MHWR010015942020

Presented On : 28-10-2020
Registered On : 29-10-2020
Decided On : 29-04-2026
Duration – 05Y – 06M – 01D

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL AT WARDHA.
(Presided over by Shri H.B. Gaikwad, Chairman, M.A.C.T., Wardha)

Motor Accident Claim Petition No.54/2020 **Exh. No.71**

Claimants :-

1] Smt. Sunanda Wd/o Prabhakar Rangankar, Aged about 51 Years, Occu.:- Housewife,

2] Mr. Anurag S/o Prabhakar Rangankar, Aged about 26 Years, Occu.:-Service,

3] Tilottama D/o Prabhakar Rangankar, Aged about 23 Years, Occu.:-Education, All R/o. Near State Bank Colony, Nagpur Road, Nalwadi, Wardha, Tah. and District Wardha.

-Versus-

Respondents :-

1] United India Insurance Company Ltd., having its branches throughout India, Through its Branch Manager, Wardha Branch, Wardha.

2] Shri. Jagdishprasad Hansraj Bishnoi, Aged about 38 Years, Occu.: Owner and Driver of offending vehicle, R/o. In front of Bhutnath Mandir, Near Shiv Balak School, Bangla Nagar, Bikaner (Rajasthan) – 334004.

Shri. P. B. Taori, the learned advocate for the claimants.
Shri. S. P. Choubey, the learned advocate for respondent No.1
Respondent No.2 – Ex-parte.

-:- <u>JUDGMENT</u> -:-

(Delivered on 09th Day of April, 2026)

The claimants have filed this petition under Section 166 of the Motor Vehicles Act, 1988 for compensation of Rs.1,00,00,000/- on account of motor vehicular accidental death of one Prabhakar S/o Shankarraoji Rangankar, who was the husband of claimant No.1 and father of claimants No.2 and 3.

2. The brief facts leading to the filing of the present petition are that, on 14.09.2020, between 12:00 noon and 12:30 p.m., the deceased, Prabhakar, was proceeding on his two-wheeler, a Pleasure bearing registration No. MH-32/U-3979, along the Chandrapur–Nagpur Highway near Chikni Fata, within the limits of village Tembhurna, while travelling from Warora towards Tembhurna for his work. At that time, a Trailer bearing registration No. RJ-07/GA-9799, coming from the Chandrapur side and proceeding towards Nagpur, dashed against the above-numbered two-wheeler. As a result of the impact, Prabhakar sustained grievous injuries and subsequently succumbed to the same.

3. It is stated that the deceased Prabhakar was aged about 57 years at the time of the accident. He was engaged since last over 25 years in the Maharashtra State Electricity Transmission Co. Ltd. (MSET) as Additional Executive Engineer (Transmission) and getting Rs.1,96,000/- per month income as salary. The claimants are suffering from great hardship and starvation. The claimants have lost the society, love and affection of the deceased

Prabhakar. They quantified total claim for compensation at Rs.1,00,00,000/-, considering his income of Rs.1,96,000/- per month.

4. It is stated that the accident took place because of the rash and negligent driving of the above numbered Trailer by respondent No.2, which was also owned by him and insured with respondent No.1, at the time of the accident. Therefore, the claimants prayed for compensation of Rs.1,00,00,000/- with 12% future interest and costs of the petition from respondents No.1 and 2.

5. Respondent No.1 filed its Written Statement (Exh.12) and contested the claim. It denied the age, occupation, and income of the deceased. The driver of the above-numbered Trailer, i.e., respondent No.2, was not holding a valid and effective driving licence to drive the vehicle in question, and that there was a breach of the terms and conditions of the insurance policy; hence, it is not liable to indemnify or pay any compensation to the claimants. It is contended that the claimants have failed to establish the involvement of the above-numbered Trailer in the alleged accident, as well as the rash and negligent act on the part of its driver. According to it, the mere presence of the Trailer near the place of the alleged accident does not establish its involvement, and it has been falsely implicated in the present case.

6. It is stated that the above-numbered Trailer was not possessing a valid fitness certificate and permit to ply on a public road, thereby amounting to a wilful breach of the statutory

provisions as well as the terms and conditions of the insurance policy. While denying its liability, it further asserted that the owner and driver of the Trailer have been falsely implicated and made scapegoats in the case.

7. It is stated that the deceased was proceeding from Warora towards Tembhurna, and since Tembhurna lies on the relevant route, he was expected to drive on the correct (eastern) side of the road. However, the deceased was allegedly driving on the western side of the four-lane road, i.e., on the wrong side, and by doing so, he himself invited the accident due to his own negligence. It is also contended that there was no damage to the front portion of the Trailer, despite the allegation that it had dashed against the two-wheeler from behind, thereby rendering the claim doubtful. On these grounds, it contended that the deceased himself was solely responsible for the accident due to his rash and negligent driving, and therefore, prayed for dismissal of the petition.

8. Respondent No.2, though served, failed to appear. Resultantly, the petition proceeded ex-parte against him on 11.08.2021.

8. The issues framed by my learned predecessor at Exh.15, are reproduced below alongwith my findings thereon.

	ISSUES		**FINDINGS**
1.	Whether petitioners prove that deceased Prabhakar Shankarraoji	:	Partly yes, contributory

	Rangankar died in a motor vehicular accident which has been resulted out of rash and negligent driving on the part of driver of Trailer bearing No. RJ-07/GA-9799 ?		negligence of both the deceased and respondent No.2.
2.	Whether respondent No.1 proves that there was breach of terms and conditions of policy by the owner ?		Yes
3.	Whether petitioners are entitled for compensation as claimed. If yes, to what extent and from whom ?	:	Partly yes, claimants are entitled to get Rs.64,24,200/- from respondent No.2 only.
4.	What award and costs ?	:	The petition is partly allowed.

= REASONS =

AS TO ISSUE NO. 1 :

9. Claimant No.2 tendered his affidavit in lieu of examination-in-chief (Exh.16). He deposed that the accident in question occurred due to the rash and negligent driving of the above numbered Trailer by respondent No.2. In his cross-examination, however, he admitted that the Nagpur–Warora road is an arterial road running from north to south. He further stated that on the relevant day, his father was proceeding towards village Tembhurda and that, while travelling from Nagpur towards Warora, it is necessary to use the eastern carriageway of the road divided by a central median. He also stated that the spot panchanama was prepared considering the prevailing circumstances at the scene; nevertheless, the police have recorded

therein that the accident occurred on the western side of the divider. Significantly, he admitted that he had not personally witnessed the accident and, therefore, had no direct knowledge as to the direction in which the vehicles involved were travelling. He categorically stated that he could not say whether his father was travelling from Warora to Nagpur or from Nagpur to Warora. Thus, it is an admitted position that he is not an eyewitness to the occurrence. In view of this admission, his testimony with regard to the manner of the accident does not carry evidentiary value and is not material for determining the issue of negligence in the present case.

10. Respondent No.2 was the eye witness to the accident. He did not appear before the Tribunal to depose about the circumstances under which the accident took place. No other eye witness has been examined by the parties.

11. To corroborate, the papers of investigation would be helpful to decide the same. It is not in dispute that, as per Form-AA (Exh. 20) and the First Information Report (Exh. 23), Crime No. 745/2020 came to be registered against respondent No. 2 for the offences punishable under Sections 279 and 304-A of the Indian Penal Code, as well as Sections 134(b) and 184 of the Motor Vehicles Act, arising out of the accident in question.

12. The spot panchanama (Exh.24) reveals that the accident occurred on the highway road near Chikhni Phata. An eyewitness, namely Chindhuji Doma Ghodmare, has been shown in the said panchanama to have stated that he had personally

witnessed the incident. The scene of occurrence was located on Warora Road, approximately 20 feet from Chikhni Phata, near village Tembhurda. It is recorded therein that the above numbered two-wheeler, was proceeding from Warora towards Tembhurda, when it was hit from behind by the above numbered Trailer. As a result of the impact, the rider sustained injuries, including a fracture to his right arm near the elbow, injury to his right ankle, and a bleeding wound on the forehead. The driver of the Trailer allegedly drove the vehicle ahead for some distance, stopped it, and thereafter fled from the spot. The deceased was subsequently taken to the Government Hospital at Warora by local villagers. The panchanama further records that broken pieces of red and white glass were found scattered at the spot and tyre skid marks were noticed, indicating sudden application of brakes by the Trailer. No other material evidence of relevance was observed at the scene.

13. The spot panchanama (Exh.24) and the sketch map indicate the presence of a central divider separating the Nagpur–Warora road into two carriageways, namely Nagpur to Warora (north–south) and Warora to Nagpur (south–north). According to the claimants, the deceased Prabhakar was proceeding on the above-numbered Pleasure scooter from Warora towards Tembhurda, and the Trailer in question was also moving in the same direction. In such circumstances, the appropriate side for both vehicles would have been the western side of the Warora–Nagpur carriageway (south–north direction).

14. The spot panchanama (Exh.24) and the FIR (Exh.23)

indicate that the Trailer dashed the scooter from behind. However, merely because the impact was from the rear does not conclusively establish negligence on the part of the Trailer driver alone. In the absence of any eyewitness examined by the parties, it becomes necessary to assess whether the deceased himself was riding the scooter cautiously and on the correct side of the road. A careful perusal of the spot panchanama (Exh. 24) shows that broken pieces of glass were found near the eastern side of the Warora–Nagpur road, close to the divider, whereas blood stains were noticed near the middle portion of the same carriageway. The exact point of impact has not been clearly established by either party. In such a situation, the Tribunal has to rely upon the spot panchanama, the sketch map, and the principle of preponderance of probabilities to ascertain the probable location of the accident.

15. The presence of broken glass pieces near the divider suggests that the point of impact was at or around that location. This indicates that the accident likely occurred beyond the midline of the Warora–Nagpur carriageway, i.e., closer to the divider. Considering that the deceased was travelling from Warora towards Nagpur, he was required to ride on the extreme left side of the road, i.e., the western side of the carriageway. However, the probable place of impact, as emerging from the record, suggests that he was not riding on the extreme left side. It is also pertinent to note that the Warora–Nagpur road is a highway, where a higher degree of care and caution is expected from road users. The deceased, therefore, had a corresponding duty to ensure that he was riding on the correct side of the road and with due diligence,

particularly considering the nature of the vehicle being a two-wheeler. In view of these circumstances, it can be reasonably inferred that there was contributory negligence on the part of the deceased in not riding his scooter with due care, caution, and on the proper side of the road.

16. The fact that the above-numbered Trailer has given dash from behind also shows negligence of the driver of the above-numbered Trailer. Had respondent No.2 driven the above numbered Trailer with due care and caution, the accident would not have taken place. Thus, joint responsibility is cast upon both the deceased and respondent No.2 in operating their respective vehicles. Had both the rider and the driver exercised due caution, the accident would not have occurred. The deceased Prabhakar and respondent No.2 were therefore equally responsible for the accident, and this is clearly a case of contributory negligence on the part of both the Pleasure rider and the Trailer driver.

17. In **ICICI Lombard General Insurance Company Limited ..Vs.. Rajani Sahoo and Others, reported in (2025) 2 SCC 599,** as relied upon by the learned advocate for the claimants, the Hon'ble Supreme Court has held that the issue of negligence in motor accident claim cases is to be adjudicated on the touchstone of the doctrine of preponderance of probabilities and not on the strict standard of proof required in criminal trials. On the other hand, in **Pukh Raj Bumb ..Vs.. Jagannath Atchut Naik and Others, reported in (2014) 4 Mh.L.J. 447,** relied upon by the learned advocate for respondent No.1, the Hon'ble Bombay High Court has

emphasised that sympathy or compassion cannot substitute the requirement of proof of negligence. Similarly, in **Shri Ram General Insurance Co. Ltd. ..Vs.. Aditya Kishore Chaturvedi and Others, reported in 2023(4) T.A.C. 738 (Del.),** relied upon by the learned advocate for respondent No.1, the Hon'ble Delhi High Court has held that mere registration of an FIR or initiation of criminal prosecution against the driver of the alleged offending vehicle is not, by itself, sufficient to fasten liability, and that the Tribunal must independently assess the evidence before arriving at a finding regarding rash and negligent driving.

18. The legal position that emerges from the aforesaid authorities is well settled. The Tribunal is required to determine the issue of negligence by evaluating the entire material on record, including ocular evidence of eyewitnesses, if any, as well as documentary evidence such as the FIR, charge-sheet, spot panchanama, and other police papers. While doing so, the standard of proof to be applied is that of preponderance of probabilities, having regard to the summary nature of proceedings under the Motor Vehicles Act. At the same time, it is equally settled that the mere registration of a criminal case against the driver of the offending vehicle cannot be treated as conclusive proof of negligence. The Tribunal is under a statutory obligation to independently scrutinise the evidence and arrive at its own findings, without being influenced solely by the fact that criminal proceedings have been initiated.

19. In view of the above settled principles, the ratio laid

down in the aforesaid decisions squarely governs the present case. Accordingly, the issue of negligence has been examined by this Tribunal on the basis of the evidence available on record and in accordance with the principle of preponderance of probabilities, while independently assessing the material brought on record by the parties.

20. The mere fact that offences were registered against respondent No.2 cannot, by itself, render him solely liable. The strict rules of proof under the Evidence Act do not apply to claim petitions, and negligence is to be determined on the touchstone of the preponderance of probabilities. Since both the rider and the driver were negligent, both are equally responsible for the accident. The FIR (Exh.23), charge-sheet (Exh.65), spot panchanama (Exh.24), clearly indicate that the accident was caused due to the rash and negligent riding and driving of both the deceased Prabhakar and respondent No.2. I therefore hold that the accident occurred due to contributory negligence on the part of both the deceased Prabhakar and respondent No.2.

21. The FIR (Exh.23), charge-sheet (Exh.65) and the Post-Mortem Report (Exh.25) clearly shows that the deceased sustained serious injuries in the above referred accident and died as a result, thereof. It is also established that the accident took place due to contributory negligence of the deceased Prabhakar and respondent No.2. Hence, I answer issue No.1 partly in the affirmative.

<u>AS TO ISSUES NO. 2 AND 3</u> :

22. The evidence on these issues, is common and

interconnected. Therefore, they are being considered together.

23. Claimant No.1 is the widow of the deceased, Prabhakar. Claimants No.2 and 3 are his children, namely, a major unmarried son who is in service and an unmarried daughter who is pursuing her education. This fact has not been disputed in the cross-examination of claimant No.2 conducted by the respondents. Claimant No.2 deposed that the deceased, Prabhakar, was about 57 years of age at the time of the accident. This assertion has remained unchallenged during his cross-examination on behalf of the respondents. The claimants have placed on record copies of the Aadhaar Card (Exh. 22) and PAN Card (Exh. 21) of the deceased, which reflect his date of birth as 12.02.1963. The said date of birth has also not been disputed in the cross-examination of Claimant No. 2. The accident in question occurred on 14.09.2020. In view of the documentary evidence on record, the age of the deceased at the time of the accident is established as 57 years.

24. Consequently, in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Smt. Sarla Verma and Ors. ..Vs.. Delhi Transport Corporation and Anr., reported in 2009(6) SCC 121**, and **National Insurance Company Ltd. ..Vs.. Pranay Sethy, reported in (2017)16 SCC 680**, the multiplier of '9' will have to be selected for the purpose of fortifying the amount of compensation.

25. In order to establish that the deceased Prabhakar was employed as an Additional Executive Engineer (Transmission) and was earning a monthly salary of Rs.1,96,732/-, the claimants

examined Sadanand Suresh Shewalkar (CW-2) (Exh. 40), who was serving in the office of the Executive Engineer, MSETCL. He deposed that during the period from December 2020 to February 2022, he was working as an Executive Engineer with MSETCL, whereas the deceased Prabhakar was holding the post of Additional Executive Engineer. He further stated that he was responsible for the disbursement of salaries to all employees. The salaries were credited to the respective bank accounts of employees through the office at the end of each month, and once the salary entries were made in the computerized system, no subsequent alteration could be effected.

26. He also deposed that the deceased, Prabhakar, was a Class-I employee, and that the Salary Certificate (Exh.36) and Salary Slips (Exhs. 30 to 35) bear his signatures. According to him, in September 2020, prabhakar met with an accidental death and, therefore, his salary for that month was restricted to 14 days. He further stated that the prescribed age of superannuation in the office is 58 years. He referred to the Seniority List (Exh. 37) published by the office on its website, wherein the name of the deceased appears at Serial No. 20 along with his date of birth and other particulars. He also stated that the deceased was eligible for promotion to the post of Executive Engineer, and upon such promotion, his salary and allowances would have increased. A certificate under Section 65-B of the Indian Evidence Act (Exh. 42) has also been produced on record.

27. In his cross-examination on behalf of respondent No.1,

he admitted that for the period from March to August 2020, no certificate under Section 65-B was produced in respect of the person who made the salary entries in the computerized system. He further admitted that he had not personally made the entries reflected in Salary Slips at Exhs. 35 and 36.

28. The respondents have not disputed that Sadanand (CW-2) was employed with, or duly authorised by, MSETCL to depose in the present matter. Further, the fact that the deceased Prabhakar was working with MSETCL as an Additional Executive Engineer has also not been denied in the cross-examination of Sadanand (CW-2). In the absence of any challenge to these material facts, they must be held to have been duly established by the claimants. The only objection raised during cross-examination pertains to the admissibility of the documents produced on record. However, it is a settled principle of law that proceedings under claim petitions are summary in nature, and the strict rules of evidence as embodied in the Indian Evidence Act are not required to be applied with rigidity. Such matters are to be adjudicated on the touchstone of preponderance of probabilities, and, where necessary, by adopting a reasonable degree of approximation. In these circumstances, and in the absence of any substantive challenge, the evidence of Sadanand (CW-2) sufficiently proves the salary slips, salary certificate, and office circular (Exhs. 30 to 37) pertaining to the deceased Prabhakar.

29. The salary slips (Exhs. 30 to 35), salary certificate (Exh. 36), and office circular (Exh. 37) clearly establish that the

deceased Prabhakar was employed as an Additional Executive Engineer with Maharashtra State Electricity Transmission Co. Ltd. The said documents reflect that he was drawing a monthly salary of Rs.1,93,102/- for March 2020, Rs.1,92,442/- for April 2020, Rs.1,90,462/- for May 2020, Rs.1,90,462/- for June 2020, Rs.1,90,462/- for July 2020, Rs.1,96,732/- for August 2020, and Rs.94,989/- for September 2020 (restricted to 14 days).

30. It is not in dispute that Prabhakar expired on 14.09.2020. The salary drawn by the deceased in the month immediately preceding his death, i.e., August 2020, was Rs.1,96,732/-. This comprised Basic Pay of Rs.1,49,130/-, Dearness Allowance of Rs.25,352/-, HRA of Rs.11,930/-, Electricity Charge Allowance of Rs.600/-, Special Compensatory Allowance of Rs.500/-, Fringe Benefit (Field) of Rs.1,400/-, Entertainment Reimbursement of Rs.670/-, Book Reimbursement of Rs.880/-, and Night Shift Allowance of Rs.6,270/-. From the said gross salary, deductions were made towards EePF contribution-Rs.20,938/-, EeVPF contribution-Rs.3,000/-, Profession Tax-Rs.200/-, Income Tax-Rs.35,851/-, stamp revenue Rs.1/-, Staff Welfare Fund Rs.10/-, Ee Dependent Welfare Fund-Rs.30/-, Credit Society- Rs.20,171/-, and Mediclaim Contribution-Rs.700/-, aggregating to Rs.80,901/-.

31. Out of these deductions, the amount of Rs.35,851/- towards income tax cannot be treated as part of the income of the deceased and is liable to be excluded. Similarly, the professional tax of Rs.200/- is also required to be deducted. Further, the

amounts towards Night Shift Allowance - Rs.6,270/- and Book Reimbursement - Rs.880/-, being in the nature of variable or reimbursement components, are also liable to be excluded for the purpose of determining the income. Accordingly, after making the aforesaid deductions, the net monthly income of the deceased Prabhakar can reasonably be assessed at approximately Rs.1,53,531/-, which is rounded off to Rs.1,53,000/- for the purpose of computation.

32. In view of the ratio laid down in *Pranay Sethi* (supra), wherein the Hon'ble Supreme Court held that, in the case of a permanent salaried employee between the age of 50 and 60 years, 15% of the actual income is to be added towards future prospects, the same principle is applicable in the present case. Considering the age of the deceased, 15% of his income is required to be added towards future prospects. I have held the income of the deceased to be Rs.1,53,000/- per month. Adding 15%, i.e., Rs.22,950/-, the monthly income of the deceased comes to Rs.1,75,950/-. Thus, the annual income of the deceased is assessed at Rs.21,11,400/- per annum.

33. Claimant No.2 is the major son of the deceased Prabhakar, while Claimant No. 3 is his unmarried daughter, who is pursuing her education. At the time of filing of the claim petition, claimant No. 2 was 26 years of age and was in employment. It is, therefore, an admitted position that claimant No. 2 had attained majority at the time of the accident, which occurred in the year 2020.The fact that claimant No.2 was engaged in service clearly

indicates that he was not financially dependent on the deceased Prabhakar. Therefore, he cannot be considered as dependent of the deceased for the purpose of awarding compensation under the head of loss of dependency. Nonetheless, he is entitled to compensation under the head of loss of parental consortium.

34. Out of the amount of Rs.21,11,400/-, 1/3rd deduction (Rs.7,03,800/-) will have to be made towards his personal and living expenses considering the number of dependents i.e claimants No.1 and 3. The balance amount of Rs.14,07,600/- would be his contribution to his family comprising of claimants No.1 and 3. This would be the loss of income/dependency of claimants No.1 and 3. If this amount is multiplied by '9', the figure would come to Rs.1,26,68,400/-. The claimants are entitled to get this amount as compensation towards loss of income/dependency, due to the accidental death of Prabhakar.

35. In view of the ratio laid down by the Hon'ble Apex Court in the case of Pranay Sethi (Supra), claimants being the spouse, son and daughter of the deceased Prabhakar respectively, they would be entitled to get compensation on account of loss of spousal and parental consortium. They would be further entitled to get compensation towards loss of estate and towards funeral expenses.

36. In view of the ratio laid down in *Pranay Sethi* (supra), there shall be a 10% increase every three years in the compensation awarded under the heads of loss of spousal and parental consortium, loss of estate, and funeral expenses,

calculated from the date of the judgment in *Pranay Sethi* (supra). As the judgment in *Pranay Sethi* (supra) was delivered on 31.10.2017, an increase of 20% is applicable, as six years have elapsed since the delivery of the said judgment. Accordingly, the claimants would be entitled to Rs.48,000/- each towards loss of spousal and parental consortium, Rs.18,000/- towards loss of estate, and Rs.18,000/- towards funeral expenses.

37. The case of **Atul Tiwari ..Vs.. Regional Manager, Oriental Insurance Company Limited, reported in (2025) 2 SCC (Cri.) 22,** relied upon by the learned advocate for the claimants with due respect would be of no help to the claimants as in the said case the issue of permanent disability was involved, unlike in the present case the issue of accidental death is involved.

38. As such, the claimants would be entitled to get the total amount of Rs.1,28,48,400/- as compensation under the following heads:

Sr. No.	**Particulars of the head**		**Amount in Rupees**
1]	Loss of dependency for claimants No.1 and 3.	:	Rs.1,26,68,400/-
2]	Loss of spousal and parental consortium to the claimants.	:	Rs.1,44,000/-
3]	Loss of estate	:	Rs.18,000/-
4]	Funeral Expenses	:	Rs.18,000/-
	Total compensation		**Rs.1,28,48,400/-**

39. I have already observed that respondent No.2 and the deceased Prabhakar, were equally responsible for the accident, and therefore, 50% negligence lies with the deceased Prabhakar and 50% negligence lies with respondent No.2. In such circumstances, the claimants are entitled to get 50% of total compensation i.e. Rs.64,24,200/- inclusive of the amount of "No Fault Liability.

40. Respondent No.2 was the owner and driver of the above numbered Trailer. The said fact is not disputed by respondent No.1 and which is also reflected in Form 'AA' (Exh.20). Indisputably, as per the certificate of registration (Exh.28) the above numbered Trailer was owned and driven by respondent No.2. The insurance policy (Exh.29) shows that the above numbered Trailer was insured with respondent No.1 from 02.10.2019 to 01.10.2020. The accident took place on 14.09.2020. As such, on the date of the accident the insurance policy in respect of the above numbered Trailer was valid.

41. The claimants have filed the driving licence (Exh.27) of respondent No.2, which shows that respondent No.2 was having valid and effective driving license to drive the above numbered Trailer at the time of the accident.

42. The respondents did not raise any objection regarding the deceased Prabhakar having valid and effective driving licence or not, at the time of the accident. Even otherwise, in the case of **Sudhir Kumar Rana .Vs. Surinder Sing, reported in (2008)12 SCC 436**, The Hon'ble Supreme Court, held as under:-

> "9. If a person drives a vehicle without a licence, he commits an offence. The same, by itself, in our opinion, may not lead to a finding of negligence as regards the accident. It has been held by the courts below that it was the driver of the mini truck who was driving rashly and negligently. It is one thing to say that the appellant was not possessing any licence but no finding of fact has been arrived at that he was driving the two-wheeler rashly and negligently. If he was not driving rashly and negligently which contributed to the accident, we fail to see as to how, only because he was not having a licence, he would be held to the guilty of contributory negligence.
>
> 10. The matter might have been different if by reason of his rash and negligent driving, the accident had taken place."

43. The Hon'ble Supreme Court has also observed that only because the appellant therein was not possessing any licence, that could be the only ground to held him liable for contributory negligence. The ratio laid down in above cited case is also applicable to the facts of the present case, as here also the driving licence of the deceased is not on record and the respondents failed to establish that only because the deceased was not having licence, he was not able to ride the above numbered Pleasure.

44. Respondent No.1 has strenuously contended that, at the time of the accident, respondent No.2 did not possess a valid permit and fitness certificate of the above numbered Trailer, thereby constituting a breach of the terms and conditions of the insurance policy and absolving it of liability. In support of this

contention, respondent No.1 examined Vikram Swami Ganeshdayal Swami (RW-1) (Exh.59), who deposed that he is serving as an Upper Division Clerk in the R.T.O. Office, Bikaner. He stated that, pursuant to the court summons received through his office, he was directed to produce the permit and fitness certificate pertaining to the said vehicle. He further deposed that his office had issued a fitness certificate on 09.11.2023 and a permit on 17.11.2023. The fitness certificate (Exh.60) bears the signature of Bharti Nethani, District Transport Officer, Bikaner, while the permit (Exh.61) bears the signature of Ashwini Rajpurohit, Additional Administrative Officer, R.T.O. Office, Bikaner, whose signatures he identified. He further stated that the State permit of the vehicle was valid for the period from 16.07.2019 to 15.07.2024, whereas the national permit was valid from 16.07.2019 to 15.07.2020.

45. In his cross-examination on behalf of the claimants, he admitted that Bharti Nethani was serving as the District Transport Officer at the relevant time. He candidly admitted that he himself was not the competent authority to issue either a fitness certificate or a permit. He further admitted that the vehicle in question was a Trailer and not a truck. Significantly, he admitted that, as per the official records, the said Trailer was fit for plying on the date of the accident, i.e., 14.09.2020. He also admitted that a national permit is generally issued for a period of one year and that, in case a vehicle registered in one State travels to another State, a temporary permit can be obtained for such travel. He further admitted that there exists a provision under the Motor Vehicles Act for issuance of temporary permits, and that at inter-State entry

points, permits are verified before allowing entry of vehicles. He clarified that there is no direct nexus between a fitness certificate and a permit, and that a vehicle, if found fit, can ply on roads. He denied the suggestion that he had deposed without authority or without verifying the record and had tendered false evidence.

46. On this aspect, respondent No.1 further examined Shekhar Keshav Bawane (RW-2) (Exh.64). He deposed that he is presently working as a Deputy Manager at the Wardha Branch of United India Insurance Company and is duly authorised to depose in the present matter. He has perused the police papers and other relevant documents pertaining to the case. The above numbered Trailer was owned and driven by respondent No.2 and was registered with the Regional Transport Office, Bikaner. Upon conducting a private inquiry, it was revealed that, on the date of the accident i.e. 14.09.2020, the said Trailer did not possess a valid route permit and that its national permit had been cancelled. The copy of the charge-sheet in Crime No.745/2020 (Exh.65) was forwarded to their office. No temporary route permit had been obtained for the said vehicle and, therefore, it was being plied on public roads within the State of Maharashtra without any valid permit, in contravention of the provisions of the Motor Vehicles Act, as well as in breach of the terms and conditions of the insurance policy. The Insurance Company is not liable to indemnify the insured and that the claim petition deserves to be dismissed as against respondent No.1.

47. In his cross-examination on behalf of the claimants, he admitted that he has been working as Deputy Manager with

respondent No.1 Company for the last 15 months. He candidly admitted that he had not personally visited Bikaner, Rajasthan, to verify the details of the vehicle in question and, therefore, had no personal knowledge in that regard. He further admitted that he was unaware as to the point of entry of the said vehicle into the State of Maharashtra. He also admitted that he possesses only limited knowledge regarding the procedure for obtaining a road permit and lacks detailed understanding of the same. He expressed ignorance as to whether a permit could be obtained at the point of entry into another State or whether such permits could be obtained online upon payment of the requisite fees. He admitted that the insurance policy in question was issued from an office situated in Rajasthan. He denied the suggestion that the policy did not contain any specific condition prohibiting the use of the vehicle without a valid permit.

48. He further stated that he was not aware whether the R.T.O. authorities had inspected the seized vehicle. However, he admitted that, in cases of motor accidents, inspection by the R.T.O. is ordinarily carried out. He further admitted that, as reflected in the charge-sheet, one Shriniwas Jilhawar, Motor Vehicle Inspector attached to the R.T.O., Chandrapur, had inspected the vehicle and submitted a report, wherein no technical defect was found in the said Trailer. He also admitted that the driver of the Trailer was not prosecuted by the police for plying the vehicle without a permit. He denied the suggestion that, with a view to avoid liability, the Insurance Company had tendered false evidence or that he had deposed falsely before the Tribunal.

49. Swami (RW-1), in his cross-examination, has categorically admitted that, as per the official records of the Regional Transport Office, the above numbered Trailer was fit for plying on the date of the accident, i.e., 14.09.2020. He has also produced on record the fitness certificate (Exh.60) issued by the Road Transport Authority, Bikaner, which clearly reflects that the said Trailer was certified to be roadworthy for the period from 15.07.2020 to 08.07.2021. In view of this unimpeached documentary evidence, it stands conclusively established that the vehicle in question possessed a valid fitness certificate on the date of the accident. Consequently, the objection raised by respondent No.1 regarding absence of a valid fitness certificate is devoid of merit and is liable to be rejected.

50. Insofar as the aspect of permit is concerned, Swami (RW-1) has deposed that the State Permit (Exh.61) of the said Trailer was valid for the period from 16.07.2019 to 15.07.2024, whereas the National Permit was valid from 16.07.2019 to 15.07.2020. The contents of the permit document (Exh.61) corroborate this position. It is an admitted fact that the accident occurred on 14.09.2020 within the territorial limits of the State of Maharashtra, i.e., subsequent to the expiry of the National Permit. In such circumstances, for a vehicle registered in another State to ply within the State of Maharashtra, it was incumbent upon the owner/driver either to possess a valid National Permit or to obtain a temporary permit, as contemplated under the provisions of the Motor Vehicles Act.

51. Swami (RW-1) has, in his cross-examination, candidly admitted that when a vehicle registered in one State enters another State, its permit is ordinarily verified at the entry point and only thereafter it is permitted to ply within the said State. He has further admitted that, subject to the applicable rules, a temporary permit can be obtained at the time of entry and that the Central legislation provides for issuance of such temporary permits. These admissions clearly establish the statutory requirement of a valid permit-either national or temporary-for inter-State operation of the vehicle. Thus, from the evidence led by respondent No.1 itself, it stands established that the National Permit of the above numbered Trailer had expired prior to the date of the accident. The crucial question that then arises for consideration is whether the said vehicle was operating under a valid temporary permit at the relevant time.

52. At this juncture, it is necessary to note that, ordinarily, the burden lies upon the insurer to establish breach of policy conditions, including absence of a valid permit, and such burden cannot be lightly shifted upon the claimants. However, the facts of the present case disclose a distinct situation. Respondent No.1 has succeeded in demonstrating, through cogent documentary evidence, that the National Permit had expired on 15.07.2020, i.e., prior to the date of the accident. Once this foundational fact is established, the evidentiary burden shifts to the owner/driver of the vehicle to show that the vehicle was otherwise authorised to ply, such as by producing a valid temporary permit.

53. In the present case, there is a complete absence of any material on record to indicate that a temporary permit had been obtained for plying the Trailer within the State of Maharashtra. Significantly, respondent No.2, who is the owner as well as the driver of the offending vehicle, has chosen to remain absent and has not stepped into the witness box to substantiate that the vehicle was covered by any valid permit on the date of the accident. An adverse inference, therefore, deserves to be drawn against him in this regard.

54. In view of the aforesaid discussion, this Tribunal is constrained to hold that, although the offending vehicle possessed a valid fitness certificate, it did not have a valid National Permit on the date of the accident, nor has it been established that any temporary permit had been obtained for its operation within the State of Maharashtra. The insurance policy (Exh.29) clearly shows the limitation clause. It lays that, 'the policy covers use only under a permit within the meaning of Motor Vehicles Act, 1988 or such a carriage falling under Sub-section 3 of Section 66 of the Motor Vehicles Act, 1988'. Thus, there is also a clear condition regarding requirement of a valid permit, as per Section 66 of the Motor Vehicles Act in the insurance policy. Consequently, it stands proved that there was a breach of the statutory requirement under Section 66 of the Motor Vehicles Act, as well as a violation of the terms and conditions of the insurance policy.

55. In the case of **Amrit Paul Singh ..Vs.. Tata AIG General Insurance Co. Ltd., reported in (2018) AIR (SC) 2662,** as relied

upon the learned advocate for respondent No.1, the Hon'ble Supreme Court observed as under;

> "23. In the case at hand, it is clearly demonstrable from the materials brought on record that the vehicle at the time of the accident did not have a permit. The appellants had taken the stand that the vehicle was not involved in the accident. That apart, they had not stated whether the vehicle had temporary permit or any other kind of permit. The exceptions that have been carved out under Section 66 of the Act, needless to emphasise, are to be pleaded and proved. The exceptions cannot be taken aid of in the course of an argument to seek absolution from liability. Use of a vehicle in a public place without a permit is a fundamental statutory infraction. We are disposed to think so in view of the series of exceptions carved out in Section 66. The said situations cannot be equated with absence of licence or a fake licence or a licence for different kind of vehicle, or, for that matter, violation of a condition of carrying more number of passengers. Therefore, the principles laid down in Swaran Singh (Supra) and Lakhmi Chand (Supra) in that regard would not be applicable to the case at hand. That apart, the insurer had taken the plea that the vehicle in question had no permit. It does not require the wisdom of the 'Tripitaka', that the existence of a permit of any nature is a matter of documentary evidence. Nothing has been brought on record by the insured to prove that he had a permit of the vehicle. In such a situation, the onus cannot be cast on the insurer. Therefore, the tribunal as well as the High Court had directed the insurer was required to pay the compensation amount to the claimants with interest with the stipulation that the insurer shall be entitled to recover the same from the owner and the driver. The said directions are in consonance with the principles stated in Swaran Singh (Supra) and other cases pertaining to pay and recover principle."

56. Applying the aforesaid ratio to the facts of the present

case, it is evident that respondent No.2, being the owner and driver of the offending Trailer, has failed to adduce any evidence whatsoever to establish that the vehicle was being plied under a valid permit at the time of the accident. On the contrary, respondent No.1/insurer has taken a specific defence regarding absence of permit and has substantiated the same by examining the concerned R.T.O. official Swami (RW-1) as well as its own officer, thereby discharging its initial burden. Once such material was brought on record, the evidentiary burden shifted upon respondent No.2 to demonstrate that the vehicle was duly authorised to ply, either by virtue of a valid National Permit or a temporary permit. However, respondent No.2 has neither entered the witness box nor produced any documentary evidence in support of such a plea. In the absence of any such proof, it cannot be held that the offending vehicle was covered by a valid permit on the date of the accident. Consequently, the defence raised by the insurer stands duly established. In these circumstances, the principle laid down in Amrit Paul Singh (supra) squarely applies to the present case.

57. In the case of **Bajaj Allianz General Insurance Co. Ltd. ..Vs.. Deoram, reported in (2018) 1 ACC 156**, as relied upon the learned advocate for respondent No.1, the Hon'ble Bombay High Court has held as under :

> "15. The aforesaid circumstances on record categorically demonstrate that the alleged offending vehicle was being used in the Maharashtra State without authentic permit. There is no impediment to

draw inference that owner was not in possession of valid and effective permit to ply the offending vehicle within the territorial jurisdiction of State of Maharashtra during the relevant period of accident occurred resulting into death of deceased Amrut, otherwise, he would have come forward to produce the document of permit of vehicle in this case."

58. In the case of **National Insurance Company Ltd. ..Vs.. Khorin Bai Sori & Ors., reported in 2021(5) All MR (Journal) 69,** as relied upon the learned advocate for respondent No.1, the Hon'ble Chhatisgarh High Court held as under :

"6. In the instance case, as pleaded by the Appellant-Insurance Company and as noted by the Tribunal in paragraph 8 of the Award, the permit issued for the vehicle was a 'National Permit'; for the period from 05.04.2012 to 04.04.2017, whereas accident was occurred on 01.04.2012, i.e. much before obtaining the permit as above. This being the position, the vehicle was being operated in total disregard to the rule of law and violation of the statutory/policy conditions was clearly established by documentary evidence and also by the oral evidence given by the Officer of the Insurance Company, who deposed before the Tribunal as a witness in support of the case.

7. The necessity to have a valid permit to use The necessity to have a valid permit to use a transport vehicle in public place has been asserted by the Apex Court stating that the absence will definitely amount to the defence in terms of Section 149 (2) (c) of the Act, 1988 as held in National Insurance Co. Ltd. v. Challa Bharathamma and Others reported in (2004) 8 SCC 517 : [2004(5) ALL MR 1184 (SC)]. (The name of the said case was subsequently corrected by the Apex Court as "National Insurance Co. Ltd vs. Challa Upendra Rao and Others", (2004) 8 SCC 517 : [2005(5) ALL MR 509 (S.C.)]. Whether the absence of permit is a

'fundamental breach' or a 'technical breach' was considered elaborately by a Five Member Bench of the High Court of Kerala in Pareed Pillai vs. Oriental Insurance Co. Ltd reported in 2018 SCC Online Ker 3542 (authored by P.R.Ramachandra Menon, CJ.), holding that it is a fundamental breach and not a technical breach. The legal position has been reiterated by the Apex Court as per judgment in Amrit Paul Singh and Another v. Tata AIG General Insurance Co. Ltd. & Others reported in 2018 (7) SCC 558. Once such breach is established, the Apex Court has made it clear, that the compensation paid by the Insurer to the Claimants can be got recovered from the Owner and Driver of the vehicle for operating the transport vehicle without valid permit at the relevant time.

59. So also, in the case of **Yash Construction Company ..Vs.. National Insurance Co. Ltd. and Others, reported in (2019) 1 ACC 813** and **United India Insurance Company Ltd. ..Vs.. Vinod and Ors., reported in (2020) ACJ 2641**, the Hon'ble Himachal Pradesh High Court and Madhya Pradesh High Court has directed pay and recover in case of such type of breach of policy.

60. On this point, the learned advocate for the claimants relied upon the case of **Gohar Mohammed ..Vs.. Uttar Pradesh State Road Transport Corporation and Others, reported in 2023 A.C. 200 (SC) and Gurmeet Singh ..Vs.. The New India Assurance Company Ltd. and Ors. Decided on 06-10-2023 in MAC. APP. 288/2021 & CM APPLs 39915/2021, 39917/2021,** wherein also the Hon'ble Supreme Court and the Hon'ble Delhi High Court has held that; such type of breaches constitute fundamental violations of the statutory provisions and the terms of the insurance policy and have accordingly directed the insurer to satisfy the award with

liberty to recover the amount from the owner and driver of the offending vehicle.

61. In the light of the evidence adduced by the parties, it stands clearly established that the above numbered Trailer did not possess a valid National Permit on the date of the accident. The material on record further demonstrates that respondent No.2 has failed to establish that the said vehicle was covered by any valid permit-either National or temporary-for plying within the State of Maharashtra at the relevant time. As discussed hereinabove, once the insurer has discharged its initial burden by placing cogent evidence on record to show absence of a valid permit, the evidentiary onus shifts upon the owner/driver to prove that the vehicle was otherwise authorised to ply in accordance with law. In the present case, respondent No.2 has neither entered the witness box nor produced any documentary evidence to substantiate the existence of a valid permit. Consequently, the said onus remains wholly undischarged.

62. The legal position in this regard has been succinctly laid down in the decisions relied upon by the learned advocate for respondent No.1, wherein it has been held that absence of a valid permit constitutes a fundamental breach of the statutory provisions under Section 66 of the Motor Vehicles Act, as well as the terms and conditions of the insurance policy. Applying the said principles to the facts of the present case, this Tribunal has no hesitation in holding that respondent No.2 has failed to discharge the burden of proving that the offending vehicle was being plied

with a valid permit at the time of the accident.

63. However, it is equally well settled that, notwithstanding such breach, the insurer cannot be absolved of its statutory liability vis-a-vis third-party claimants. The consistent view taken by the Hon'ble Supreme Court and various High Courts, including in the authorities relied upon by both sides, is that in cases of fundamental breach such as absence of permit, the appropriate course is to apply the principle of "pay and recover". In other words, while the insurer is entitled to avoid ultimate liability as against the insured, it is nevertheless required to first satisfy the award in favour of the claimants and thereafter recover the same from the owner and driver of the offending vehicle.

64. In view of the aforesaid legal position, although the breach established in the present case is fundamental in nature, the claimants, being third-party victims, cannot be left remediless. Accordingly, respondent No.1–insurer is directed to pay the compensation amount to the claimants in the first instance, with liberty to recover the same from respondent No.2 in accordance with law.

65. Considering the overall facts and circumstances of the present case, and having due regard to the beneficial object underlying the provisions of the Motor Vehicles Act, this Tribunal is of the considered view that the claimants, being the widow and children of the deceased Prabhakar, are entitled to just and effective compensation without being subjected to protracted litigation for its realization. The evidence on record establishes

that there has been a breach of the policy condition inasmuch as the offending vehicle was not covered by a valid permit at the time of the accident. Such breach, as discussed hereinabove, is fundamental in nature. However, it is equally well settled through a catena of judicial pronouncements that even in cases of fundamental breach, the statutory liability of the insurer towards third-party claimants cannot be completely avoided. The consistent approach adopted by the Hon'ble Supreme Court and various Hon'ble High Courts is to safeguard the interest of innocent victims by directing the insurer to satisfy the award in the first instance, with liberty to recover the same from the insured.

66. In the present case, respondent No.2, being the owner as well as driver of the offending vehicle, has failed to discharge the burden of proving that the vehicle was being plied in accordance with the statutory requirements. At the same time, the claimants, who are third-party victims, cannot be made to suffer on account of such breach committed by the insured. In these circumstances, this Tribunal deems it just and proper to direct respondent No.1–Insurance Company to pay the awarded compensation amount to the claimants in the first instance. However, respondent No.1 shall be entitled to recover the said amount, along with accrued interest, from respondent No.2 by initiating appropriate execution proceedings in accordance with law. Hence, issue No.2 in the affirmative and issue No.3 partly in the affirmative.

AS TO ISSUE NO. 4 :

67. The claimants are entitled to get Rs.64,24,200/- inclusive of the amount of 'No Fault Liability'. The above-mentioned amount of compensation has been calculated strictly as per the principles laid down by the Hon'ble Apex Court. Thus, the claimants are entitled to get Rs.63,74,200/- exclusive of the amount of 'No Fault Liability', with future interest @ Rs.7% per annum and proportionate costs of the petition on Rs.64,24,200/- from respondent No.2. Respondent No.2 is liable to pay the above-mentioned amount to the claimants. However, in view of the established breach of the terms and conditions of the insurance policy, respondent No.1-Insurance Company shall, in the first instance, deposit and pay the aforesaid compensation amount to the claimants, and thereafter shall be entitled to recover the same, along with same rate of interest, from respondent No.2 by initiating appropriate execution proceedings, in accordance with law.

68. Considering the status of the claimants, their ages, their dependency on and relationship with the deceased and future requirements, the amount of Rs.63,74,200/- will have to be appropriately apportioned amongst them. In my view, it would be just and proper to apportion the said amount amongst the claimants as under :

Claimant No. 1	:	Rs. 48,26,200/-
Claimant No. 2	:	Rs. 48,000/-
Claimant No. 3	:	Rs.15,00,000/-

69. The entire amount payable to the claimants will have to be directed to be paid to them through RTGS or NEFT, with some restriction to the extent that, out of the compensation amount payable to claimant No.1, an amount of Rs.20,00,000/- be invested in the fixed deposit in her name in any Nationalized Bank of her choice, for a period of five years and another amount of Rs.15,00,000/- be invested in the fixed deposit in her name in any Nationalized Bank of her choice, for a period of three years. Claimant No.1 shall be at liberty to withdraw the amount of interest accrued on the said fixed deposit amount, quarterly, if desired. Remaining compensation amount of her share, be paid to her, by RTGS or NEFT.

70. On depositing the total compensation amount as directed above, the entire amount payable to claimant No.2 be paid to him, as directed above, by RTGS or NEFT. Out of the compensation amount payable to claimant No.3, an amount of Rs.8,00,000/- be invested in the fixed deposit in her name in any Nationalized Bank of her choice, for a period of three years. Claimant No.3 shall be at liberty to withdraw the amount of interest accrued on the said fixed deposit amount, quarterly, if desired. Remaining compensation amount of her share, be paid to her, by RTGS or NEFT.

71. Respondent No.1 shall at first pay the amount of entire compensation awarded and then recover the same from respondent No.2 alongwith the same rate of interest till realization thereof, by initiating execution proceeding against him. In the

result, in answer to issue No.4, I pass the following order.

ORDER

1. The Claim Petition is partly allowed with proportionate costs.

2. The claimants are entitled to get Rs.64,24,200/- (Sixty Four Lakhs Twenty Four Thousand Two Hundred only) inclusive of the amount of 'No Fault Liability', from respondent No.2 towards compensation.

3. Respondent No.2 shall pay Rs.63,74,200/- (Sixty Three Lakhs Seventy Four Thousand Two Hundred only) exclusive of the amount of 'No Fault Liability', to the claimants with interest @ Rs.7% per annum from the date of institution of the petition i.e. 28.10.2020, till realization thereof.

4. On depositing the total compensation amount as directed above, the entire amount be apportioned amongst the claimants as under :

Claimant No.1	:	Rs.48,26,200/- + interest + proportionate costs of the petition.
Claimant No.2	:	Rs.48,000/- + interest + proportionate costs of the petition.
Claimant No.3	:	Rs.15,00,000/- + interest + proportionate costs of the petition.

5. On depositing the total compensation amount as directed above, out of the compensation amount payable to claimant No.1, an amount of Rs.20,00,000/- be invested in the fixed deposit in her name in any Nationalized Bank of her choice for a period of five years and another amount of Rs.15,00,000/- be invested in the fixed deposit in her name in any Nationalized Bank of her choice for a period of three years. Claimant No.1 shall be at liberty to withdraw the amount of interest accrued on the above said fixed deposits

amount, quarterly, if desired. Remaining compensation amount of her share, be paid to her, by RTGS or NEFT.

6. On depositing the total compensation amount as directed above, the entire amount payable to claimant No.2 be paid to him, as directed above, by RTGS or NEFT.

7. Out of the compensation amount payable to claimant No.3, an amount of Rs.8,00,000/- be invested in the fixed deposit in her name in any Nationalized Bank of her choice, for a period of three years. Claimant No.3 shall be at liberty to withdraw the amount of interest accrued on the said fixed deposit amount, quarterly, if desired. Remaining compensation amount of her share, be paid to her, by RTGS or NEFT.

8. Respondent No.2 shall deposit the Award amount in the Savings Bank account of the Tribunal bearing Account No.40779968126 with State Bank of India, Civil Lines, Treasury Branch, Wardha (IFSC Code-SBIN0005764), after due verification.

9. Respondent No.2 do pay proportionate costs of this petition on Rs.64,24,200/- to the claimants and shall bear his own.

10. Respondent No.1 shall at first pay the amount of entire compensation awarded and then recover the same from respondent No.2 alongwith the same rate of interest till realization thereof, by initiating execution proceeding against him.

HEMANT BHAGWANTRAO GAIKWAD

Digitally signed by HEMANT BHAGWANTRAO GAIKWAD
Date: 2026.04.29 18:32:08 +0530

Dt.- 29.04.2026

(H. B. Gaikwad)
Chairman
Motor Accident Claims Tribunal,
Wardha.

C E R T I F I C A T E

The contents of this P.D.F. file Judgment are same word to word, as per the assigned Judgment.

Judgment Dictated on - 26/04/2026

Judgment Checked on - 26/04/2026

Judgment Signed on - 26/04/2026

(G. A. Umate)
Stenographer