


MHYA010028412019	Presented on : 07-11-2019
	Registered on : 07-11-2019
	Decided on : 12-03-2026
	Duration : 06Y-04M-05D
	<b>Exh.67</b>

**BEFORE THE MEMBER, MOTOR ACCIDENT CLAIMS  
TRIBUNAL, YAVATMAL.**

**(Presided over by Shekhar C. Munghate)**

**M. A. C. P. No.228/2019**

- 1) **Smt. Shubhangi wd/o. Vinayak Shirbhate,**  
Aged about 36 years, Occu. : Nil
- 2) **Madhav s/o. Vinayak Shirbhate,**  
Aged about 18 years, Occu. : education
- 3) **Punit s/o. Vinayak Shirbhate,**  
Aged about 14 years, Minor.  
Occu. : education.
- 4) **Uday s/o. Vinayak Shirbhate,**  
Aged about 8 years, Minor.  
Occu. : education.  
The applicant No.3 and 4 are minors  
through their natural guardian mother  
applicant No.1 Smt. Shubhangi Vinayak  
Shirbhate.  
All R/o. Kalamb, Tal. Kalamb,  
District Yavatmal.

**... Applicants**

**VERSUS**

1. **Mohd. Nafis Mohd. Rafique Shaikh,**  
Aged about 58 years, Occu. : Driver,  
R/o. Ward No.7, Warashivni,  
Dist. Balaghat (M.P)

(Driver of Truck No. MH-36/1665 involved in the accident)

2. **Hemraj s/o. Chandsing Chavhan,**  
Aged 55 years, Occu. : Owner  
R/o. Kamatha, Tal. & Dist. Gondia.  
(Owner of vehicle Truck No. MH-36/1665 involved in the accident)
3. **New India Assurance Company Ltd.**  
1<sup>st</sup> floor, Rungatha Complex, Jaisthamb Square, Gondia.  
Through Branch Manager,  
New India Assurance Company Ltd.,  
Branch Office at Yerawar Building,  
Datta chowk, Yavatmal.  
(Insurer of truck No. MH-36/1665 involved in the accident vide policy No. 160/302/311/40100004025 valid from 23/02/2015 to 22/02/2016

.... Non-Applicants

**PETITION UNDER SECTION 166 OF THE MOTOR VEHICLE ACT.**

**Appearance :**

Mr. M. G. Thakare, Advocate for Applicants  
N. A. No.1 and 2 exparte  
Mr. M. B. Raichura, Advocate for N. A. No.3.

**J U D G M E N T**

(Delivered on 12/03/2026)  
DICTATED IN OPEN COURT

1. The dependent of the deceased in motor vehicle accident claims compensation from the owner, driver and insurer of the motor vehicle involved under section 166 of

the Motor Vehicle Act.

2. The facts leading to present petition are briefly stated as follows :-

On 30/01/2016 deceased Vinayak @ Babu Damodhar Shirbhate was going to Mehrabad and Shirdi in Ahamadnagar District for Darshan from Kalamb in vehicle cruiser bearing No.MH-23/E-4875 alongwith his friends including Tejprakash Onkar, Sudhakar Raut and others and at that time Sudhakar Raut was driving the said Cruiser vehicle. When they reached at village Kukasa at about 04:00 am in front of Gram Panchayat office Kukasa situated on Malegaon to Mehkar road, that time N.A. No.1 kept his vehicle i.e. truck bearing No.MH-36/1665 unattended and it was parked dangerously on road without any precautionary measures and indicator by violating traffic rules and at that time because of this wrong and negligent parking of the N.A. No.1 of his vehicle on road and due to bright light of vehicle coming from opposite side driver of cruiser Sudhakar Raut could not see the truck and Cruiser dashed on the Truck bearing No.MH-36/1665 and accident occurred, in which deceased Vinayak @ Babu Damodhar Shirbhate died on spot and another two persons namely Tjprakash Onkar and Sudhakar Raut were also died, so also seven other persons were seriously injured. Therefore, Tulsiram Bawaskar has lodged report at Police Station Shirpur (Jain) and the

offence has been registered vide Crime No.0017/2016 against N.A. No.1 Mohd. Nafis for the offences punishable under Section 279, 283, 304-A 337, 338 of I.P.C. That accident occurred due to rash and negligent driving of N.A. No.1.

3. At the time of incident, the deceased was 37 years old. They claim compensation from the owner and insurer of the involved motor vehicle due to loss of dependency due to death of deceased. They claim that due to negligent driving of N.A.No.1, the incident occurred. Therefore, claimed compensation to the tune of Rs.50,00,000/- on the count of future loss of dependency, loss of filial consortium, loss of estate, pains and suffering, funeral expenses, etc.
4. The non-applicant No. 1 and 2 served with the notice, but they failed to appear. Therefore, vide order below Exh.1 the case proceeded ex parte against them.
5. The non-applicant No.3 resisted the claim by filing his written statement at Exh.17. He denied the claim in toto. Finally prayed to dismiss the claim petition.
6. Heard the learned advocate Mr. M. G. Thakare for applicants and learned advocate Mr. M. B. Raichura for N.A. No.3 at length.
7. Considering the pleadings, my learned predecessor

framed issues at Exh.33. I have recorded the findings for the reasons discussed thereafter :-

Sr. No	Issues		Findings
1.	Whether the applicants prove that the accident had occurred on 30/01/2016 due to keeping Truck bearing registration No. MH-36/1665 unattended, dangerously and violating all rules of traffic on road without any precautionary measures and indicator by N.A. No.1 ?	::	Yes
2.	Whether the applicants prove that Vinayak @ Babu Damodhar Shirbhate died in the said vehicular accident? ?	::	Yes
3.	Whether the non-applicant No.3 proves that the deceased contributed to the accident due to rash and negligent riding of Cruiser bearing registration No. MH-23/E-4875 on 30/01/2016 ?	::	No.
4.	Whether non-applicant No.3 proves that the petition is bad for non-joinder of insurance company of Cruiser bearing registration No.MH-23/E-4875 responsible to the cause of accident ?	::	No.
5.	Whether the applicants are entitled for compensation? If yes, to what extent?	::	Yes. As per final order.
6.	What order and award ?	::	As per final order

## REASONS

### As to Issue Nos.1 to 5 :-

8. As these issues are interlinked with each other, they are discussed together to avoid repetition.
9. To substantiate the claim, applicant Smt. Shubhangi wd/o. Vinayak Shirbhate has examined herself at Exh.41 by filing affidavit in lieu of examination-in-chief. In support of her affidavit, she has filed FIR at Exh. 44, spot panchanama at Exh.45, inquest panchanama at Exh.46, postmortem report at Exh.47, Insurance policy at Exh.48, driving licence of N.A. No.1 at Exh.49, registration certificate of Truck No.MH-36/1665 at Exh.50, driving licence of Sudhkar Raut at Exh.51, Form AA at Exh.52, Aadhaar Card of applicant No.1 at Exh.53, Aadhaar card of applicant No.2 at Exh.54, Aadhaar card of applicant No.3 at Exh.55, charge-sheet at Exh.56, Fitness certificate at Exh.57, school leaving certificate of deceased at Exh.58, Aadhaar card of applicant No.4 at Exh.59, award at Exh.60 and 61, 7/12 extract at Exh.62 and 63.
10. During cross-examination, the non-applicant No.3 tried to bring on record that deceased was above 42 years old at the time of accident and was not working and did not earn income of Rs.60,000/- per month. But the applicant denied all the suggestions put to her. Further, she has admitted that she has not witnessed the incident.

11. Further in cross-examination, she stated that since the death of her husband, they are not cultivating the agricultural land, but it had given on lease. She has not filed the account of income of agricultural land till the accident of his husband.
12. The applicants have filed certain documents, as stated above. On perusal of F.I.R. (Exh.44), it appears that offence was registered against the driver of offending vehicle for the offences punishable under Sections 279, 283, 304-A, 337 and 338 of I.P.C. vide Crime No.0017/2016 at Shirpur Police Station, Dist. Washim. The spot panchanana (Exh.45) shows that accident took place at Malegaon to Mehkar Highway, near the village Kuksa and supports the contention of applicants. Inquest panchanama (Exh.46) shows that the deceased died in a vehicular accident, whereas post-mortem report (Exh.47) shows the cause of death of deceased as head injury. Therefore, applicants are succeeded to prove that deceased Vinayak @ Babu Shirbhate died in the vehicular accident.
13. To prove the accident due to offending truck bearing registration No. MH-36/1665 keeping unattended, dangerously parked on road, it is required to go through the documents filed on record. Spot panchanama Exh.45 shows that on 30/01/2016 on Malegaon to Mehkar Highway road at village Kuksa near Gram Panchayat

Office Truck bearing No.MH-36/1665 standing facing towards Mehkar. Panchanama Exh. 45 also shows its right side two tyres of rear side got burst. Cruiser vehicle No.MH-23/E-4875 had given dash to the said truck. Due to dash, bonnet, engine, headlight, battery of the cruiser vehicle got damaged. It also shows that driver of the offending truck due to burst of tyre did not take precaution around the truck by labeling sign, reflector light and flag. Therefore driver of cruiser vehicle did not see the standing truck in unattended condition and gave dash to the said truck. Therefore, accident took place and in said accident deceased died. In said accident deceased Vinayak Shirbhate sustained grievous injuries and died on the spot. Postmortem report Exh.47 also shows that the cause of his death is due to head injury. Therefore applicants also proved that the accident had occurred on 30/01/2016 due to keeping offence truck bearing No.MH-36/1665 standing unattended, dangerously and violating all the rules of traffic on road without any precautionary measures and indicator by N.A. No.1. Non-applicant No.1 and did not cross-examine the witness hence, this fact remained unchallenged.

14. In the evidence of affidavit Exh.47, applicant has stated that on the day of accident, her husband Vinayak Damodhar Shirbhate was travelling alongwith his friends in Cruiser Jeep bearing No.MH-23/E-4875 while going

towards Meharabad and Shirdi. When their jeep Cruiser reached in front of Gram Panchayat of village Kuksa on Malegaonto Mehkar road, at that time truck driver i.e. N.A.1 of truck No.MH-36/1665 due to burst of tyre was standing unattended and dangerously on that road and did not take precaution of the driver of truck by labeling signs, flag, indicator, lights around the truck therefore driver of cruiser vehicle did not see the standing truck and gave dash to the offending truck. In said accident deceased Vinayak Shirbhate and his other two friends also died on the spot itself. From this, we can assume the gravity of accident. Therefore, the driver of the offending truck is solely negligence as he did not take precaution measures. Therefore, the deceased has not contributed to the accident due to rash and negligent rider of Cruiser bearing No.MH-23/E-4875.

15. There is another facet to the matter, since the applicant was sitting in the Cruiser as a occupant, the aspect of contributory negligence fades in significance. Resultantly, the case would fall within the category of composite negligence.

16. A profitable reference in this context can be made to the ruling of the Hon'ble Supreme Court in the case of T.O. Anthony vs. Karvanan, reported in 2008 ACJ 1165 (SC), especially in para 6, it is observed as under -

*'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong-doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrongdoer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand, where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.*

17. In view of the aforesaid exposition of law, even if it is assumed that some negligence was attributable to any of the driver of the involved vehicles, then also, at best the case would fall within the category of composite negligence. It is well settled law that in case of composite negligence, the victim or the dependent of the victim, has the liberty to proceed against either of the joint tort feasons and need not implead all the joint tort feasons, owners of the respective vehicles and the insurers.
18. Non-applicant No.3 is the insurance company of the offending truck bearing registration No.MH-36/1665. The

N.A. No.1 was driver and the N. A. No. 2 is the owner of the offending truck. The insurance policy of offending truck Exh.48 shows the risk of insurance covered from 23/02/2015 to 22/02/2016. Accident took place on 30/01/2016. Therefore, at the time of accident, the offending truck was validly insured with N.A. No.3. The driving licence of the driver of offending vehicle Exh.49 was issued on 17/11/2014. It shows that he had possessed valid driving licence at the time of accident. So also, the driving licence of the driver of Cruiser which is placed on record at Exh.51.

19. In this claim petition, the N.A. No.1 i.e. the driver of offending truck and N. A. No. 2 owner of the truck did not appear in Court and contested the matter. Therefore, N.A. No.2 and 3 are solely responsible to pay the compensation to the applicants. Therefore, as discussed above, I am inclined to answer issue No.1 to 5 accordingly.

20. It is the contention of learned counsel for the applicants that deceased was businessman and agriculturist. He was hard worker and was looking after all the agriculture field and he was carrying various business and earning Rs.60,000/- per month therefrom. Applicants filed on record 7/12 extracts in the name of applicants of Survey No.688 and 700 for the year 2015-16 at Exh.62 and 63, respectively. Applicant also filed xerox copy of the same fields alongwith list Exh.43 for the year

2014-15 in the name of deceased. But the applicants are not filed any document to show that the deceased was doing various businesses.

21. The claimants have mentioned in claim petition the age of deceased as 37 years at the time of accident. School leaving certificate of the deceased at Exh.58 shows that the date of birth of deceased Vinayak is 14/03/1974. Therefore, it is clear that, at the time of accident the deceased was 41 years old.
22. The applicants filed on record the copies of judgment which is passed by this Court in connection with the said accident in M.A.C.P No.144/2017 and M.A.C.P No.170/2017.
23. It is imperative to note that the applicants have not filed any document about the proof of income of deceased. Applicants have filed on record 7/12 extract of the agricultural field at Exh.62 and 63 which were in the name of applicants. The land remains as such. I am of the view that, the family had suffered loss of managerial person. Therefore, on the basis of nature of his occupation the notional income is drawn. Therefore, it can be assumed that in the year 2016 the deceased was earning at the rate of Rs.6,000/- per month from the agricultural land as managerial income. The deceased was able bodied person at the time of accident. The claim of claimants that

the deceased was a businessman cannot be justified for want of documentary evidence. Considering the avocation of deceased, in absence of proof of stable income, the notional income of deceased can be assessed to the tune of Rs.6,000/- per month.

24. Taking into consideration age of the deceased, multiplier of "14" would be made applicable. The actual future loss of income of claimants due to death of deceased would be calculated considering notional income of the deceased @ Rs.6,000/- per month. Since the deceased was below 50 years of age and self employed, the claimants are also entitled for 10% future prospects in view of ratio laid down in the case of **National Insurance Company Limited v. Pranay Sethi, 2017 ACJ 2700 (SC)**. There appears to be four dependents i.e. wife and three sons of the deceased, hence 1/4 (one-fourth) amount needs to be deducted towards his personal expenses.

25. The calculation of loss of income of the claimants due to death of deceased, is as under :-

Yearly income @ Rs.6,000/- per month	Rs.6,000/- x12 ----- = Rs.72,000/-
Actual yearly future loss of income after 1/4 (one-fourth) deduction on account of personal expenses of the deceased	Rs.72,000/- - 18,000/- ----- =Rs.54,000/-

Income after applying multiplier	Rs.54,000/- x 14 ----- Rs.7,56,000/-
25% future prospects since deceased being self employed and below 41 years of age	Rs.7,56,000 /- x 25% ----- = Rs.1,89,000/-
Total loss of income	<b>Rs.9,45,000 /-</b>

26. In view of principle laid down in the case of **United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur & Ors. reported in AIR 2020 SC 3076**, the claimant No.1 is entitled to get Rs.40,000/- under the head of spousal consortium, Rs.40,000/- each to applicant No.2 to 4 under the head of parental consortium. The claimants are also entitled to get Rs.16,500/- towards loss of estate and Rs.16,500/- towards funeral expenses. Thus, total compensation comes to Rs.1,93,000/- + Rs. **9,45,000/-**= Rs.11,38,000/-.

27. Lastly, the aspect of interest under Section 171 of the Act is discussed in recent pronouncement of the Hon'ble Supreme Court in the case of **Kajal Vs. Jagdish Chand and others, reported in (2020) 4 SCC 413**, wherein it was held that the entire amount of compensation shall carry an interest of 7.5% per annum from the date of filing of the claim petition till payment of the amount. In view of the above observation, I am inclined to award interest @ 7.5% per annum.

28. In view of above discussion it is well established that the applicants are entitled to get compensation Rs.11,38,000 /- from non-applicant No.1 to 3 jointly and severally. Hence, I proceed to pass following order.

### ORDER

1.	Claim petition is partly allowed with proportionate costs.
2.	A) The claimants are entitled to get compensation of <b>Rs.11,38,000/-</b> (Rs.Eleven Lakhs Thirty Eight Thousand only) inclusive of N.F.L. compensation from opponent No.2 and 3 jointly and severally along with interest at the rate of 7.5% per annum, from the date of filing of claim petition till its realization.
3.	On deposit of the compensation amount, the same shall be distributed as follows :  A) <b>Rs.2,50,000/-</b> (Rupees Two Lakhs Fifty Thousand only) be kept in fixed deposit in the name of <b>claimant No.3- Punit Vinayak Shirbhate</b> in any Nationalized Bank of his choice till his age of attaining.  B) <b>Rs.2,50,000/-</b> (Rupees Two Lakhs Fifty Thousand only) be kept in fixed deposit in the name of <b>No.4 Uday Vinayak Shirbhate</b> in any Nationalized Bank of his choice till their age of attaining.  C) A sum of <b>Rs.2,50,000/-</b> (Rupees Two Lakhs Fifty Thousand only) shall be paid to <b>Claimant No.2 Madhav Vinayak Shirbhate</b> .  D) The <b>remaining amount</b> , along with interest, shall be paid to <b>Claimant No.1 Smt. Shubhangi</b>

	<b>Vinayak Shirbhate.</b>
4.	The amount be paid to claimants by separate cheques.
5.	The claimants shall be entitled to take appropriate steps for recovery of the amount.
6.	The claimants shall pay deficit Court fees, if any, on the compensation amount within one month from the date of this order.
7.	After depositing deficit Court fees, award be drawn up accordingly.

Dt-12/03/2026.

**(Shekhar C. Munghate)**  
Member, M.A.C.T.,  
Yavatmal.

**Certificate**

I affirm that the contents of this P. D. F. Judgment are same word to word, as per the original judgment.

Name of Stenographer :- M. A. Bomble,  
Stenographer Grade I.  
Court name :- Principal District & Sessions Court,  
Yavatmal.  
Date :- 12/03/2026  
Judgment signed by  
Presiding officer on :- 13/03/2026  
Judgment uploaded on :- 13/03/2026

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