


MHTH010005212020 	Received on	18/01/2020
	Registered on	18/01/2020
	Decided on	10/04/2026
	Duration	YY MM DD 06 02 23

**IN THE COURT OF MEMBER MOTOR ACCIDENT CLAIMS TRIBUNAL,
THANE, AT THANE**
(Presided over by R.V. Mohite, Member)

Motor Accident Claim Petition No.75/2020

CNR : MHTH010005212020

Exhibit 49

1. Smt. Alka Raju Shelke

Age - 35 years, Occu. : Housewife,

2. Master Ganesh Raju Shelke

Age - 12 years, Occu. : Student,

3. Master Vinayak Raju Shelke

Age - 10 years, Occu. : Student,

4. Mr. Sitaram Darku Shelke

Age - 60 years, Occu. : Nil,

5.Mrs. Rakhmabai Sitaram Shelke

Age - 55 years, Occu. : Nil,

(Minor claimant Nos.2 and 3 through next friend and
natural guardian Smt. Alka Raju Shelke i.e. claimant No.1)

All R/at :Dehane, Taluka Rajgurunagar (Khed),

District Pune, State – Maharashtra.

...Claimants.

Versus

1. Mr. Suryakant Zodage

Address : Ghodegaon, Taluka Ambegaon,

Dist. Pune, State – Maharashtra.

During treatment in Sasoon Hospital, the deceased succumbed on 23/09/2019.

3. The accident took place due to sole negligence of driver of motorcycle bearing No.MH-14-BY-7139. Ghodegaon police registered C.R.No.158/2019 under section 279, 337, 338, 304-A of IPC and section 184 of the M.V. Act against the rider of motorcycle bearing No.MH-14-BY-7139 and filed charge-sheet against him.

4. The deceased was working as Cleaner and Hamali work on motor Tempo bearing No.MH-14-DN-9956 of Mr. Dajiram Raghu Dingle since last 15 years and earning Rs.15,000/- per month. At the time of accident, he was 35 years old and of sound physical health. The claimants were depended upon the income of deceased. The claimants have sustained pecuniary and non pecuniary damages as described in the petition. Hence, the claimants pray to award just compensation with interest.

5. The summons was duly published against the opponent No.1, but he remained absent. Hence, petition is proceeded ex-parte against him.

6. The insurer (opponent No.2) has filed written statement at Exh.16 and contested the claim. The opponent denied age, occupation and income of the deceased. It is contended that the alleged accident took place due to sole negligence of the deceased. The rider of offending vehicle bearing No.MH-14-BY-7139 was not holding valid and effective driving licence. This is clear breach of the terms and conditions of policy. Thus, the opponent No.2 prays to dismiss the petition against it.

7. My Ld. Predecessor has framed issues at Exh.19. Those issues alongwith my findings thereon with reasons are as under :-

Sr. No.	Issues	Findings
1.	Do the petitioners prove that, accident occurred on 22/09/2019 at about 07.00 pm, due to rash and negligent driving of Motor cycle, bearing, registration No. MH-14-BY-7139, hereinafter referred to as “the offending vehicle” ?	Yes.
2.	Do the petitioners prove that, the deceased expired due to injuries sustained in this accident ?	Yes.
3.	Does opponent No.2 prove that, opponent No.1 committed willful breach of terms and conditions of insurance policy ?	Yes.
4.	Is there negligence of the deceased in the accident ? If yes, to what extent ?	No.
5.	Are the petitioners entitled to compensation ? If yes, to what extent and from whom ?	Yes, Rs.28,99,100/-.
6.	What is extent of liability of both opponents, in the event the claim is allowed ?	Opponent No.2 to pay at first instance and then to recover from opponent No.1.
7.	What order and award ?	As per final order.

8. Heard Ld. Advocate for the claimants.

9. Heard Ld. Advocate for opponent No.2. She has filed written notes of argument at Exh.47. She is relied upon following case laws-

- i] **United India Insurance Co. Ltd. Versus Sujata Arora and others reported in Civil Appeal No.231 of 2012 decided by the Hon'ble Supreme Court of India,**
- ii] **Bajaj Allianz General Insurance Co. Ltd. Versus Gandam Somulamma and others reported in 2015 ACJ 576.**

REASONS

As to Issue Nos.1, 2 and 4 :-

10. These issues are interlinked with each other, hence they are decided together.

11. In support of contentions in the claim petition, the claimant No.1 has filed her evidence affidavit at Exh.22. Said affidavit is replica of the petition. In addition to that, the claimants have filed F.I.R. at Exh.23, spot panchanama at Exh.24, inquest panchanama at Exh.25, insurance policy at Exh.26, statement of wife of deceased at Exh.27, R.C. book of offending motorcycle at Exh.28, postmortem report at Exh.29, Aadhar card and PAN card of claimant No.1 at Exh.30 and Exh.31, Aadhar card of claimant Nos.2 and 3 at Exh.32 and Exh.33, Aadhar card of deceased at Exh.34 and charge-sheet at Exh.38.

12. There is no dispute about accidental death of Raju Sitaram Shelke. The opponent No.2 has not challenged involvement of motorcycle bearing No.MH-14-BY-7139 in the said accident.

13. It is also not disputed of filling of prosecution against the rider of motorcycle bearing No.MH-14-BY-7139 for causing accidental death of the deceased by rash and negligent driving. But neither the

rider of offending motorcycle nor the opponent No.1 - owner of the offending motorcycle challenged the fact of prosecution before Higher Authority. They have not entered into witness box to deny involvement of offending motorcycle in the alleged accident.

14. As per the contention of opponent No.2, the alleged accident took place due to negligence of the deceased. But in support of said contention, there is no evidence on record. There is absolutely no evidence on record to show any negligent act of deceased in the alleged accident.

15. As per spot panchanama (Exh.24), the spot of accident was in front of Mahadev Traders, on Manchar – Bhima Shankar road. The road was having width of 15ft. and having 5ft. side patti on both side of the lane.

16. As per evidence on record, on 22/09/2019, the deceased was walking on the road. When he crossed the road in the vicinity of Ghodegaon village and reached opposite Mahadev Traders South Edge (brink), the offending motorcycle bearing No.MH-14-BY-7139 came rashly and negligently from Manchar - Bhima Shankar Road and violently dashed to the left side of deceased. Due to said dash, the deceased fell down on the ground and sustained injuries to his head, left leg and other bodily injuries. The deceased succumbed on 23/09/2019. This shows rash and negligent driving of driver of offending vehicle as well as its speed. The rider of offending vehicle could not control speed of motorcycle and dashed to the deceased. There is nothing on record to show any contributory negligence on the part of the deceased in the said accident. Further, opponents have not lead evidence to prove contributory negligence of the deceased in the alleged accident. Thus, the accident occurred due to rash and sole negligent driving of rider of offending vehicle. The deceased died due to

accidental injuries. The opponent No.2 failed to prove that accident occurred due to negligence of deceased. Accordingly, I answer Issue Nos.1 and 2 in the affirmative and Issue No.4 in the negative.

As to Issue No.3 :

17. The opponent No.2 has contended that the rider of offending vehicle was not holding valid driving licence at the time of accident. Therefore, it is willful breach of the terms and conditions of the insurance policy. To prove this fact, the opponent No.2 has examined its Manager - Umesh Patil at Exh.42. As per his version, the offending vehicle was insured with opponent No.2 and its validity period was from 12/07/2019 to 11/07/2020. The insurer sent notice to rider of offending vehicle for production of driving licence. The witness has produced insurance policy at Exh.43 half charge-sheet at Exh.44 and office copy of notice dated 03/03/2020 sent to opponent No.1 at Exh.45.

18. I.O. has carried out investigation and filed charge-sheet against the rider of offending motorcycle under section 279, 337, 338, 304-A of IPC and section 184, 3/181 of the M.V. Act. Neither the rider of offending motorcycle nor its owner - opponent No.1 challenged the prosecution before Higher Authority. They have not produced copy of driving licence either before the police or in this court or before the insurer. There is absolutely no evidence about holding valid driving licence by the rider of offending motorcycle at the time of accident. Thus, the rider of offending motorcycle plied the vehicle without holding valid driving licence. Thus, there is breach of terms and conditions of insurance policy by the opponent No.1. Hence, I answer Issue No.3 in the affirmative.

As to Issue Nos.5 to 7 :

19. The offending motorcycle was duly insured by opponent No.2 at the time of accident. Insurance policy is at Exh.26. It bears

avoidance clause. Its validity period was from 12/07/2019 to 11/07/2020. It covers the date of accident i.e. 22/09/2019.

20. The offending vehicle was owned by the opponent No.1 and it was insured by the opponent No.2 at the time of accident. The policy issued to opponent No.1 was not cancelled with respect to third party. However, there is breach of terms and conditions of insurance policy on behalf of the opponent No.1.

21. It is observed by the various High Courts and the Hon'ble Apex Court that the insurance company to satisfy the award in favour of third party at the first instance and then to recover the awarded amount from the owner of the vehicle where the insurance company could establish breach of terms of policy on a part of owner of the vehicle.

22. Considering above discussion, it is just and proper to direct the insurance company to satisfy the award and then recover from the opponent No.1 i.e. the owner of offending vehicle.

23. Accident occurred due to rash and negligent driving of offending motorcycle bearing No.MH-14-BY-7139. The deceased died due to accidental injuries. So, the claimants are entitled to get compensation amount.

24. The claimant No.1 is widow, claimant Nos.2 and 3 are children and claimant Nos.4 and 5 are parents of the deceased. There is nothing on record to show that the claimants were not depended upon the income of the deceased at the time of accident. So, the claimants being legal representatives are entitled to get compensation for accidental death of deceased.

25. As per the guidelines given by the Hon'ble Apex Court in Sarla Verma's case, only three factors need to be established by the

claimants for assessing compensation in case of death : a) age of the deceased, b) income of the deceased and c) the number of dependents. The issues to be determined by the Tribunal to arrive at the loss of dependency are i) additions / deductions to be made for arriving at the income, ii) the deduction to be made towards the personal living expenses of the deceased and iii) the multiplier to be applied with reference to the age of the deceased. On this background, I am going to decide above mentioned three factors by considering the evidence placed on record.

Determination of age of deceased :

26. The claimants have produced Aadhar card of the deceased at Exh.34 which shows the birth date of the deceased as 01/01/1984. The opponent No.2 has not challenged the birth date of deceased. So, the age of the deceased is assessed as 35 years at the time of accident.

Determination of income of deceased :

27. As per the evidence of claimants, the deceased was working as Cleaner and Hamali work on motor Tempo bearing No.MH-14-DN-9956 owned by Mr. Dajiram Raghu Denge and earning Rs.15,000/- per month. To prove this fact, the claimants have not examined any witness or lead any evidence. In absence of income proof, notional income of the deceased is assessed as Rs.13,000/- per month. Thus, his yearly income is assessed of Rs.13,000 x 12 = Rs.1,56,000/- p.a.

Number of dependency and multiplier :

28. The claimants were depended upon the income of deceased. As per Sarla Verma's case, 1/4 income i.e. Rs.39,000/- has been deducted towards personal and living expenses of the deceased. So, his yearly contribution towards family would be Rs.1,17,000/-. The deceased was 35 years old at the time of accident. As per Sarla Verma's

case, multiplier 16 is applicable to the age group of 31 to 35. By applying multiplier 16, the loss of future earning would be Rs.1,17,000 x 16 = **Rs.18,72,000/-**.

29. In view of Pranay Sethi's case, an addition of 40% of the income should be warrant where the deceased was not in permanent job and below the age of 40 years. So, the claimants are entitled to get an amount of **Rs.7,48,800/-** towards future prospects.

30. In view of Pranay Sethi's case, the claimants are entitled to get an amount of Rs.40,000/- towards loss of consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses with 10% additions in every three years. In the circumstances, the claimants are entitled to get **Rs.48,400/-** towards loss of consortium, **Rs.18,150/-** towards funeral expenses and **Rs.18,150/-** towards loss of estate.

31. In the circumstances, the claimants are entitled to get compensation as under -

Loss of future income	Rs.18,72,000/-
Future prospect	Rs. 7,48,800/-
Loss of consortium (Rs.48,400 x 5)	Rs. 2,42,000/-
Loss of estate	Rs. 18,150/-
Funeral expenses	Rs. 18,150/-
Total amount	Rs.28,99,100/-

32. The claimants are entitled to get compensation of **Rs.28,99,100/- (Rupees Twenty-Eight Lakh Ninety-Nine Thousand One Hundred Only)** towards pecuniary and non-pecuniary damages. The opponent No.1 has committed breach of terms and conditions of policy.

In such circumstances, the opponent No.2 insurance company to pay compensation amount at first instance and then to recover the same from opponent No.1. The Hon'ble Apex Court and the Hon'ble Bombay High Court has awarded interest @ 9% p.a. in various decisions. Hence, the claimants are entitled to get the interest @ 9% p.a. from the date of petition till depositing of the amount. The case law cited by the opponent No.2 at Sr. No.1 is not applicable here as the Hon'ble Apex Court as well as different Hon'ble High Courts held in recent judgment that even if the driver holds an invalid, fake, no licence and and the victim is third party, the insurer first pay the compensation and recover it from vehicle owner. The case law cited by the opponent No.2 at Sr. No.2 is applicable here. Therefore, I answer Issue No.5 in the affirmative as Rs.28,99,100/-, Issue No.6 as opponent No.2 to pay at first instance and then to recover from opponent No.1 and for giving answer to Issue No.7, I pass the following order -

ORDER

1.	The petition is allowed with costs.
2.	The opponents do pay an amount of Rs.28,99,100/- (Rupees Twenty-Eight Lakh Ninety-Nine Thousand One Hundred Only) to the claimants with interest @ 9% p.a. from the date of petition till the date of depositing said amount within period of one month from the date of award, in bank account of the Motor Accident Claims Tribunal, Thane, by RTGS or NEFT, as per directions of the Hon'ble Apex Court in W.P. No.534/2020.
3.	The opponent No.2 to pay the compensation amount at first instance and then to recover the same from the opponent No.1 by filing execution proceeding.
4.	Out of total amount of compensation, Rs.13,99,100/- (Rupees Thirteen Lakh Ninety-Nine Thousand One Hundred Only) alongwith proportionate interest be given to claimant No.1, Rs.5,00,000/- (Rupees Five Lakh Only) each alongwith

	proportionate interest be given to claimant Nos.2 and 3 and Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand Only) alongwith proportionate interest be given to claimant Nos.4 and 5.
5.	Out of compensation amount given to claimant No.1, Rs.3,00,000/- (Rupees Three Lakh Only) , be invested in fixed deposit, in her name, for the period of 2 years, in any Nationalized Bank.
6.	Compensation amount given to claimant Nos.2 and 3, be invested in fixed deposit, in their name, for the period of 2 years, in any Nationalized Bank.
7.	The branch manager of concerned bank is directed to pay the amount of fixed deposit with interest to concerned claimants after its maturity without asking further order of this Tribunal for its realization.
8.	Remaining compensation amount be transferred by RTGS or NEFT - i) in the account No.001110000041413 of claimant No.1 maintained at Sindhudurg Sahakari Bank Ltd., Branch – Lalbaug Mumbai, having IFSC Code – UTIBOSSIND1, her Aadhar card number is 447718152411 and PAN card number is MPTPS2292J, ii) in the joint account No.3425235666 of claimant Nos.4 and 5 maintained at Central Bank of India, Branch – Shinoli, having IFSC Code – CBIN0280668, Aadhar card number of claimant No.4 is 209576120637 and of claimant No.5 is 521423729743, as per award.
9.	The opponent No.1 is directed to inform in writing to the claimants and the Tribunal after depositing the amount in M.A.C.T. Account by mentioning claim petition number, date of

	depositing amount, the amount, UTR number of NEFT or RTGS transaction and name of claimants.
10.	The claimants do pay the deficit court fee, if any.
11.	Award be drawn accordingly.

Thane
Date : 10/04/2026.

(R.V. Mohite)
Member, Motor Accident Claims Tribunal,
Thane.