MHWR010020842023

Presented On	:	21-12-2023
Registered On	:	22-12-2023
Decided On	:	31-07-2026
Duration	**–**	**02Y – 07M – 10D**

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

Motor Accident Claim Petition No.90/2023 **Exh. No.37**

Claimants :- 1] Bhanudas S/o Maroti Gedam,
Aged about 66 Years, Occu.:- Nil

2] Sau. Laxmi W/o Bhanudas Gedam,
Aged about 52 Years, Occu.:-Household,
Both R/o. Madana, Post-Kasarkheda,
Tah. Arvi, District Wardha.

-Versus-

Respondents :- 1] Abhay S/o Sanjay Ghodkhande,
Aged – Adult, Occu.: Owner of
Motorcycle No.MH-31-CM-6182
R/o. 481, new Subhedar Lay-out, Nagpur
Tah. and District Nagpur.

2] Go Digit General Insurance Ltd.,
Atlantis, 95, 4th B Cross Road, Koramangala
Industrial lay-out, 5th Block,
Bengaluru-560095.

Shri. P. G. Waghmare, the learned advocate for the claimants.
Respondent No.1 - Ex-parte
Shri. S. P. Choube, the learned advocate for respondent No.2

-:- **JUDGMENT** -:-

(Delivered on 31st Day of July, 2026)

The claimants have filed this petition under Section 164 of the Motor Vehicles Act, 1988 for compensation of Rs.5,00,000/- on account of motor vehicular accidental death of one Sanjay Bhanudas Gedam, who was the son of the claimants.

2. It is stated by the claimants that on 25.11.2023, the deceased Sanjay was going towards Yavatmal by Wardha-Yavatmal road by driving Car bearing registration No.MH-31/CM-6182 in a very normal speed. However, at about 11.00 to 12.00 hours, when the said car reached village Bhidi, due to some sudden obstacle appeared on the road, the deceased lost control over the car and dashed against the signal board, due to that the deceased sustained fatal injuries and died on the spot.

3. It is stated that, the deceased Sanjay was aged about 40 years at the time of accident. He was unmarried. He was driver by occupation and was earning Rs.15,000/- per month. He was maintaining the applicants out of his earning. The claimants are suffering from great hardship and starvation. The claimants have lost the society, love and affection of the deceased. They quantified total claim for compensation at Rs.5,00,000/- considering his income of Rs.15,000/- per month. The deceased Sanjay was driver of the above numbered car, which was owned by respondent No.1 and insured with respondent No.2. Therefore, the claimants prayed for compensation of Rs.5,00,000/- with future interest and costs of

the petition from the respondents.

4. Respondent No.1, though duly served with notice, failed to appear. Resultantly, the petition proceeded ex-parte against him on 28.08.2025.

5. Respondent No.2-Insurance Company filed its Written Statement (Exh.25) and resisted the claim by denying the material averments made by the claimants, including age, occupation and income of the deceased Sanjay. It stated that the deceased was not having valid and effective driving license to ride the above numbered car at the time of the incident. Non holding of driving license is itself breach of terms and conditions of insurance policy, for which no liability to pay compensation be fastened against it. It stated that, respondent No.1 had not made payment of any single pie towards premium to cover risk of paid driver, employee, personal accident cover of five passenger as well as personal accident cover of paid driver. As there is no personal accident cover of paid driver in the contract of insurance dated 23.03.2023, no liability to pay the compensation, if any could be saddled on it. It also stated that, the said car was not having mandatory PUC certificate at the time of accident. It also stated that, deceased Sanjay was driving the alleged car, at the time of accident and thus, he could not be termed as third party, and therefore the present claim is not maintainable. It stated that, the deceased was driving the car rashly, negligently and in a high speed. The deceased lost his control and the accident occurred. In this background, it prayed for dismissal of the petition.

6. The issues framed by me at Exh.26, are reproduced below alongwith my findings thereon.

	ISSUES		**FINDINGS**
1.	Whether petitioners prove that deceased Sanjay S/o Bhanudas Gedam died because of injuries sustained by him due to the accident arising out of the use of Honda City Car bearing registration No. MH-31/CM-6182 ?	:	Yes
2.	Whether respondent No.2 proves that there is breach of the terms and conditions of the insurance policy ?	:	Redundant
3.	Whether the claimants are entitled to get compensation ? If yes, what should be the quantum ?	:	No
4.	Who is liable to pay compensation ?	:	No
5.	What order and award ?	:	The petition is dismissed.

- REASONS -

AS TO ISSUE NO. 1 :

7. This being the petition under Section 164 of the Motor Vehicles Act, 1988 **("the Act" for short)**, as per Section 164, the claimant was not required to plead or establish that the death was due to any wrongful act or neglect or default of the owner of the vehicle concerned or of any other person. Under the scheme of Section 164 of the Motor Vehicles Act, the liability is founded on the principle of no-fault liability. Therefore, it is sufficient for the claimants to establish that the death was the result of an accident arising out of the use of a motor vehicle.

8. The evidence of claimants No.1 and 2, recorded at Exh.27 and 36 respectively, clearly establishes that Sanjay sustained injuries in the accident in question and subsequently died as a consequence of those injuries. They have consistently deposed that the accident involved the above-numbered car and that the injuries suffered by Sanjay in the said accident proved fatal. Their oral testimony finds substantial corroboration from the documentary evidence on record, namely, Form-AA (Exh.29), the First Information Report (Exh.30), the Spot Panchanama (Exh.31), and the Postmortem Report (Exh.33). These documents clearly establish the manner in which the accident occurred, the place of its occurrence, the identity of the offending vehicle, and the fact that Sanjay sustained fatal injuries in the said accident. The postmortem report further confirms that his death was the direct result of the injuries suffered in the accident.

9. Moreover, no dispute raised regarding the fact that Sanjay's death was caused due to the use of the above-numbered car. The oral and documentary evidence, when read together, forms a consistent and unbroken chain establishing the involvement of the said vehicle in the accident. Consequently, it is established that the above-numbered car was indeed involved in the accident which resulted in the death of Sanjay. Hence, issue No.1 is answered in the affirmative.

AS TO ISSUES NO.2 TO 4 :

10. The evidence on these issues is common and interconnected. Therefore, they are taken together for consideration.

11. The learned advocate for respondent No.2 argued that the petition is not maintainable, as the deceased Sanjay was not the third party as contemplated in the Insurance Policy and Sections 147 and 165 of the Motor Vehicles Act. He argued that the Tribunal has jurisdiction only to decide the claims pertaining to third party or in respect of the property and not the claims under a contractual liability. He urged that there was contract between respondents No.1 and 2, and therefore, as the deceased, who entered the shoes of respondent No.1, is not the third party, the present petition is not maintainable before the Tribunal. Even otherwise, also, respondent No.1 has not paid any premium towards the liability of paid driver. In support, he relied upon the case of **National Insurance Co. Ltd. ..Vs.. Ashalata Bhowmik and Others, reported in (2018) AIR (SC) (Civ.) 3055, Ningamma and Another ..Vs.. United India Insurance Co. Ltd., reported in (2009) 13 SCC 710, National Insurance Co. Ltd. ..Vs.. MD. Atikul Islam, reported in (2022) ACJ 1825 decided by Gauhati High Court.** He therefore, prayed for dismissal of the petition.

12. On the other hand, the learned advocate for the claimants submitted that there is an insurance policy of the above numbered Car, and therefore, respondent No.2 is also liable to pay compensation. According to him this court has jurisdiction to entertain the petition under Section 164 of the Motor Vehicles Act, as in the case in hand the premium towards the coverage of injury to the owner/driver is covered. He argued that respondent No.2 cannot evade its responsibility to pay compensation for the death of Sanjay in the vehicular accident. Even pay and recover order can be

passed considering the circumstances. In support, he relied upon the case of **Kaminiben and Others ..Vs.. The Oriental Insurance Company Limited and Others, decided by the Hon'ble Supreme Court in Civil Appeal No... of 2026 (Arising out of SLP (Civil) No.21802/2023) on 11.02.2026, Kanta Devi ..Vs.. Anuj Chauhan and Another, decided by the Hon'ble Supreme Court in Civil Appeal No... of 2025 (Arising out of SLP (Civil) No.6650-6651/2020) on 04.11.2025, K. Nagendra ..Vs.. The New India Insurance Co. Ltd. and Others, reported in (2025) AIR (SC) 5281, Sunita and Others ..Vs.. United India Insurance Co. Ltd. And Others, reported in (2025) AIROnLine (SC) 601 and Oriental Insurance Co. Ltd. ..Vs.. Ramrao Annasaheb Borgad and Others, decided by the Hon'ble Bombay High Court (Aurangabad Bench) in First Appeal No.3053 of 2013 on 24.03.2026.** He thus, prayed for allowing the claim.

13. The learned advocate for respondent No.2 has placed reliance upon the decisions in Ashalata (supra), Ningamma (supra) and Md. Atikul (supra). In Ningamma (supra), the Hon'ble Supreme Court considered a claim under Section 163-A of the Motor Vehicles Act where the deceased himself was driving the vehicle borrowed from its owner. It was held that once the deceased was driving the vehicle with the permission of the owner, he stepped into the shoes of the owner. Consequently, neither the deceased nor his legal representatives could maintain a claim under Section 163-A against the owner or the insurer of the same vehicle, as the liability under the Act is intended to compensate third-party victims. The Hon'ble Supreme Court, however, observed that, if the insurance policy contained any contractual personal accident coverage, the claimants

would be entitled only to such contractual benefit in accordance with the terms of the policy.

14. The principle laid down in Ashalata (supra) is substantially similar. In that case also, the deceased himself was driving the insured vehicle and met with a fatal accident. The Hon'ble Supreme Court reiterated that a person who steps into the shoes of the owner cannot simultaneously claim compensation from the owner or the insurer under the statutory provisions of the Motor Vehicles Act intended for third-party risks. It distinguished between statutory liability under the Act and contractual liability arising under an insurance policy. Similarly, in Atikul (supra), the Gauhati High Court followed the ratio of Ningamma (supra) and Ashalata (supra) and held that the legal representatives of a deceased driver who was himself driving the insured vehicle could not maintain a statutory claim under the Motor Vehicles Act against the insurer, as the deceased was not a third party. It further observed that any entitlement of the claimants would depend entirely upon the contractual terms of the insurance policy.

15. All these decisions consistently hold that the legal representatives of a deceased person, who was himself driving the insured vehicle cannot invoke the statutory liability created under the Motor Vehicles Act, as the deceased occupies the position of the owner or insured and not that of a third party. Any compensation payable in such cases can arise only under the contractual terms of the insurance policy and not by virtue of the statutory jurisdiction exercised by the Motor Accident Claims Tribunal.

16. The learned advocate for the claimants, on the other hand, relied upon the decisions in Kaminiben (supra), Kanta Devi (supra), K. Nagendra (supra), Sunita (supra) and Ramrao (supra). The learned advocate for the claimants contended that these decisions recognize the beneficial object of the Motor Vehicles Act and hold that technical breaches of policy conditions should not ordinarily defeat the legitimate claim of the victims. It was further argued that even where the insurer establishes breach of policy conditions, the Hon'ble Courts have directed the insurer to satisfy the award first and thereafter recover the amount from the insured by applying the principle of "pay and recover". According to the learned advocate, once the existence of a valid insurance policy is admitted and the accident occurred during its currency, the insurer cannot completely avoid its liability.

17. The judgments in K. Nagendra (supra) and Sunita (supra) undoubtedly reiterate the welfare-oriented object of the Motor Vehicles Act and emphasise that the provisions relating to compensation deserve liberal interpretation in favour of victims. Likewise, Ramrao (supra) applies the settled principle that where statutory liability exists, the insurer may, in appropriate cases, be directed to satisfy the award first and thereafter recover the amount from the owner. Likewise, in Kaminiben (supra) and Kanta Devi (supra), while dealing with the peculiar facts before them, the Hon'ble Supreme Court granted compensation after noticing the legal position governing the liability of the insurer. The relief granted therein was either based upon the contractual insurance coverage available under the policy or by exercise of the

extraordinary powers vested in the Hon'ble Supreme Court under Article 142 of the Constitution of India to do complete justice between the parties. However, the learned advocate for the claimants failed to point out from the aforesaid decisions that the legal representatives of a deceased driver who himself was driving the insured vehicle can maintain a statutory claim before the Motor Accident Claims Tribunal notwithstanding the settled principle that such deceased steps into the shoes of the owner. Nor do those decisions dilute the ratio laid down in Ningamma (supra) and Ashalata (supra) on the question of maintainability of such statutory claims.

18. The principle of "pay and recover" is ordinarily invoked where the insurer has statutory liability towards a third party, but seeks to avoid liability on account of breach of policy conditions. The said doctrine presupposes the existence of a valid statutory claim. Where the claimants themselves do not fall within the category of a third party and the claim itself is outside the statutory jurisdiction of the Tribunal, the doctrine of "pay and recover" cannot be invoked to create a liability which the statute itself does not recognize. Applying the aforesaid principles to the facts of the present case, it is an admitted position that the deceased Sanjay himself was driving the insured vehicle at the time of the accident. The accident did not involve any other offending vehicle. Consequently, the deceased cannot be regarded as a third-party victim for the purpose of fastening statutory liability under the Motor Vehicles Act. The legal representatives of the deceased merely step into his shoes.

19. The insurance policy on record further shows that although a Personal Accident Cover of Rs.15,00,000/- was available for the owner-driver, there was no additional premium paid towards personal accident cover for a paid driver or legal liability in respect of such paid driver. On this point respondent No.2 examined its Senior Legal Executive, Shri Tausif Ather Sayyad (RW-1), at Exh.30. He deposed that respondent No.1 had not paid any additional premium towards legal liability for employees, liability in respect of a paid driver, or personal accident cover for a paid driver. According to him, the risk of the deceased was, therefore, not covered under the contract of insurance. In his cross-examination, however, he fairly admitted that the insurance policy relating to the above-numbered car was valid and subsisting on the date of the accident. He also admitted that the policy provided a Personal Accident (PA) Cover for the owner-driver to the extent of Rs.15,00,000/-.

20. It is evident from the insurance policy (Exh.34) that an additional premium was indeed paid only towards the Personal Accident Cover for the owner-driver. However, there is nothing in the policy to indicate that any premium was paid for extending personal accident coverage to a paid driver or for covering the legal liability in respect of a paid driver. Thus, the policy, on its plain terms, does not provide such coverage. The claimants have consistently asserted that the deceased was employed as a driver by respondent No.1. In fact, the claim petition itself proceeds on the footing that the deceased was a paid driver of the insured vehicle. Once this position is accepted, it was incumbent upon the claimants, or even respondent No.1, to establish that the owner had paid the

requisite additional premium, so as to extend the insurance coverage to a paid driver. No such material has been brought on record. Neither the insurance policy (Exh.34) nor any other documentary evidence demonstrates that the liability in respect of a paid driver was covered under the policy.

21. In these circumstances, even assuming that the claim could be examined on the basis of contractual liability arising out of the insurance policy, the claimants have failed to establish the existence of such contractual coverage. The policy extends personal accident benefits only to the owner-driver and not to a paid driver. Consequently, the claimants have failed to prove that the deceased was covered by the terms of the insurance contract. Therefore, apart from the petition being not maintainable under the statutory provisions of the Motor Vehicles Act, the claimants have also failed to establish any enforceable contractual liability against respondent No.2 under the insurance policy.

22. The deceased was admittedly not the registered owner of the vehicle. Therefore, even the contractual coverage relied upon by the claimants is unavailable on the facts of the present case. Accordingly, the authorities relied upon by respondent No.2 are directly applicable to the issue of maintainability. The authorities relied upon by the claimants, with due respect, though reiterating the beneficial object of the Act and the principle of "pay and recover" in appropriate cases, do not advance the case of the claimants, as those decisions neither overrule nor depart from the principle that a person who steps into the shoes of the owner cannot maintain a statutory claim before the Motor Accident Claims

Tribunal against the insurer of the same vehicle. Consequently, the present petition, founded solely upon statutory liability under Section 164 of the Motor Vehicles Act, is not maintainable. Once, it is held that a claim is not maintainable, this Tribunal, which does not possess such special or extraordinary powers, cannot grant compensation on the basis of contractual liability by exceeding its jurisdiction. Therefore, with due respect, the rulings cited by the learned advocate for the claimants do not assist in establishing either the maintainability of the petition or the enforceability of contractual liability before this Tribunal.

23. The claimants seek compensation on the basis of contractual liability. Sections 147 and 165 of the Motor Vehicles Act contemplate two distinct types of insurance- statutory insurance and contractual insurance. The Act does not provide for the grant of relief in respect of liabilities arising solely out of contractual obligations. Having regard to the ratio laid down in the authorities cited above, and upon a conjoint reading of Sections 147 and 165 of the Act, it is evident that the Tribunal is empowered to entertain only those claims that arise out of statutory liability. The present case does not fall within that category. The claimants have sought compensation purely on the basis of a contractual arrangement between respondents No.1 and 2. Consequently, they have failed to establish that their claim is maintainable under the framework of the Motor Vehicles Act. For enforcement of contractual liabilities, the law provides a separate and appropriate remedy. In view of the foregoing discussion, the claim petition is therefore not tenable.

24. In view of the finding that the claim petition itself is not

maintainable and that the deceased was not covered under the contractual terms of the insurance policy, the question whether there was any breach of the terms and conditions of the insurance policy loses its significance and does not survive for determination. Consequently, the issue relating to the alleged breach of the terms and conditions of the insurance policy becomes redundant.

25. As a sequel to the above discussion and findings, the claimants have failed to establish any liability on the part of the respondents to compensate them. Consequently, they are not entitled to any compensation from either of the respondents. Accordingly, issue No.2 is answered accordingly, while issues No.3 and 4 are answered in the negative.

AS TO ISSUE NO. 5 :

26. In view of the finding to issues No.3 and 4, the claimants are not entitled to get any compensation. The petition, therefore deserves to be dismissed, and is accordingly dismissed. In the circumstances, the parties to bear their own costs. In the result, in answer to issue No.5, I pass the following order.

-:- **ORDER** -:-

1. The Claim Petition is dismissed.
2. The parties to bear their own costs.

HEMANT BHAGWANTRAO GAIKWAD

Digitally signed by HEMANT BHAGWANTRAO GAIKWAD
Date: 2026.07.31 18:19:34 +0530

Dt.- 31-07-2026

[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.

(G. A. Umate)
Stenographer