

(5) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

(6) If on the date of filing of any claim, the claimant is not aware of the insurance company with which the vehicle had been insured, it shall be the duty of the owner of the vehicle to furnish to the tribunal or court the information as to whether the vehicle had been insured on the date of the accident, and if so, the name of the insurance company with which it is insured.

Explanation. - For the purposes of this section, -

(a) "award" means an award made by the Claims Tribunal under section 168;

(b) "Claims Tribunal" means a Claims Tribunal constituted under section 165;

(c) "liability covered by the terms of the policy" means the liability which is covered by the policy or which would be so covered but for the

fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy; and

(d) "material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he shall take the risk and, if so, at what premium and on what conditions.

23] Petitioner is admittedly a third party to the Car. As such, in view of Section 150 of the M.V. Act, the respondent insurance company is duty bound to first satisfy the petitioner for the amount of awarded compensation.

24] Form Comp AA Exh.14 also show that at the time of the accident, the respondent No.2 was the owner of the Car. The policy of insurance Exh.38, proved by the respondent insurance company, shows that the respondent No.2 was insured under the said policy for the said Car. The certificate of registration of the Car also shows the respondent No.2 as the registered owner of the Car. The respondent insurance company has not led any evidence to show that the registered owner of the Car, respondent No.2 was mindful of the fact that the driver of the Car was not holding a valid and effective driving licence at the time of the accident. Under such circumstances, the principle of “pay and recover”, which is applied even in the case of fault liability, can be applied to the claim petitions under no fault liability too, i.e. under Section 164 r/w Section 150 of the M.V. Act.

25] The Hon’ble Supreme Court in the case of *Jawahar Singh Vs. Bala Jain and others*, [2011 (3) T.A.C. 12 (S.C.)], has held that, since the motorcyclist was a minor, it was the

responsibility of the petitioner to ensure that his motorcycle was not misused and that to by a minor who had no licence to drive the same. But the Tribunal was held to be right in saddling liability for payment on the petitioner, who was the owner of the offending motorcycle being driven by the minor, who was found contributory negligent in causing the said accident and directing the insurance company to pay the awarded amount of compensation to the victim and to recover the same from the petitioner/owner of the vehicle.

As such, the respondent insurance company at the first instance can be directed to pay the above amount of compensation to the petitioner, with liberty to recover the same from the respondent No.2, registered owner of the Car, by filing an execution proceeding, based on the principle of “pay and recover”. As such, my answer to Issue No.3 is accordingly in the affirmative. In the result, I proceed to pass the following order.

ORDER

i] Petition is allowed with costs.

ii] The Respondent No.1 insurance company at the first instance, on the principle of “Pay and Recover” do pay to the petitioner, an amount of statutory fixed compensation of **Rs.2.50 Lacs** (Rupees Two Lacs Fifty Thousand only), along with interest thereon at the rate of 7.5% per annum, from the date of petition, till its realization, which after payment as aforesaid, they may recover the same from the respondent No.2, the registered owner

of the Car, in accordance with law.

- iii] The respondent No.1 insurance company shall deposit the amount of compensation of the petitioner into her bank account.

Account Holder's Name	Account No.	Bank Name	IFSC Code
Nisha Yashawant Meshram	33916294214	State Bank of India, Kingsway, S.V. Patel Marg, Nagpur	SBIN0063868

- iv] Award be drawn accordingly, but only after the petitioner affixes the deficit court fees, if any, on the amount of awarded just compensation.

Nagpur.
Date: 15/04/2026

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

Case argued on	:	02/01/2026
Judgment dictated on	:	15/04/2026
Transcription ready on	:	15/04/2026
Judgment checked and digitally signed on	:	15/04/2026

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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 (Grade I) : Prashant P. Yenurkar