

MHNS010062742023



Received on :- 25/09/2023

Registered on :- 05/10/2023

Decided on :- 12/03/2026

Duration :- Y. M. D.
02 05 15**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, NASHIK,
AT NASHIK**

(Presided over by S.D.Jagmalani)

Motor Accident Claim Petition No.951/2023.**Exh.37.**

Tushar Narayan Nikam,
Age :- 39 yrs., Occ.:- Business,
R/o. Aai Row bungalow,
Matoshri Nagar, Makhamalabad Road,
Nashik.

Petitioner**Versus**

- 1] Ramesh Khanderao Kale,
Age :- Major, Occ.:- Vehicle owner,
R/o. Sarvadnya Park, Ambad Link
Road, Uttam Nagar, Opp. Shubham
Park, Cidco, Nashik,
- 2] Divisional Manager,
ICICI Lombard General Insurance
Company, Address :- Woodland
Tower, Old Gangapur Naka,
Gangapur Road, Nashik.

Respondents**Appearance :-**

Mr. A.N. Vighne, learned Advocate for petitioner.

Petition proceeded ex-parte against respondent No.1.

Mr. S.G. Ashtaputre, learned Advocate for respondent No.2.

J U D G M E N T(Delivered on this 12th day of March, 2026)

1] Present petition is filed u/s.166 of the Motor Vehicles Act for grant of compensation on account of permanent disability sustained by the petitioner in an accident occurred on dated 23/05/2023.

The facts of case, in brief, are as follows :-

2] That, on dated 23/05/2023, petitioner travelling in Ertiga car bearing No.MH-15/FF-0935 was proceeding from Ghoti to Nashik. On the way truck bearing No.MH-40/AK-6147 came from wrong side very rashly and given dash to the car of the petitioner, due to which petitioner had sustained grievous injuries. After the accident, petitioner was shifted to Uma Hospital for medical treatment. According to petitioner, accident took place due to negligent act of the driver of said truck. The said truck was belonged to respondent No.1 and at the relevant time, it was insured with respondent No.2.

3] On the day of accident, petitioner was aged about 39 years. He was doing business of onion and earning Rs.8,13,587/- per annum. However, due to accidental injuries, he has sustained permanent disability, therefore, now he is unable to do any work for his livelihood. Therefore, petitioner has calculated the amount of compensation towards loss of his future earning at Rs.15 Lakhs, however, he has restricted his claim to the extent of Rs.1 Lakh towards compensation

alongwith interest @ 18 % p.a. from both the respondents jointly and severally.

4] In spite of service of notice, respondent No.1 remained absent, hence, petition came to be proceeded ex-parte against him.

5] Respondent No.2 has filed its written statement (Exh.11) thereby denied the accident as alleged by the petitioner. There was 2 days delay in lodging the report, which remained unexplained. It was submitted that accident took place due to negligent act of the driver of the said car. It was further submitted that, the driver of respondent No.1 had no valid and effective motor driving licence. Respondent No.1 has breached the terms and conditions of insurance policy. Thus, taking all such general and statutory defences, it was submitted that, respondent No.2 is not liable to pay any compensation to the petitioner and prayed for the dismissal of the petition.

6] In view of rival pleadings of the parties, following issues (Exh.12) were framed and this Tribunal has recorded the findings with reasons thereon as follows :-

<u>Sr. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
[1]	Whether due to rash and negligent driving of Hyva Truck bearing No.MH-40/AK-6147 accident occurred and as a consequence thereof petitioner,	

	proceeding by Ertiga car bearing No. MH-15/FF-0935, sustained permanent disability due to accidental injuries ?	..	<u>Partly in affirmative.</u>
[2]	Whether respondent No.2 proves that respondent No.1 has committed the breach of terms and conditions of insurance policy ?	..	<u>In the negative.</u>
[3]	Whether the petitioner is entitled to get the compensation ? If yes, what should be the quantum ?	..	<u>Yes.</u> <u>As per final order.</u>
[4]	Who is liable to pay compensation ?	..	<u>Both the respondents.</u>
[5]	What order ?	..	<u>As per final order.</u>

REASONS

As to Issue No.1 :-

7] In order to prove the accident, petitioner has examined himself and placed on record his affidavit (Exh.13), in which he has reiterated the contents of petition. In support of such contentions, he placed reliance upon documents such as copy of F.I.R. (Exh.16), spot panchnama (Exh.17), vehicle particulars (Exh.18), discharge summary (Exh.19) and his Aadhar card (Exh.20). In the cross-examination he admitted that he was sitting beside the driver in the Ertiga car. The accident had occurred during night and at that time he was sleeping. He further admitted that in the spot panchnama (Exh.17) police did not show the spot of accident.

8] Petitioner has not examined any other witness to prove the accident, however, it is pertinent to note that, in the case of **United India Insurance Co. Ltd. Vs. Vajarabai Narayan Sadaram**¹, relying upon the legal preposition laid down by the Hon'ble Apex Court in **Bimla Devi Vs. Himachal State Road Transport Corpn.**², it is held that, a strict proof of an accident caused by a particular vehicle in a particular manner may not be possible to be proved by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. In the said case, Hon'ble High Court has taken into consideration the report under Sec. 174 of the Cr.P.C. arrived at by the investigating agency regarding negligence on the part of driver of offending vehicle.

9] It appears from the record that in the present case, there is delay of 2 days in lodging the report, however, in **Ravi Vs. Badrinarayan**³, it is held by the Hon'ble Apex Court that, delay in lodging F.I.R. cannot be a ground to doubt claimant's case. Claimants are not expected to act mechanically with promptitude in lodging the F.I.R. with the police. Delay in lodging the F.I.R. cannot be a ground to deny justice to the victim. In cases of delay, the Courts are required to examine the

1 2022(1) T.A.C. 521 (Bom.)

2 (2009) 13 SCC 530

3 2011(1) TAC 867(SC)

evidence with a closer scrutiny and in doing so; the contents of the F.I.R. should also be scrutinized more carefully. If Court finds that there is no indication of fabrication or it has not been concocted or engineered to implicate innocent persons then, even if there is a delay in lodging the F.I.R., claim case cannot be dismissed merely on that ground. In the present case, though there is delay of two days in filing the report, however, in the report itself the registration number of the offending vehicle as well as name of its driver have been duly mentioned. Therefore, only for the delay in lodging the report, the oral testimony of petitioner cannot be disbelieved.

10] Now so far as permanent disability is concerned, petitioner has examined (PW3) Dr. Kapil Prakash Kapadnis. He deposed that, on 23/05/2023 petitioner was admitted in Uma Hospital, Nashik for treatment due to injuries sustained in road traffic accident. Petitioner had sustained left acetabulum fracture and right hip dislocation. The said injuries were grievous in nature. He had given medical treatment to the petitioner. Petitioner was discharged from the hospital on dated 05/06/2023. Petitioner has sustained 40% disability. Accordingly, he issued disability certificate (Exh.31). According to him, there is less possibility of recovery of the petitioner.

11] In cross-examination (PW3) Dr. Kapadnis admitted that, he did not mention the word 'permanent' in the aforesaid

disability certificate. He further admitted that, if the scientific tools are used, its exact disability can be assessed. He did not mention the tools and scientific tests which he performed upon the petitioner while assessing his disability. He did not carry out the test for which the petitioner was taking treatment for numbness. He did not mention the nature of work of the petitioner. He admitted that, it was not case of mal-union of fracture. The said injuries have been healed and the fracture has been united. He admitted that, he assessed the said disability for particular limb and not for the whole body.

12] It is pertinent to note that, (PW3) Dr. Kapadnis is the treating doctor and he had given treatment to the petitioner by visiting Uma hospital. However, there are certain rules and regulations for the assessment of permanent disability and the certificate should be issued in the prescribed format. Admittedly, (PW3) Dr. Kapadnis did not issue the certificate (Exh.31) in prescribed format. Even he did not mention that, the petitioner has sustained permanent disability. He had assessed the said disability for the particular limb and not for the whole body. Petitioner did not get himself examined from the Medical Board of the Civil Hospital for assessment of his permanent disability. Therefore if the assessment of his whole body is carried out, it would reveal that, petitioner has sustained less than 40% disability, as assessed by (PW3) Dr. Kapil Kapadnis. Thus, it reveals from the record that, petitioner has sustained disability

due to the rash and negligent driving of the truck bearing No.MH-40/AK-6147 by the driver of respondent No.1. Hence, I answer issue No.1 partly in the affirmative.

As to Issue No.2 :-

13] It was submitted by respondent No.2 that, the driver of respondent No.1 was not holding valid and effective motor driving licence thereby committed breach of terms and conditions of insurance policy. However, in support of such contention, it did not place any cogent evidence on record. Nothing is revealed from the record that respondent No.1 has breached the terms and conditions of the insurance policy. Hence, I record my findings to issue No.2 in the negative.

As to Issue No.3 :-

14] It is well settled principle that in granting compensation for personal injury, the injured has to be compensated [1] for pain and suffering; [2] for loss of amenities; [3] shortened expectation of life, if any; [4] loss of earning or loss of earning capacity or for both; and [5] medical treatment and other special damages. While granting compensation, it is necessary to note the principles laid down by the Hon'ble Apex Court in the case of **Rajkumar vs Ajay Kumar**⁴, in respect of assessment of loss of future earning of the injured. It is held that the loss of earning capacity is something different, that will have to be assessed by the Tribunal with reference to

the evidence in entirety. The tribunal is required to assess the effect of permanent disability on the earning capacity of the injured. Therefore, bearing aforesaid principles in mind, it will be necessary to appreciate evidence for determining just and reasonable compensation to be awarded to the petitioner.

15] Since petitioner has sustained disability, he is entitled for pecuniary and non-pecuniary compensation. According to petitioner, he was doing business of onion and earning Rs.8,13,587/- per annum and now he is unable to do any work for his livelihood. He has placed on record copy of income tax return for the assessment year 2023-24. The accident took place on dated 23/05/2023. It appears that, he has submitted the income tax return for the year 2023-24 on dated 30/07/2023, after the accident. In the cross-examination he admitted that, he was ready to produce the income tax return of the period prior to the accident, of the year 2022-23 and after the accident, for the assessment year 2024-25, which are very necessary to appreciate the loss of his future earning capacity. However, he did not place on record income return of the period prior to the accident and of the next assessment year. He has withheld those material documents, therefore in absence of trustworthy evidence, no inference can be drawn that now petitioner is unable to do any work for his livelihood. It appears that, he was earning Rs.8,000/- per month and looking to the

disability, it would be appropriate to hold that, he had sustained 25% functional disability.

16] So far as pecuniary damages are concerned, petitioner has examined (PW2) Akash Bandawane, the Manager of Uma Hospital. He deposed that, the petitioner was admitted in the said hospital and had purchased medicines from Uma Medicos. Accordingly, 13 bills (Exh.25) were issued of total worth Rs.66,830/-. Four bills (Exh.26) of worth Rs.6,050/- were also issued by Pratham Pathology. Petitioner has also paid the amount of Rs.2,50,000/- towards hospital bill (Exh.24). Petitioner has also placed on record medicines bills (Exh.33 collectively) of worth Rs.34,701/-. There is no reason to disbelieve his testimony. Thus, it appears that, petitioner has incurred the total amount of Rs.3,57,581/- towards medical expenses.

17] On the day of accident, petitioner was aged about 39 years. Therefore, considering the principles and guidelines laid down by the Hon'ble Apex Court in the case of **Smt. Sarla Verma & Ors. Vs. Delhi Transport Corporation and Anr⁵**, and **National Insurance Company Limited Vs. Pranay Sethi and Others⁶**, multiplier of '15' will be applicable and additional 40% amount towards the future prospects is required to be added.

⁵ 2009(4) ALL MR 429

⁶ 2017 (4) T.A.C.673 (S.C.)

18] Thus, the loss of dependency would be Rs.8,000/- X 25% = Rs.2,000/- x 12 x 15 = Rs.3,60,000/-. In addition to this compensation, petitioner is entitled for 40% towards future prospects, which comes an amount of Rs.1,44,000/-. So also, he is entitled for Rs.25,000/- towards pain, suffering, mental and physical shock, hardship, inconvenience, discomforts and attendant charges. Petitioner is also entitled for medical expenses total of Rs.3,57,581/-. So the petitioner is entitled to get the total compensation amount of Rs.8,86,581/- alongwith interest @ 7% p.a. from the date of petition till its realization. Hence, I answer issue No.3 accordingly.

As to Issue No.4 :-

19] The offending vehicle was owned by respondent No.1 and at the relevant time it was insured with respondent No.2, hence, both the respondents are jointly and severally liable to pay compensation to the petitioner. Hence, I answer issue No.4 accordingly.

As to Issue No.5 :-

20] In view of the findings recorded above, petition deserves to be allowed. Accordingly, I proceed to pass the following order :-

ORDER

- [1] Petition is hereby allowed with proportionate costs.
- [2] Petitioner is entitled to get compensation amount of Rs.8,86,581/- (Rupees Eight Lakhs Eighty Six Thousand Five Hundred Eighty One only)[including amount of No fault liability] along-with interest at the rate of 7% p.a. from the date of petition till its actual realization.
- [3] Both the respondents severally and jointly do pay the compensation amount to the petitioner.
- [4] Respondents are directed to deposit the amount of award by way of NEFT / RTGS in the account of Tribunal bearing CA A/c No. 00000033377237119, IFSC Code No. SBIN0000437 State Bank of India, Treasury Branch, Nashik alongwith prescribed format to the Tribunal and shall send copy of same to the petitioner. It be paid to the petitioner on his due verification as per rules.
- [5] Petitioner shall produce his bank account details along with either a certificate of the banker giving all details of the bank account including IFS Code or a copy of a cancelled cheque of his bank account.
- [6] Award be drawn up accordingly on payment of deficit Court fees within one month from the date of order.
- [7] M.A.C.P No.951/2023 is disposed of accordingly.
(Dictated, delivered and pronounced in an open Court.)

Date :- 12/03/2026.

Nashik.

(S.D.Jagmalani)
Member,
Motor Accident Claims Tribunal,
Nashik.