MHPA100002262022	Received on	:	17/03/2022		
	Registered on	:	17/03/2022		
	Decided on	:	08/07/2026		
	Duration	:	04 Years	03 Months	21 Days
	Exhibit No.	:	62		

<u>IN THE COURT OF THE MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL, GANGAKHED,</u>
<u>TALUKA GANGAKHED, DISTRICT PARBHANI</u>
(Presided over by Virbhadra M. Sundale)

<u>Motor Accident Claim Petition No. 8/2022</u>

1.	Venubai w/o Uttamrao Raut Age: 50 Yrs., Occ: Household,	
2.	Govind s/o Uttamrao Raut Age: 22 Yrs., Occ: Education,	
3.	Gopal s/o Uttamrao Raut, Age: 20 Yrs., Occ: Education,	
	All R/o: Sategaon, Tq. Palam, District Parbhani.	**PETITIONERS**
	<u>VERSUS</u>	
1.	Kishanrao s/o Keshavrao Dhakane Age: 50 years, Occ: Business R/o Kaedhare Wadi Kandhar, Tq. Kandhar, Dist: Nanded	
2.	Cholamandalam MS General Insurance Company Through Its Branch Manager CTS No. 14536, 3rd Floor, Oberai Towers, Civil Line, Jalna Road, Opposite Hotel Amarprit, Aurangabad.	**RESPONDENTS**

Claim for Rs. 97,00,000/-.
Petition under Section 166 of the Motor Vehicles Act, 1988.

APPEARANCE: Advocate Mr. D.V.Dabhade for petitioners.
Adv. Mr. Ajay Vyas for respondent No.2.

J U D G M E N T
(Delivered on 8th day of July, 2026)

01. The petitioners have filed the present petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.97,00,000/-, together with interest at the rate of 12% per annum from the date of the accident till realization and costs, on account of the death of Uttam S/o Shahuji Raut in a motor vehicle accident alleged to have occurred on 05.07.2021.

02. The case of the petitioners, in brief, is that petitioner No.1 is the widow of deceased Uttam S/o Shahuji Raut, whereas petitioner Nos.2 and 3 are his sons. The deceased was serving as a Head Master at Zilla Parishad Primary School, Mumbar, Taluka Purna, Dist: Parbhani and was earning a monthly salary of about Rs.80,000/-. On 05.07.2021, after attending official work at the office of the Block Education Officer, Purna, he was returning to his native village Sategaon on his motorcycle bearing registration No. MH-22-AT-3591. At about 5.30 p.m., when he reached near Bombay Bridge on the Purna–Tadkalas Road, Truck bearing registration No. MH-26-BE-8185 allegedly came from the opposite direction in a rash and negligent manner and dashed against his motorcycle. Due to the impact, the deceased along with his motorcycle fell into a ditch of about 30 feet and sustained grievous injuries. He was immediately shifted to Government Hospital, Purna, and thereafter referred to

Civil Hospital, Nanded, where he was declared dead after medical examination. According to the petitioners, the accident occurred solely due to the rash and negligent driving of the offending truck. It is further contended that respondent No.1 is the owner and respondent No.2 is the insurer of the offending truck and, therefore, both are jointly and severally liable to compensate the petitioners.

03. It is further the case of the petitioners that after the funeral ceremonies, the nephew of the deceased lodged a report before Police Station, Purna, against the driver of the offending truck, on the basis of which Crime No.275 of 2021 came to be registered for the offences punishable under Sections 279, 338 and 304-A of the Indian Penal Code. The deceased was about 53–54 years of age at the time of the accident and was the sole earning member of the family. Petitioner No.1 is a homemaker, whereas petitioner Nos.2 and 3 were students and were entirely dependent upon the earnings of the deceased for their livelihood. The petitioners contend that because of the untimely death of the deceased, they have suffered substantial pecuniary as well as non-pecuniary loss. They have claimed compensation towards loss of dependency, consortium, loss of love and affection, transportation of the dead body and funeral expenses. According to them, the deceased had a bright future and would have continued to earn substantially had the accident not occurred. On these averments, the petitioners have sought compensation of Rs.97,00,000/- together with interest and costs from the respondents, holding them jointly and severally liable.

04. Respondent No.1 has resisted the claim petition by filing his written statement and has denied the material averments made

therein. It is contended that the accident did not occur due to the rash and negligent driving of Truck No. MH-26-BE-8185 as alleged by the petitioners. According to respondent No.1, on the date of the accident it was raining and the deceased was under the influence of liquor. It is further contended that the deceased himself lost control over his motorcycle and dashed against the oncoming truck, and, therefore, the accident occurred solely due to his own rash and negligent driving. Respondent No.1 has denied the petitioners' averments regarding the age, occupation and monthly income of the deceased and has contended that the deceased was merely a labourer earning about Rs.300/- per day. While admitting that a criminal case came to be registered against the truck driver, respondent No.1 has asserted that such registration was only because the offending vehicle was a heavy vehicle and the same does not establish negligence on the part of the truck driver. Respondent No.1 has, however, admitted that he is the owner of Truck No. MH-26-BE-8185 and that the said vehicle was duly insured with respondent No.2 on the date of the accident. On these grounds, respondent No.1 has prayed for dismissal of the claim petition with costs.

05. Respondent No.2–Insurance Company has contested the claim petition by filing its written statement and has denied all the material averments made therein. It is contended that the petition is not maintainable either in law or on facts and that the petitioners are put to strict proof of all their assertions. The Insurance Company has questioned the existence and validity of the insurance policy in respect of Truck bearing registration No. MH-26-BE-8185, contending that the alleged policy could not be traced in its records and calling upon respondent No.1 to produce the original insurance policy.

Without prejudice to the aforesaid contention, respondent No.2 has raised statutory defences under Sections 147 and 149 of the Motor Vehicles Act by alleging that the driver of the offending truck was not holding a valid and effective driving licence and that the vehicle was not possessing a valid permit and fitness certificate on the date of the accident. It is further contended that the insured had committed breach of the terms and conditions of the policy and had also failed to comply with the statutory obligations under Section 134(c) of the Motor Vehicles Act. The Insurance Company has also alleged non-compliance with Section 158(6) of the Motor Vehicles Act by the concerned police authorities in not forwarding the relevant documents. On these grounds, it has sought to absolve itself of any statutory liability to indemnify the insured.

06. Respondent No.2 has further denied the involvement of the offending Truck bearing registration No. MH-26-BE-8185, the manner in which the accident is alleged to have occurred, as well as the age, occupation and monthly income of the deceased. It has also questioned the delay in lodging the First Information Report and has put the petitioners to strict proof of all the facts pleaded in the claim petition. According to respondent No.2, the accident occurred due to the negligence of the deceased himself, who was allegedly riding Motorcycle bearing registration No. MH-22-AT-3591 without a valid driving licence, without wearing a helmet and without insurance, and therefore the principle of contributory negligence is attracted. It is further contended that the owner and insurer of the said motorcycle have not been impleaded as parties to the proceedings, resulting in non-joinder of necessary parties. The Insurance Company has also asserted that the offending truck has been falsely implicated in the

accident in collusion with the owner and the petitioners. It has further contended that the amount of compensation claimed is highly excessive and that the claim for interest at the rate of 12% per annum is untenable. According to respondent No.2, even if compensation is awarded, the rate of interest should not exceed 6% per annum. On these grounds, respondent No.2 has prayed for dismissal of the claim petition with costs.

07. In view of the rival pleadings and contentions raised by both the parties, the learned predecessor of this Tribunal framed the following issues for determination. After appreciating the oral and documentary evidence placed on record and considering the submissions advanced on behalf of both sides, I have recorded my findings on the said issues for the reasons stated hereinafter:

S.No.	**ISSUES**	**FINDINGS**
01.	Whether the petitioners prove that Uttam s/o Shahuji Raut died in motor vehicular accident between Motorcycle bearing No. MH-22-AT-3591 and Truck bearing No. MH-26BE-8185, on 05.07.2021 on Purna to Tadkalas road?	Affirmative
02.	Whether the petitioners prove that the said accident occurred due to rash and negligent driving of driver of offending vehicle?	Affirmative
03.	Whether the respondent No.2 proves that there is breach of terms and conditions of the insurance police of said vehicle?	Negative
04.	Whether respondents prove that due to contributory negligence on the part of motorcycle driver the accident was occurred?	Negative
05.	Whether the petitioners are entitled for	Partly

	compensation, If yes, to what extent and from whom?	Affirmative
06.	What order and award?	As per final order

REASONS

AS TO ISSUE NOS. 1 AND 2:

08. The first and foremost question that arises for determination is whether deceased Uttam Shahuji Raut sustained fatal injuries in the motor vehicular accident involving Truck bearing Registration No. MH-26-BE-8185 and Motorcycle bearing Registration No. MH-22-AT-3591, and whether the accident occurred due to the rash and negligent driving of the driver of the offending truck. Since Issue Nos. 1 and 2 arise out of the same transaction and are closely interlinked, they are considered together. The petitioners are required to establish that Uttam Shahuji Raut sustained injuries in the said accident, succumbed to those injuries, and that the accident was the direct result of the rash and negligent driving of the offending truck. In a petition under Section 166 of the Motor Vehicles Act, the burden upon the petitioners is to prove their case on the touchstone of preponderance of probabilities and not beyond reasonable doubt as required in a criminal trial. The Tribunal is required to appreciate the oral and documentary evidence in a pragmatic manner, keeping in view the beneficial object of the legislation. If the evidence adduced by the petitioners inspires confidence and is not effectively rebutted, the Tribunal would be justified in recording a finding that the accident occurred due to the rash and negligent driving of the offending truck and that Uttam Shahuji Raut died as a consequence

of the injuries sustained therein. Keeping these settled principles in view, the evidence on record is now being appreciated.

09. In order to discharge the burden cast upon them, the petitioners have examined Govind Uttamrao Raut (PW1), Trimbak Marotirao Bhuske (PW2), Nandkumar Baburao Bhalerao (PW3) and Balaji Vitthal Kapashikar (PW4). They have also produced on record certified copies of the First Information Report (Exh.28), Spot Panchanama (Exh.29), Inquest Panchanama (Exh.30), Post-Mortem Report (Exh.31), Registration Certificate of the offending truck (Exh.32), Insurance Policy (Exh.33), Charge-sheet along with statements of witnesses recorded during investigation (Exh. 35 to 38), Pay bills and Salary certificate (Exh. 42 to 44 & 54 to 55) and first page of service book of the deceased (Exh.53). These documents have been duly proved and exhibited during the course of evidence. On the other hand, though respondent No.1 has filed a written statement disputing negligence and involvement of the offending truck, neither he nor the driver of the offending truck has entered the witness box. Similarly, respondent No.2-Insurance Company has also not examined any witness in support of the defences raised in its written statement. Consequently, the evidence led by the petitioners remains substantially unrebutted except through cross-examination. The oral and documentary evidence is therefore required to be appreciated to ascertain whether the petitioners have succeeded in proving their case.

10. Govind (PW1), the son of the deceased, has deposed regarding the occupation, income and family status of the deceased and the circumstances in which he came to know about the accident. He stated that on the date of the accident the deceased had gone for

official work and while returning home, the offending truck, driven in a rash and negligent manner, dashed against his motorcycle, resulting in serious injuries. He has also proved the relevant police papers and the documents pertaining to the employment and income of the deceased. During his cross-examination, he candidly admitted that he had not personally witnessed the accident and that he learnt about the incident from the cousin of the deceased. This admission appears to be fair and natural, as he did not attempt to falsely claim himself to be an eye-witness. Therefore, his evidence regarding the actual occurrence of the accident is hearsay and cannot be treated as substantive evidence on negligence. However, his testimony regarding the identity of the deceased, his employment, income, treatment and subsequent death is based on his personal knowledge and has remained unshaken during cross-examination. Nothing material has been elicited to discredit his testimony on these aspects.

11. The respondents have suggested to Govind (PW1) that the deceased was not wearing a helmet, that he did not possess a valid driving licence, that he had consumed liquor prior to the accident and that the offending truck has been falsely implicated in collusion with the police. Govind (PW1) has categorically denied all these suggestions. On the contrary, he has specifically deposed that after completion of investigation, the police returned the helmet of the deceased to him under acknowledgment. Apart from putting these suggestions in cross-examination, the respondents have not produced any evidence to substantiate such allegations. Mere suggestions put to a witness, when specifically denied, do not constitute evidence and cannot be accepted in the absence of corroborative material. No medical record has been produced to

indicate that the deceased was under the influence of alcohol. Likewise, no evidence has been adduced to show that the offending truck was falsely implicated. Hence, the testimony of Govind (PW1), to the extent it is based on his personal knowledge, remains trustworthy and reliable.

12. The most material witness examined by the petitioners on the aspect of negligence is Nandkumar (PW3), who claims to be an eye-witness to the accident. He has deposed that on the date of the incident he was proceeding towards his agricultural field and the deceased was travelling ahead of him on his motorcycle. According to him, the offending truck came from the opposite direction at a high speed and in a rash and negligent manner and dashed against the motorcycle of the deceased. He further stated that due to the impact of the collision, the deceased along with his motorcycle was thrown into a roadside ditch. Nandkumar (PW3) immediately rushed to the spot and found the deceased lying in an injured condition. Thereafter, with the assistance of an auto-rickshaw driver, he shifted the injured to Government Hospital, Purna. He identified the deceased from the identity documents found in his bag and informed his relatives about the accident. He also remained present until arrangements were made to shift the injured to Civil Hospital, Nanded for further treatment. His conduct immediately after the accident appears to be quite natural and lends assurance to his presence at the scene of occurrence.

13. The testimony of Nandkumar (PW3) has been subjected to lengthy cross-examination. During such cross-examination, he

admitted that he did not remember the registration number of the motorcycle, the auto-rickshaw by which the injured was shifted to the hospital, or the jeep by which the injured was subsequently taken to Nanded. He also expressed his inability to recollect the mobile numbers of the deceased and his relatives. In the opinion of this Tribunal, these omissions relate only to collateral and insignificant details, which any ordinary witness may fail to remember after a considerable lapse of time. They do not affect the core of his evidence regarding the manner in which the accident occurred. The respondents could not point out any material contradiction or omission touching the substance of his testimony. Nothing has been brought on record to show that Nandkumar (PW3) had any reason to falsely implicate the offending truck or to support the petitioners. His evidence has remained consistent regarding the involvement of the offending truck and the rash and negligent manner in which it was being driven. Consequently, this Tribunal finds the testimony of Nandkumar (PW3) to be trustworthy, reliable and worthy of acceptance.

14. Another important circumstance which strengthens the testimony of Nandkumar (PW3) is that he is an independent witness having no relationship with the deceased or the petitioners. The respondents have not alleged any previous enmity or motive on his part to falsely depose against the driver or owner of the offending truck. His presence at the spot appears to be quite natural, as he was proceeding towards his agricultural field. His evidence also finds substantial corroboration from the contemporaneous documents prepared during the course of investigation. The description of the place of accident, the position of the vehicles and the injuries

sustained by the deceased are consistent with the version narrated by him before the Tribunal. His evidence does not suffer from any inherent improbability or exaggeration. It is a settled principle that the testimony of an independent witness, if found natural and trustworthy, deserves due weight. Therefore, this Tribunal finds no reason to discard or disbelieve the evidence of Nandkumar (PW3).

15. The documentary evidence produced by the petitioners also lends substantial support to the oral testimony. The First Information Report discloses that Crime No.275 of 2021 was registered against the driver of Truck bearing Registration No. MH-26-BE-8185 for the offences punishable under Sections 279, 338 and 304-A of the Indian Penal Code. The Spot Panchanama indicates the place of occurrence and is consistent with the manner of the accident as spoken to by Nandkumar (PW3). The Inquest Panchanama and the Post-Mortem Report establish that the deceased sustained multiple injuries in a road traffic accident and succumbed to those injuries during treatment. After completion of investigation, the Investigating Officer filed a Charge-sheet against the driver of the offending truck after finding sufficient material regarding his negligence. Though the Charge-sheet is not conclusive proof of negligence, it is certainly a relevant circumstance which can be taken into consideration while appreciating the evidence in a claim petition under Section 166 of the Motor Vehicles Act. When the documentary evidence is read along with the reliable testimony of Nandkumar (PW3), it clearly probabilises the case put forward by the petitioners.

16. Much emphasis has been laid by the learned advocates for the respondents on the delay in lodging the First Information Report. However, having regard to the facts and circumstances of the present case, the said contention does not merit acceptance. The accident occurred on 05.07.2021, whereas the First Information Report came to be lodged on 10.07.2021, resulting in a delay of only five days. The evidence on record discloses that immediately after the accident, the injured was shifted to the Government Hospital at Purna and was thereafter referred to the Civil Hospital, Nanded for better medical treatment in view of the seriousness of the injuries. The immediate and foremost concern of the family members and the persons accompanying the injured was naturally to secure timely medical treatment rather than to approach the police. Unfortunately, despite the treatment administered, the injured succumbed to the injuries sustained in the accident. In cases involving serious or fatal road accidents, a short delay in lodging the First Information Report is neither unnatural nor fatal to the claim, particularly when the delay stands reasonably explained by the medical treatment of the injured. Unless it is demonstrated that such delay was deliberately utilised for fabricating a false case or for falsely implicating the offending vehicle, no adverse inference can be drawn against the petitioners. In the present case, the respondents have failed to establish that the delay of five days has caused any prejudice to their defence or that it has resulted in embellishment or concoction of the prosecution case. On the contrary, the explanation offered by the petitioners appears to be natural, probable and consistent with the ordinary human conduct expected in such unfortunate circumstances. Consequently, the delay of five days in lodging the First Information Report does not, by itself, impair the credibility of the petitioners'

version or create any doubt regarding the occurrence of the accident involving the offending vehicle.

17. The respondents have further contended that the deceased was not wearing a helmet and was not holding a valid driving licence at the time of the accident. Even assuming that such contentions are true, they do not by themselves establish negligence on the part of the deceased. The evidence on record consistently shows that the accident occurred because the offending truck came from the opposite direction and dashed against the motorcycle of the deceased. There is absolutely no evidence to show that the deceased contributed to the occurrence of the accident. Likewise, no medical evidence has been produced to establish that the injuries sustained by the deceased were aggravated on account of non-wearing of a helmet. The respondents have also failed to prove that the alleged absence of a valid driving licence had any nexus with the occurrence of the accident. In the absence of such evidence, the plea of contributory negligence cannot be accepted. Consequently, the defence raised by the respondents on this count deserves to be rejected.

18. On an overall appreciation of the entire oral and documentary evidence, this Tribunal finds that the petitioners have succeeded in proving the involvement of Truck bearing Registration No. MH-26-BE-8185 in the accident. The testimony of Nandkumar (PW3) inspires confidence and receives due corroboration from the First Information Report, Spot Panchanama, Inquest Panchanama, Post-Mortem Report and Charge-sheet. The evidence of Uttam (PW1)

regarding the employment, income and subsequent events has also remained unshaken. The respondents have not examined either the driver of the offending truck or any independent witness to probabilise the defence raised by them. The pleas regarding heavy rainfall, intoxication of the deceased and false implication of the offending truck have remained unsupported by any reliable evidence. The evidence adduced by the petitioners, on the other hand, is consistent, natural and trustworthy. Applying the principle of preponderance of probabilities, this Tribunal is satisfied that the accident occurred due to the rash and negligent driving of the driver of the offending truck.

19. For the reasons discussed above, this Tribunal holds that the petitioners have successfully established that deceased Uttam Shahuji Raut sustained fatal injuries in the motor vehicular accident which occurred on 05.07.2021 involving Truck bearing Registration No. MH-26-BE-8185 and Motorcycle bearing Registration No. MH-22-AT-3591. The evidence on record further establishes that the accident occurred solely due to the rash and negligent driving of the driver of the offending truck. The respondents have failed to substantiate the various defences raised by them by leading cogent and convincing evidence. The oral testimony of the eye-witness, duly corroborated by the contemporaneous documentary evidence, is sufficient to prove the case of the petitioners on the standard of preponderance of probabilities applicable to proceedings under Section 166 of the Motor Vehicles Act. Consequently, the petitioners have discharged the burden cast upon them under law. Hence, Issue No.1 regarding the involvement of the offending truck and Issue No.2 regarding rash and

negligent driving stand proved. Accordingly, issue Nos.1 and 2 are answered in the affirmative.

AS TO ISSUE NOS. 3 AND 4:

20. Issue Nos.3 and 4 are interconnected, as they pertain to the statutory defences raised by respondent No.2–Insurance Company and the plea of contributory negligence raised by both the respondents. Since the evidence and arguments relating to these issues are common, they are being considered together for the sake of convenience. The burden to establish breach of the terms and conditions of the insurance policy squarely lies upon the Insurance Company. Similarly, the burden to prove contributory negligence of the deceased rests upon the respondents who have raised such a defence. It is a settled principle of law that neither breach of policy conditions nor contributory negligence can be presumed merely on the basis of pleadings or suggestions made during cross-examination. The party raising such pleas must establish the same by leading cogent, reliable and convincing evidence. Unless the respondents discharge the burden cast upon them, the statutory liability of the insurer to indemnify the insured cannot be avoided. Keeping these settled principles in view, the evidence adduced by the parties requires careful scrutiny.

21. The Insurance Company has resisted the claim petition by raising several statutory defences in its written statement. It is contended that the driver of the offending truck was not holding a valid and effective driving licence and that the offending vehicle was not covered by a valid permit and fitness certificate on the date of the

accident. It is further pleaded that the insured committed breach of the terms and conditions of the insurance policy and that there was non-compliance with the provisions of Sections 134(c) and 158(6) of the Motor Vehicles Act. The Insurance Company has also questioned the involvement of the offending truck and alleged that the vehicle has been falsely implicated in collusion with the police and the petitioners. In addition, it has been contended that the deceased was not wearing a helmet, was not possessing a valid driving licence and that the owner and insurer of the motorcycle have not been impleaded as parties to the petition. On these grounds, the Insurance Company has sought exoneration from its liability to satisfy the award. The correctness of these contentions is therefore required to be examined in the light of the evidence available on record.

22. Although several statutory defences have been raised by the Insurance Company, no oral or documentary evidence has been adduced to substantiate any of them. Neither an officer of the Insurance Company nor any official from the Regional Transport Office has been examined before the Tribunal. No investigator appointed by the insurer has entered the witness box to establish any breach of the policy conditions. Likewise, no communication from the Licensing Authority has been produced to show that the driver of the offending truck did not possess a valid and effective driving licence. Similarly, no record has been placed before the Tribunal to establish that the permit or fitness certificate of the offending truck had expired or stood cancelled on the date of the accident. The owner and driver of the offending truck have also not entered the witness box to support the pleas raised by the insurer. It is trite that pleadings are not evidence and that facts pleaded must be established by

admissible evidence. In the absence of any such evidence, the statutory defences raised by the Insurance Company cannot be accepted merely because they have been incorporated in the written statement.

23. The Insurance Company has further pleaded breach of the provisions contained in Sections 134(c) and 158(6) of the Motor Vehicles Act and has also questioned the existence of a valid insurance policy. However, except making such pleadings, no evidence has been adduced to establish that any alleged procedural lapse has caused prejudice to the insurer or has in any manner affected its right to defend the claim petition. Mere non-compliance with procedural requirements, even if assumed, does not by itself absolve the insurer of its statutory liability unless it is affirmatively shown that such non-compliance has resulted in prejudice. On the contrary, the petitioners have produced a copy of the insurance policy at Exhibit 33, which reveals that the offending truck was validly insured with respondent No.2 for the period from 24.09.2020 to 23.09.2021, thereby covering the date of the accident, i.e., 05.07.2021. Furthermore, respondent No.1, the owner of the offending vehicle, has categorically admitted in the written statement that the offending truck was duly insured with respondent No.2 on the date of the accident. The said admission by the insured, coupled with the documentary evidence in the form of the insurance policy, completely belies the contention of the Insurance Company that the offending vehicle was not insured. The Insurance Company has neither challenged the genuineness of the policy nor produced any evidence to show that the policy had been cancelled or had otherwise ceased to be operative on the date of the accident. Consequently, this

Tribunal is satisfied that the offending vehicle was covered by a valid and effective insurance policy on the date of the accident. The Insurance Company has, therefore, failed to establish either any breach of the policy conditions or any statutory defence available under the Motor Vehicles Act so as to avoid its liability. Accordingly, the insurer cannot escape its statutory obligation to indemnify the insured merely on the basis of unsubstantiated pleadings.

24. The respondents have further contended that the deceased himself was responsible for the accident as he allegedly lost control over his motorcycle due to heavy rainfall and because he was under the influence of liquor. They have also pleaded that the motorcycle dashed against the offending truck and, therefore, the deceased was guilty of contributory negligence. However, except making these averments in the written statements, no evidence has been adduced to substantiate the same. Neither respondent No.1 nor the driver of the offending truck has stepped into the witness box to explain the manner in which the accident occurred. The driver of the offending truck was the most competent witness to depose about the circumstances leading to the accident, but he has not been examined without assigning any explanation. His non-examination assumes significance, particularly when the petitioners have examined an independent eye-witness whose testimony has been accepted by this Tribunal. In these circumstances, an adverse inference deserves to be drawn against the respondents for withholding the best available evidence. Consequently, the plea that the accident occurred due to the negligence of the deceased or because of heavy rainfall remains a mere assertion unsupported by any reliable evidence.

25. The allegation that the deceased had consumed liquor before the accident also remains wholly unsubstantiated. The respondents have neither produced any Chemical Analyser's Report nor any medical evidence indicating the presence of alcohol in the blood of the deceased. Even the Post-Mortem Report does not record any smell of alcohol or any finding suggestive of intoxication. No witness has been examined to establish that the deceased was under the influence of liquor immediately prior to the accident. In civil proceedings, a serious allegation having the effect of reducing or defeating the claim cannot be accepted in the absence of satisfactory evidence. The burden to establish intoxication was entirely upon the respondents, and they have failed to discharge the same. Mere suggestions put to the witnesses during cross-examination cannot take the place of proof. Hence, the plea that the deceased was under the influence of liquor at the relevant time is rejected.

26. The respondents have next contended that the deceased was not wearing a helmet and was not holding a valid driving licence and, therefore, was guilty of contributory negligence. The evidence on record, however, does not support this contention. Uttam (PW1) has specifically deposed that after completion of the investigation, the police returned the helmet of the deceased to him under proper acknowledgment. Nandkumar (PW3) has also denied the suggestion that the deceased was travelling without wearing a helmet. The respondents have not produced any seizure panchanama, police record or any other documentary evidence to establish that no helmet was found at the spot of the accident. Even otherwise, assuming that the deceased was not wearing a helmet or was not possessing a valid driving licence, such circumstances by themselves do not establish

contributory negligence unless it is proved that they had a direct nexus with the occurrence of the accident or materially contributed to the injuries sustained. Since the accident has been proved to have occurred because the offending truck dashed against the motorcycle of the deceased, these allegations are of no assistance to the respondents. Accordingly, the plea of contributory negligence raised on these grounds cannot be accepted.

27. The learned advocate appearing for respondent No.2 has relied upon the decisions in **The New India Assurance Co. Ltd. Vs. Julius T. J. Freitas, A. Chithra Vs. G. A. Sivakumar, Ram Niwas Vs. Neeraj Kumar, Siby Paul Vs. Praveen Kumar and The Branch Manager Vs. Jeyarani** to contend that non-wearing of a helmet constitutes contributory negligence. There can be no quarrel with the legal principles enunciated in the said decisions. However, the applicability of those decisions depends upon the facts of each case. In the present case, the respondents have not produced any medical or scientific evidence to establish that the injuries sustained by the deceased were aggravated due to non-wearing of a helmet or that such omission had any causal connection with the occurrence of the accident. On the other hand, the petitioners have rightly relied upon the decisions in **Anjana Narayan Kamble and others Vs. Branch Manager, Reliance General Insurance Company Ltd. and United India Insurance Co. Ltd. Vs. Anil Kisan Shinde and others,** wherein it has been held that mere absence of a helmet or a valid driving licence does not by itself amount to contributory negligence unless a direct nexus with the accident is established. The ratio laid down in the aforesaid decisions squarely applies to the facts of the present case. Therefore, the authorities relied upon by the petitioners deserve acceptance,

whereas the judgments cited by the respondents do not advance their case.

28. The Insurance Company has further contended that the claim petition is bad for non-joinder of the owner and insurer of the motorcycle involved in the accident. This contention does not merit acceptance. The petitioners have consistently pleaded and established that the accident occurred solely due to the rash and negligent driving of the driver of the offending truck. The respondents have failed to prove any negligence on the part of the deceased so as to make the owner or insurer of the motorcycle necessary parties to the proceedings. In a claim petition under Section 166 of the Motor Vehicles Act, it is not mandatory for the petitioners to implead every person connected with the accident when the negligence of only one vehicle is alleged and proved. The liability of the tortfeasor whose negligence caused the accident can independently be adjudicated by the Tribunal. Since the respondents have failed to establish contributory negligence on the part of the deceased, the question of apportionment of liability does not arise. Hence, the objection regarding non-joinder of the owner and insurer of the motorcycle is rejected.

29. Upon an overall consideration of the evidence on record, this Tribunal finds that none of the statutory defences raised by respondent No.2 has been substantiated by acceptable evidence. No material has been produced to establish that the driver of the offending truck was not holding a valid and effective driving licence or that the offending vehicle did not possess a valid permit or fitness

certificate. Likewise, the alleged breach of the terms and conditions of the insurance policy has not been proved by examining any competent witness or producing any documentary evidence. The pleas regarding non-compliance with Sections 134(c) and 158(6) of the Motor Vehicles Act also remain unsupported by evidence and have not been shown to have caused any prejudice to the insurer. Similarly, the allegations of intoxication, non-wearing of a helmet, absence of a driving licence and contributory negligence on the part of the deceased have remained mere assertions without proof. The respondents have chosen not to examine the driver of the offending truck, who was the best witness to support their defence. Their failure to adduce the best available evidence considerably weakens the defence raised in the written statements. Consequently, this Tribunal finds that the respondents have failed to discharge the burden cast upon them under law.

30. It is well settled that the statutory liability of an insurer cannot be avoided merely on the basis of pleadings or suggestions made during cross-examination. The insurer is required to establish the alleged breach of the policy conditions by leading cogent and convincing evidence, which is conspicuously absent in the present case. Equally, contributory negligence cannot be inferred on assumptions or conjectures and must be established by satisfactory evidence demonstrating that the conduct of the deceased materially contributed to the occurrence of the accident. As already held while deciding Issue Nos.1 and 2, the accident occurred solely due to the rash and negligent driving of the offending truck, and no evidence has been brought on record to attribute any negligence to the deceased. The respondents have failed to rebut the evidence adduced

by the petitioners by leading any independent or reliable evidence. Consequently, respondent No.2 cannot avoid its contractual as well as statutory liability to indemnify respondent No.1. The plea of contributory negligence also deserves rejection for want of evidence. Therefore, both the statutory defences of the Insurance Company and the plea of contributory negligence raised by the respondents fail.

31. In view of the foregoing discussion, this Tribunal holds that respondent No.2–Insurance Company has failed to prove breach of any of the terms and conditions of the insurance policy or any statutory defence available under the Motor Vehicles Act. The respondents have also failed to establish that the deceased was guilty of contributory negligence or that his conduct had in any manner contributed to the occurrence of the accident. The objections regarding the absence of a valid driving licence, permit, fitness certificate, non-wearing of a helmet, intoxication, false implication of the offending truck and non-joinder of the owner and insurer of the motorcycle have all remained unsubstantiated. Consequently, the Insurance Company cannot be absolved of its liability to satisfy the award. The liability to indemnify respondent No.1 therefore continues in accordance with the terms of the policy. Accordingly, issue No.3 and 4 are answered in the Negative.

ISSUE NO. 5 AND 6:

32. The gross annual income of the deceased comes to Rs.9,64,800/- (80400 x 12) and after allowing the standard deduction admissible to a salaried employee, the taxable income works out to approximately Rs.9,14,800/-. Applying the income-tax

rates prevailing during the relevant financial year together with the applicable Health and Education Cess, the annual income-tax liability is assessed at approximately Rs.99,278/-, which comes to nearly Rs.8,273/- per month. After deducting Professional Tax of Rs.200/- and Income Tax of Rs.8,273/- from the gross monthly salary of Rs.80,400/-, the net monthly income of the deceased comes to Rs.71,927/-. The service record and salary certificate further establishes that the deceased was born on 09.08.1966 and was serving as a permanent Government teacher. His age of superannuation was 58 years and, therefore, on the date of the accident he had approximately three years of service remaining. The salary certificate further reveals that his last drawn basic pay was Rs.64,000/- per month. Since the evidence on record clearly establishes both the remaining period of service and the last drawn basic pay, this Tribunal finds it appropriate to assess the loss of dependency separately for the pre-retirement and post-retirement periods instead of applying the multiplier to the full salary beyond the age of superannuation.

33. The deceased was a permanent Government servant. In view of the Constitution Bench judgment in **National Insurance Company Limited Vs. Pranay Sethi,** an addition of 15% towards future prospects is required to be made as the deceased was between the age of 50 and 60 years. Accordingly, 15% of the net monthly income of Rs.71,927/-, i.e. Rs.10,789/-, is added, taking the monthly income for computation to Rs.82,716/-. The next question is regarding deduction towards the personal and living expenses of the deceased. The petitioners consist of the widow and two sons of the deceased. The evidence of Govind (PW1) shows that petitioner Nos.2

and 3 had already attained majority and had completed their B.A.M.S. course and were undergoing internship at the relevant time. Except the bare oral assertion of petitioner No.2, there is no documentary or other reliable evidence to establish that either of them was financially dependent upon the earnings of the deceased. There is also no evidence that either son was suffering from any disability or was incapable of maintaining himself. Mere status as legal representatives do not by itself establish financial dependency. Consequently, this Tribunal holds that only petitioner No.1, being the widow of the deceased, has been proved to be financially dependent upon his income. Therefore, in accordance with the principles laid down in **Sarla Verma Vs. Delhi Transport Corporation,** deduction of one-half towards the personal and living expenses of the deceased is just and proper. Accordingly, one-half of the monthly income of Rs.82,716/-, namely Rs.41,358/-, is deducted towards his personal expenses, leaving the monthly contribution to the family at Rs.41,358/- and the annual dependency at Rs.4,96,296/-.

34. The deceased had approximately three years of service left before attaining the age of superannuation. Therefore, the loss of dependency during the remaining service period is required to be calculated on the basis of his salary. Accordingly, the annual dependency of Rs.4,96,296/- multiplied by the remaining service period of three years comes to Rs.14,88,888/-. Upon retirement, the deceased would have become entitled to pension. The service records establish that his last drawn basic pay was Rs.64,000/- per month. Ordinarily, a government servant is entitled to pension equivalent to 50% of the last drawn basic pay. Accordingly, the monthly pension is taken at Rs.32,000/-. Since the same principle governing deduction

towards personal expenses applies to pensionary income also, one-half thereof is deducted towards the personal and living expenses of the deceased, leaving the monthly contribution to the family after retirement at Rs.16,000/- or Rs.1,92,000/- annually.

35. The deceased was aged about 54 years and 11 months on the date of the accident. As held in **Sarla Verma Vs. Delhi Transport Corporation,** the appropriate multiplier applicable to the age group of 51 to 55 years is '11'. Since the deceased would have remained in service only for another three years, the dependency during that period has already been assessed on the basis of his salary. The remaining period of eight years falling within the multiplier is therefore required to be assessed on the basis of pensionary income. Accordingly, the annual dependency after retirement of Rs.1,92,000/- multiplied by eight years comes to Rs.15,36,000/-. Thus, the total loss of dependency works out to Rs.30,24,888/- (Rs.14,88,888/- + Rs.15,36,000/-). This method of computation appropriately reflects the actual pecuniary loss likely to have been suffered by the dependant and avoids granting compensation on the basis of full salary beyond the age of superannuation.

36. The petitioners are also entitled to compensation under the conventional heads. Petitioner No.1, being the widow of the deceased, is entitled to spousal consortium, whereas petitioner Nos.2 and 3, though not proved to be financially dependent upon the deceased, continue to be his legal representatives and children. In view of the principles laid down by the Hon'ble Supreme Court in

National Insurance Co. Ltd Vs. Pranay Sethi and Magma General Insurance Company Limited Vs. Nanu Ram, petitioner No.1 is entitled to spousal consortium and petitioner Nos.2 and 3 are entitled to parental consortium. Accordingly, consortium of Rs.44,000/- is awarded to each of the three petitioners, aggregating to Rs.1,32,000/-. The petitioners are further entitled to Rs.18,000/- towards loss of estate and Rs.18,000/- towards funeral expenses. No separate compensation can be awarded towards loss of love and affection in view of the law laid down in **National Insurance Co. Ltd Vs. Pranay Sethi**

37. The compensation payable to the petitioners is computed as follows:

S.No.	Particulars	Amount (Rs.)
1.	Gross Monthly Salary	80,400
2.	Less: Professional Tax	200
3.	Less: Income Tax	8,273
4.	Net Monthly Income	71,927
5.	Future Prospects @15%	10,789
6.	Monthly Income after Future Prospects	82,716
7.	Less: 1/2 Personal Expenses	41,358
8.	Monthly Dependency	41,358
9.	Annual Dependency	4,96,296
10.	Loss of Dependency during remaining	14,88,888

	service (3 years)	
11.	Last Drawn Basic Pay	64,000
12.	Pension @50%	32,000
13.	Less: 1/2 Personal Expenses	16,000
14.	Annual Dependency after Retirement	1,92,000
15.	Post-retirement Period (8 years)	15,36,000
16.	Loss of Dependency after Retirement	15,36,000
17.	Total Loss of Dependency	30,24,888
18.	Consortium (Rs.44,000 × 3)	1,32,000
19.	Loss of Estate	18,000
20.	Funeral Expenses	18,000
	Total Compensation	**Rs.31,92,888/-**

38. The above method of computation, in the opinion of this Tribunal, is just, fair and reasonable and is fully supported by the evidence available on record. The service record and salary certificate conclusively establishes that the deceased was a permanent Government teacher who would have retired on attaining the age of 58 years and that his last drawn basic pay was Rs.64,000/- per month. The evidence also establishes that only petitioner No.1 was financially dependent upon the deceased, whereas petitioner Nos.2 and 3 were major sons and no satisfactory evidence has been adduced to prove that they were dependent upon his income. Therefore, deduction of one-half towards the personal and living expenses of the deceased is fully justified. By assessing the loss of

dependency on the basis of salary up to the date of superannuation and pension thereafter, the Tribunal has awarded compensation on realistic and proved facts rather than on assumptions that the deceased would have continued to draw full salary beyond the age of retirement. The compensation so determined is held to be just, fair and reasonable within the meaning of Section 168 of the Motor Vehicles Act.

39. So far as the liability to satisfy the award is concerned, respondent No.1 is admittedly the registered owner of the offending truck, whereas respondent No.2 is its insurer under a policy which was admittedly in force on the date of the accident. Under Issue Nos.3 and 4, this Tribunal has already recorded a finding that respondent No.2 has failed to establish any breach of the policy conditions or any statutory defence available under Section 149(2) of the Motor Vehicles Act. Consequently, respondent Nos.1 and 2 are jointly and severally liable to pay the compensation. However, respondent No.2, being the insurer, shall satisfy the award in the first instance with liberty, if otherwise available in law, to recover the amount from respondent No.1 in accordance with law.

40. The petitioners have claimed interest at the rate of 12% per annum. Having regard to the prevailing rate of interest and the consistent view adopted by the Hon'ble Supreme Court and the Hon'ble Bombay High Court in motor accident claim cases, this Tribunal is of the opinion that interest at the rate of 7% per annum would be just and reasonable. Accordingly, the petitioners are entitled to interest at the rate of 7% per annum on the compensation awarded

from the date of filing of the petition until realization. Respondent No.2 shall deposit the entire amount together with accrued interest before this Tribunal within the prescribed period. Accordingly, Issue No.5 is answered partly in the affirmative and, in answer to Issue No.6, the following order is passed.

ORDER

1. The petition is partly allowed with costs.

2. The petitioners are entitled to recover compensation of Rs.31,92,888/- (Rupees Thirty-One Lakhs Ninety-Two Thousand Eight Hundred Eighty-Eight only) together with interest at the rate of 7% per annum from the date of filing of the petition till its realization.

3. Respondent Nos.1 and 2 are jointly and severally liable to pay the compensation. However, respondent No.2–Insurance Company shall indemnify respondent No.1 and deposit the aforesaid amount, inclusive of the amount of compensation, if any, already paid to the petitioners under Section 140 of the Motor Vehicles Act, together with accrued interest, by RTGS/NEFT into the Tribunal Account maintained with the State Bank of India, bearing the following particulars:

   Account Name: Ex-Officio Member, Motor Accident Claims Tribunal, Gangakhed

   Customer Name: District and Sessions Judge, Gangakhed

   Account No.: 40791205612

   IFSC Code: SBIN0020023

4. Out of the total compensation, petitioner No.1 shall be entitled to Rs.31,04,888/-, whereas petitioner Nos.2 and 3 shall each be entitled to Rs.44,000/- towards parental consortium.

5. Out of the amount payable to petitioner No.1, 50% together with proportionate interest shall be invested in a Fixed Deposit Receipt in any nationalised bank for a period of five years, with liberty to withdraw the periodical interest accrued thereon. The remaining amount shall be released to petitioner No.1 by account payee cheque or by direct credit to her bank account after due verification.

6. The respective amounts payable to petitioner Nos.2 and 3 together with proportionate interest shall be released to them by account payee cheque or by direct credit to their respective bank accounts after due verification.

7. The amount, if any, received by the petitioners under Section 140 of the Motor Vehicles Act or under any interim award in the present proceedings shall be duly adjusted while satisfying this Award.

8. Draw the Award accordingly.

DISTRICT COURTS MAHARASHTRA
सत्यमेव जयते

Digitally signed by VIRBHADRA MAHADAPPA SUNDALE
Date: 2026.07.08 17:16:41 +0530

(Virbhadra M. Sundale)
Member,
Motor Accident Claim Tribunal
Gangakhed, Dist: Parbhani

Date: 08.07.2026