

MHTH010048922018



Presented on : 02.07.2018
Registered on: 02.07.2018
Decided on : 13.03.2026
Duration : 7-Y, 8-M, 11-D

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL, THANE
(Presided over by K. P. Shrikhande)**

M.A.C.P.No.373/2018
[CNR No. MHTH010048922018]

Exh.66

- Petitioners:**
- 1] Smt. Jabbarunnisa Noor Mhd. Choudhari,
Age-32 years; Occ-Housewife.
 - 2] Kum. Tahira Noor Mhd Choudhari,
Age-15 years; Occ-Student.
 - 3] Kum. Ramzan Noor Mhd Choudhari,
Age-14 years: Occ-Student.
 - 4] Mr. Fateh Mohammad Choudhari,
Age-65 years: Occ-Nil.
 - 5] Smt. Laisan Fateh Mhd Choudhari,[Died]
Age-63 years, Occ-Nil. **Pursis Exh.63**
- [No.2 and 3 are minors through petitioner No.1
mother as natural guardian.]

All residing at – Padwal Nagar, Rais Compound,
Pipeline, Wagle Estate, Dist. Thane.

- Versus -

- Respondents:**
- 1] Mr. Mom Raj s/o. Bharat Ram
R/at – Kerioyo ki Dhani, Kaprda Teh. Bilara,
Dist. Jodhpur, Rajasthan - 342001.
 - 2] M/s. United India Insurance Co. Ltd.
Thane Divisional Office, 1st floor,
Pinak Galaxy Opp. Big Bazar,
near Kapurbawdi Circle, Majhiwada, Thane.

Shri Amit Choudhary, advocate for the petitioners.

Ex-parte, against respondent No.1.

Shri K. P. Saundattikar, advocate for respondent No.2.

JUDGMENT

(Delivered on 13th March, 2026)

This petition is under section 166 of the Motor Vehicles Act, 1988 for grant of compensation on account of vehicular accidental death of Mr. Noor Mhd Fateh Mhd Choudhari. Brief facts of the petition may be summarized as under:-

2] There was an accident on 24/12/2017 at about 02:15 p.m. on Mumbra-Panvel road, near Gurukrupa Petrol Pump within territorial jurisdiction of the Shil-Dayghar police station, Thane in which Mr. Noor Mhd Fateh Mhd Choudhari received serious injuries and died on the spot.

3] According to the petitioners, the deceased was riding the motorcycle as a pillion rider on Mumbra-Panvel road, when he reached near Gurukrupa Petrol Pump and at that time, one Tata Trailer No.RJ-19/GB-4911 came in a high speed, in rash and negligent manner and dashed the motorcycle of the deceased from left side. As a result of the said dash, deceased Mr. Noor Mhd. And the front rider fell down on road and they both were dragged along with the trailer and the deceased sustained severe injuries and succumbed to those injuries on the spot. The said Trailer is hereinafter referred to as '*the offending vehicle*'.

4] According to the petitioners, the said offending vehicle was being driven in high-speed and negligently. The report was lodged in respect of the said accident, and a crime was registered against driver of offending vehicle for the offence punishable under sections 304A, 279, 337 and 427 of the Indian Penal Code

and also under sections 184 of the Motor Vehicles Act.

5] According to the petitioners, petitioner No.1 is a wife, petitioners No.2 is a daughter, petitioner No.3 is a son and petitioners No.4 and 5 are the parents of the deceased. At the time of accident, the deceased Mr. Noor Mhd was 36 years old and was working as a supervisor with Mahalaxmi Enterprises, Thane and was earning Rs.20,000/- per month. According to them, they are entitled to the compensation of Rs.50,05,000/-; however, they have restricted their claim to the amount of Rs.1,00,000/- due to the financial difficulties and paid the court-fees thereon, and shown readiness to pay the court-fees later on the compensation amount, if granted more.

6] According to the petitioners, respondent No.1 is the owner and respondent No.2 is the insurer of the offending vehicle and therefore, both the respondents are jointly and severally liable to pay the compensation. They have prayed for interest at the rate of 7% per annum on the quantum of the compensation.

7] Respondent No.1 failed to appear despite the service of summons of the petition and therefore, it proceeded ex-parte by the order dated 25.03.2025. Respondent No.2 appeared and filed its written statement at Exh.13. It has denied almost all the averments and the allegations made in the petition. It is the defence of respondent No.2 that at the time of accident the driver of the motorcycle was negligent and it is a clear case of contributory negligence. It is further defence of this respondent is that a driver of the tanker was not having the valid and effective permit/fitness and driving license and therefore, it is the breach of terms and condition of the insurance policy and as such, the insurance company is not liable to pay the compensation and prayed for dismissal of the petition.

8] In view rival pleadings of both the parties, following

issues were framed at Exh.35 to which my findings are recorded against each of them for the reasons given below:-

ISSUES	FINDINGS
1. Whether the petitioners prove that when the deceased Noor Mohammad Fath Mohammad was riding motorcycle as a pillion rider, and the accident took place on 24.12.2017 near Gurukrupa Petrol Pump on Mumbra-Panvel road between his motorcycle and Tata Trailer No.RJ-19/GB-4911 and he received the injuries?.....	Yes.
2. Whether the petitioners prove that deceased Noor Mohammad Fath Mohammad succumbed to the injuries sustained in the accident?.....	Yes.
3. Whether the petitioners prove that the said Tata Trailer No.RJ-19/GB-4911 was being driven rashly or negligently at the time of accident?.....	Yes.
4. Whether respondent No.2 proves that there was breach of terms and conditions of the insurance policy?.....	No.
5. Whether respondent No.2 proves the contributory negligence of rider of the motorcycle?.....	No.
6. Are the petitioners entitled to compensation?.....	Yes.
If yes, to what extent?.....	Rs.40,08,000/-.
7. What order and award?.....	As per final order.

REASONS

As to issues No.1 to 3:-

9] According to the petitioners, the accident took place on 24/12/2017 at around 2:15 p.m. on Mumbra-Panvel road near Gurukrupa Petrol Pump within territorial jurisdiction of the

Shil-Dayghar police station, Thane. Petitioner No.1 Jabbarunnisa (P.W.1) has filed her evidence on affidavit at Exh.40 and stated all the facts pleaded in the petition. Her evidence suggests that her husband Mr. Noor Mhd was proceeding on a motorcycle as a pillion rider on Mumbra-Panvel road. When he reached near Gurukrupa Petrol Pump, one Trailer No.RJ-19/GB-4911 came in high speed, in rash and negligent manner and gave a dash to the motorcycle of deceased and therefore, her husband received grievous injuries and succumbed to those injuries on the spot.

10] There is no dispute in respect of occurrence of the said accident, and registration of a crime against the driver of the Trailer at Shil-Daighar police station, Thane for the offence punishable under sections 304A, 279, 337 and 427 of the Indian Penal Code and also under section 184 of the Motor Vehicles Act. The petitioners have placed on record the copy of F.I.R at Exh.55 which supports to her contention about registration of the crime against the driver of the Trailer for the rash or negligent driving and causing death of Noor Mhd. Inquest-panchnama (Exh.45) and cause of death certificate (Exh.46) supports the evidence of petitioner No.1 (P.W.1) that her husband Noor Mhd. received the several injuries in the accident and due to the injuries, he died on the spot. Evidence of the petitioner No.1 (P.W.-1) remained unrebutted and unchallenged as respondent No.2 failed to cross-examine her. Therefore, on the basis evidence of petitioner No.1 and the documents placed on record, I hold that the petitioners have proved that deceased Noor Mhd met with an accident on 24.12.2017 because of giving a dash by the offending vehicle, and the offending vehicle was being driven rashly or negligently, and Noor Mhd sustained grievous injuries and he succumbed to the injuries sustained in the said accident and as

such, I answer **issues No.1 to 3** in the affirmative.

As to issue No.4:-

11] It may be seen that there is no dispute that respondent No.1 was the owner of the offending vehicle and respondent No.2 was the insurer of the said offending vehicle. Copy of insurance policy (Exh.47) is placed on record. The fact that the insurance policy of the offending vehicle was effective and valid at the time of accident has not been disputed by respondent No.2 in the written statement. Accident took place on 24.12.2017 and the insurance policy was valid and effective for the period from 11.01.2017 to 10.01.2018.

12] Respondent No.2 has come up with the case that the driver of the offending vehicle was not having valid and effective driving license and therefore, it is the breach of terms and conditions of the insurance policy and as such, it is not liable to pay the compensation. However, respondent No.2 has not brought on record any documentary evidence in support of these defences and even respondent No.2 has not led any oral evidence. Respondent No.2 made absolutely no attempt to prove this defence. The learned advocate for respondent No.2 has also not argued in respect of the breach of terms and conditions of the insurance policy. Therefore, I hold that respondent No.2 failed to prove that there was breach of terms and conditions of the insurance policy and as such, I answer **issue No.4** in the negative.

As to issue No.5-

13] It is also the defence of respondent No.2 that at the time of accident the deceased was a pillion rider on motorcycle No.MH-04/CH-7645, and the driver of the motorcycle was negligent while riding the said motorcycle and it is a clear case of contributory negligence of the driver of motorcycle, and

therefore, respondent No.2 is not liable to pay any compensation to the petitioner.

14] It may be seen that though it is pleaded by respondent No.2 that there was contributory negligence of motorcycle rider in occurrence of an accident, nothing has been brought on record in this respect and even no document is placed on record suggesting that driver of motorcycle was riding the said vehicle rashly or negligently, and therefore, I hold that respondent No.2 failed to prove that there was any negligence of the driver of motorcycle while riding the motorcycle and in causing the accident and as such, I answer **issue No.5** in the negative.

As to issue No.6 :

15] It is already observed that the petitioners have proved that respondent No.1 is the owner of the offending vehicle and respondent No.2 is the insurer of the said vehicle and having regard to the fact that respondent No.2 failed to prove breach of conditions of insurance of policy, I hold that respondents No.1 and 2 are jointly and severally liable to pay the compensation on account of death of Noor Mhd.

16] According to the petitioners, petitioner No.1 is a wife, petitioner No.2 is a minor daughter, petitioner No.3 is a minor son and No.4 is a father of the deceased. It may be seen that evidence of petitioner No.1 (P.W.1) in respect of their relations with deceased Noor Mhd. is un rebutted and unchallenged. Having regard to the relations of the petitioners with deceased Noor Mhd., I hold that they all are the legal heirs and therefore, they are entitled to the compensation. Petitioner No.1 wife is appearing to be the housewife, petitioners No.2 and 3 appearing to be minor children and petitioner No.4 is old aged father and therefore, all four petitioners can be said to be the dependents on

the earnings of the deceased Noor Mhd.

17] Now the point for determination is what quantum of compensation the petitioners are entitled to. The petitioners have claimed that the deceased was 36 years old at the time of an accident. It may be seen that the petitioners have not placed on record any document showing the date of birth of deceased Noor Mhd. However, the inquest-panchanama and the cause of death certificate of the deceased placed on record suggest that the deceased was 36 years old. On the strength of inquest-panchanama and cause of death certificate, I hold that the deceased Noor Mhd was 36 years old at the time of his accident.

18] Evidence of petitioner Jabbarunnisa (P.W.1) suggests that her husband i.e. deceased Noor Mhd was employed as a Supervisor with Mahalaxmi Enterprises, Thane and was earning Rs.20,000/- per month. Salary certificate is also placed on record at Exh.60. This document has been proved by the petitioners by examining Ramesh Ram Vishwakarma (P.W.2) at Exh.59, who is the proprietor of the 'Mahalaxmi Enterprises, Thane'. Evidence of the Ramesh (P.W.2) in respect of employment of deceased Noor Mhd with 'Mahalaxmi Enterprises, Thane' can not be disbelieved as his evidence remained unrebutted and unchallenged. Hence, on the strength of evidence of Ramesh (PW.2), I hold that the petitioners have proved that deceased Noor Mhd was employed with 'Mahalaxmi Enterprises, Thane' and was drawing salary of Rs.20,000/- per month.

19] Deceased Noor Mhd. was salaried person, but his job was not permanent and therefore, having regard to the age of the deceased as 36 years, the petitioners are held entitled to 40 % future prospects as per the decision of the Apex Court in a case,

National Insurance Company Limited -Vs- Pranay Sethi and others, (2017) 16 SCC 680 (SC).

20] It is already observed that all four petitioners were the dependents on the income of the deceased Noor Mhd. Having regard to the dependency, 1/4th income is considered towards his personal and living expenses, as per the decision of the Supreme Court in a case, *Sarla Varma and others -Vs- Delhi Transport Corporation and Others, AIR 2009 SC 3104*. Furthermore, as the age 36 years of the deceased Noor Mhd is falling in the age band 36 to 40, an appropriate multiplier is to be considered as 15.

21] Under the conventional head, as per the decision of the Apex Court in a case, *National Insurance Company Limited - Vs- Pranay Sethi and others, (2017) 16 SCC 680 (SC)*, the petitioners are held entitled to the amount of Rs.15,000/- towards loss of estate and amount of Rs.15,000/- towards funeral expenses, and each petitioner would be entitled to the amount of Rs.40,000/- towards the consortium. In view of the further direction of the Apex Court in respect of awarding 10% increase in every three years, the petitioners would be entitled to 20% increase on the conventional head as 6 years have been elapsed after passing the said judgment on 31.10.2017.

22] Thus, the compensation amount on account of the death of Noor Mhd Fateh Mhd Choudhari is assessed as follows, and I take this amount as just and reasonable amount of compensation.

Sr. No.	Particulars	Amount
I	Annual income of deceased after deduction of tax (Nil) (Rs.20,000/- p.m. x 12)	Rs.2,40,000/-
II	Future prospects: 40% of income (Age being in age group below 40 years)	Rs.96,000/-
III	Totally income (I+II)	Rs.3,36,000/-

IV	1/4 th deduction towards personal and living expenses of deceased	Rs.84,000/-
V	Multiplicand (III-IV)	Rs.2,52,000/-
VI	Multiplier 15 (For the age group: 36 to 40 yrs.)	
VII	Loss of dependency (Multiplicand X Multiplier)	Rs.37,80,000/-
VIII	Loss of estate	Rs.15,000/-
IX	Loss of consortium Rs.40,000x 4	Rs.1,60,000/-
X	Funeral expenses	Rs.15,000/-
XI	Additional 20% increase on conventional heads i.e. on loss of estate, consortium and funeral expenses.	Rs.38,000/-
XII	Total compensation..... (VII + VIII + IX +X + XI)	Rs.40,08,000/-

23] Therefore, I hold that the petitioners are entitled to the compensation of Rs.40,08,000/- inclusive of the amount of no fault liability of Rs.50,000/- and as such, I answer **issue No.6** accordingly.

24] The petition was filed in the year 2018; however, summons/notice of the petition was not served by taking the prompt steps by the petitioner. There is a long delay in serving the summons/notice of the petition on respondent No.1. Respondent No.1 was served by R.P.A.D. on 16.01.2025. So it shows that the petitioners were not prosecuting the petition diligently. So delay in disposing of the petition was due to the inaction and want of due diligence of the petitioners and therefore, having regard to this aspect, I am of the view that the petitioners can be made entitled to the interest on the compensation amount Rs.40,08,000/- from 16.01.2025. Having regard to the several judgments of the Hon'ble High Court and the Hon'ble Supreme Court, I am of the view that granting the interest at the rate of Rs.9/- per annum would be just and proper. As the offending vehicle was duly insured with

respondent No.2, it is the duty of respondent No.2 to indemnify the owner i.e. respondent No.1. So, it would be just and proper to give direction to respondent No.2 to deposit with the Tribunal the compensation amount for being paid to the petitioners. In the result, in an answer to **issue No.7**, I proceed to pass the following order.

ORDER

1. The petition is partly allowed with costs.
2. Respondents No.1 and 2 are held jointly and severally liable to pay the amount of Rs.40,08,000/- (**Rupees Forty lakhs and Eight Thousands only**) as the compensation to the petitioners.
3. The petitioners are entitled to the interest at the rate of Rs.9% per annum on the compensation amount from 16.01.2025 till its full realization.
4. Amount of Rs.50,000/-, if any, paid towards no fault liability, shall be adjusted against the aforesaid amount of compensation.
5. Respondent No.2 is directed to deposit the above amount, for being paid to the petitioners, with the Tribunal.
6. Petitioner No.1 would be entitled to 40% and petitioners No.2 to 4 would be entitled to 20% each. 50% amount payable to each of the petitioners shall be kept in fixed deposit for the period of 3 years.
7. After the maturity of the Fixed Deposit, the petitioners shall be entitled to receive the said amount with the accrued interest thereon.
8. The award shall be drawn accordingly.

Place :Thane
Dated :13.03.2026

Sd/-
(K. P. Shrikhande)
Extra Jt. District & Addl. Sessions
Judge as Member, M.A.C.T., Thane.