MHAH300019272020

Presented on	03	10	2017
Registered on	03	10	2017
Decided on	31	10	2025
Duration	08	00	28
	Y.	M.	D.

IN THE COURT OF MEMBER, MOTOR ACCIDENT CLAIMS TRIBUNAL AT RAHATA, DIST. AHMEDNAGAR.

Motor Accident Claim Petition No. 37/2024 **Exh. No. 76.**
(Old Motor Accident Claim Petition No. 54/2017)

1. Seema Nanasaheb Gaikwad,
Age : 30 years, Occu- Household

2. Nandini Nanasaheb Gaikwad,
Age : 11 years, Occ. Education.

3. Viren Nanasaheb Gaikwad,
Age : 4 years, Occ. Nil.

4. Kalyani Nanasaheb Gaikwad,
Age : 1 years, Occ. Nil.
Claimants No.2 to 4 are minors through their guardian mother claimant no.1.

5. Kaushlyabai Dashrath Gaikwad,
Age : 55 years, Occ. Nil,
All R/o. Khobare vasti, Babhaleshwar,
Tal. Rahata, Dist. Ahmednagar. .....**Claimants.**

Versus

1. Shrikant Vasant Jagdhane,
Age : 50 years, Occ. Transport,
R/o. Ukkalgaon, Tal. Shrirampur,
Dist. Ahmednagar.
(Owner of the offending tanker)

2. Manager,
New India Assurance Co. Ltd.,
Third Party Hub, 3rd floor,
Hrishiraj Regency, Gangapur road,
near Vidya Vikas Circle, Nashik 422005.
(Insurer of the offending tanker)

3. Bhausaheb Kundlik Chechare,
Age : 50 Years, Occ. Transport,
R/o. Lohgaon, Tal. Rahata,
Dist. Ahmednagar.
(Owner of tanker No.MH-15-AG-8847)

4. Dilip Dagadu Gunjal,
Age : 50 Years, Occ. Driver,
R/o. Babhaleshwar Khurd,
Tal. Rahata, Dist. Ahmednagar.
(Driver of the offending tanker) **.... Respondents.**

Appearance :

Shri. S. C. Ghumare,	learned Advocate for Claimants.
Shri. A. S. Shaikh,	learned Advocate for Respondent No.1.
Shri. M. P. Gujrathi,	learned Advocate for Respondent No.2.
Shri. S. S. Shaikh,	learned Advocate for Respondent No.3.

J U D G M E N T

(Delivered on 31st October, 2025)

1. The claimant no.1 is wife, claimant nos.2 to 4 are the minor children and claimant no. 5 is the mother of Nanasaheb Dashrath Gaikwad (hereinafter referred to as deceased). They have filed this claim petition for compensation of Rs. 27,54,000/-, restricted upto Rs. 2,00,000/-, on account of death of deceased, aged 34 years in motor vehicular accident occurred on 09.02.2017.

The brief facts of the case of the petitioners/claimants is as follows :

2. It is the case of petitioners/claimants that, on 09.02.2017

at about 3:50 p.m. deceased was driving the Tankar bearing registration No. MH-15-AG-8847 owned by the respondent no.3. The deceased was proceeding via Pimpalwadi-Rahata, when he reached near Sadaphal vasti, at that time, driver of Tankar bearing registration No. MH-17-AG-3191 (hereinafter referred to as offending vehicle) drove the offending vehicle in a very high speed, rashly and negligent manner, without controlling the speed came to the wrong side and gave forceful dash to the deceased's taker from driver side, as a result thereof, deceased's tanker fell down in a ditch beside the road, therefore, deceased and other passenger Bhausaheb Abasaheb Nikalge came and crushed under their tanker. Moreover, the other persons who were sitting in the tanker also sustained grievous injuries. The deceased and others were shifted to the Saibaba Hospital, Shirdi. The doctor declared deceased Nanasaheb brought dead.

3. The notices were issued to the respondents. Respondent No.1 appeared and filed his written statement at Exh. 31, thereby denying all the allegations and claim of claimants. It is further contended that the deceased driver of the tanker himself was negligent and suddenly came in front of their tanker thereby causing an accident. It is further submission that, there is sole negligence on the part of deceased and the driver of their tanker has no fault at all. It is their further submission that his driver was holding valid and effective driving license at the relevant time of accident. He did not commit any breach of insurance policy. His vehicle was validly insured with respondent no.2 company. Therefore, respondent No.1 has no liability to pay compensation and prayed to dismiss the claim petition against him.

4. Respondent No. 2 Insurance Co. appeared and filed their written statement at Exh. 23. The respondent no. 2 denied all the allegations and claim of claimants. The offending vehicle is incorporated due to ulterior motive. There appears suspicion on the implication of the offending vehicle. The implantation of the offending vehicle is doubtful. It is their further submission that the claimants have not made party to the insurance company of their tanker and hence the petition is not maintainable for non-joinder of necessary parties. In alternative it is submitted that there is negligence on the part of driver of the offending vehicle. It is submitted that, the driver of the offending vehicle was not holding valid and effective driving license at the relevant time of accident. Respondent No.1 committed breach of terms and conditions of the policy, therefore, respondent No.2 has no liability to pay compensation.

5. Respondent No.3 appeared and filed his written statement at Exh.32 , thereby denying all the allegations and claim of claimants. The respondent is the owner of tanker in which deceased was driving the tanker. It is their contention that the deceased was driver on their tanker and was driving the tanker in a moderate speed and following traffic rules. It is further submission that, there is sole negligence on the part of the driver of offending tanker. The deceased has no fault at all. It is their further submission that his driver was holding valid and effective driving license at the relevant time of accident. The police has rightly prosecuted the driver of the offending vehicle being negligent and responsible for occurrence of the accident. Therefore, respondent No.3 has no liability to pay compensation and prayed to dismiss the claim petition against him.

6. Heard, both the sides and rival contentions, perusing the claim application and written statement and on verifying the documents submitted along with the claim application. My Learned Predecessor has framed the issues at Exh. 33, I have given my reasons for the findings thereon :

	ISSUES	FINDINGS
1)	Do the petitioners prove that on 09.02.2017 at about 03.50 p.m., on Rahata-Pimpalwadi road, near Sadaphal Vasti, driver of the Tankar bearing registration No. MH-17-AG-3191 drove it rashly and negligently and caused the accident ?	In partly affirmative.
2)	Do the petitioners prove that Nanasaheb Dashrath Gaikwad died due to the injuries sustained in that accident ?	In affirmative.
3)	Does the opponent no.2 prove that there is breach of terms and conditions of the insurance policy in respect of the Tankar bearing registration No. MH-17-AG-3191 ?	In negative.
4)	Are petitioners entitled for compensation ? If yes, what would be the quantum ?	Yes, Rs.6,25,000/-.
5)	What would be the liability of each opponent, in the event, if the claim is allowed ?	As per final order.
6)	What order and award ?	As per final order, claim is partly allowed.

R E A S O N S

AS TO ISSUE NOS.1 to 6 :-

7. All the issues are taken together as they are interconnected and related with each other and can be conveniently decided to avoid repetitions and overlapping.

8. To substantiate the claim claimant nos.1 and 5 filed their affidavit of evidence at Exh. 40 and 54 respectively and produced documents i.e. certified copy of FIR Exh. 42, witness statement at Exh. 43 and 47, spot panchnama Exh. 44, inquest panchanama Exh. 45, Postmortem report Exh. 46, copy of charge-sheet at Exh. 48, certified copy R.C. Book of the offending vehicle Exh. 49, certified copy of cover note of insurance policy of offending vehicle Exh. 50, driving license of the driver at Exh. 51, fitness certificate of the offending vehicle Exh. 52 and copy of RC book of Tankar bearing registration No. MH-15-AG-8847 at Exh. 53.

9. As it is an application under Section 166 of Motor Vehicle Act it is necessary for the claimants firstly to prove the rash and negligence on the part of the driver of the offending vehicle to bring home the fault of driver. Secondly, claimants sufficiently has to prove that deceased died due to vehicular accident caused on dated 09.02.2017.

10. The claim petition is filed by the legal representatives i.e. wife, children and mother of deceased. It is the case of claimants as to deceased was standing beside the offending vehicle at that time, the offending vehicle came in a high speed and dashed the deceased’s tanker thereby causing accident. The incident had occurred on 09.02.2017 at about 3.50 p.m., the complaint is lodged on the same day of accident.

11. The learned advocate for the claimants vehemently argued that the incident is not disputed. The incident had occurred on 09.02.2017, deceased was referred to the hospital and doctor

declared him brought dead. After preliminary inquiry police reported the incident. The postmortem report Exh. 46 was carried out as per the police inquest deceased died in the road traffic accident. Deceased was 34 years old died leaving behind wife, three children and mother.

12. In support of said above contentions, the Ld. Advocate for the claimants has also filed his written argument at Exh. 75 and relied on the following case laws -

i) **National Insurance Co. Ltd. Vs. Chamundeshwari and Ors. 2021 STPL 10374 SC.**
ii) **Bimla Devi and Ors. Vs. Himachal Road Transport Corpn and Ors., AIR 2009 SUPREME COURT 2819.**
iii) **United India Insurance Co. Ltd. Vs. Vaishali Deepak Pardeshi & Ors., First Appeal No. 2926 of 2018, Hon'ble Bombay High Court, Aurangabad Bench, Decided on 22.03.2019.**
iv) **ICICI Lombord General Insurance Co. Ltd. Vs. Smt. Maya Govind Patel and Ors., 2024(1) T.A.C. 150 (Bom).**
v) **New India Assurance Co. Ltd. Vs. Smt. Varsha Sandeep Sabale and Ors., 2024(1) T.A.C. 517 (Bom).**

I have carefully gone the observations in the cited supra authorities and same would be considered while appreciating merits of the petition.

13. On the other hand, it is the defence of Respondent No. 2 that the driver of the offending Tanker was not responsible solely and there is negligence on the part of deceased himself. The learned advocate for respondent No.2 insurance company argued that, at the time of accident the deceased was himself negligent and drove his tanker dangerously. Due to the negligence of the deceased himself, the accident had occurred, which resulted into death of deceased. There being a contributory negligence on the part of deceased. There is no income and age proof of the deceased. There is breach of

insurance policy. It is further submitted that the driver of the offending vehicle was not having a valid driving license. Mere filing the charge-sheet cannot be based to fastened the liability against the offending vehicle and insurance company. It is further submitted that it is the case of involvement of two vehicle both being tankers in the above referred accident.

14. It is further argued that The claimants have not led evidence to establish involvement of the offending vehicle and because of rash and negligent driving the above referred accident occurred. It is further submitted that the rules under the Evidence Act are not strictly applicable to the proceeding before the Tribunal, however, initial burden of proof on the principle of preponderance of probability is always lies on the claimant. The claimants have not led reliable, sufficient and cogent evidence to discharge initial burden. They failed to establish involvement and because of rash and negligent driving of the offending vehicle the accident occurred. In support of the said submissions, the learned advocate for respondent no.2 relied on the decisions of the Hon'ble Bombay High Court, Bench at Aurangabad in the following cases -

i) **Bajaj Allianz General Insurance Com. Ltd. Vs. Manisha w/o. Lahu Kale & Ors. : First Appeal No.2742/2015, Decided on 04.09.2018.**

ii) **M/s. I.C.I.C.I. Lombard Insurance Company Ltd., Vs. Hajratbee w/o. Abdul Razak and others : First Appeal No.1366/12, Decided on 20.06.2019.**

15. It is their further denied that no income proof is submitted nor document to indicate the deceased was working as a

driver with respondent no.3, hence in absence of income proof, notional income may be taken into consideration.

16. The fact cannot be oversighted that both the vehicles are tanker. As per the contention of claimants, the deceased was riding the tanker and after filing the water he was on the way towards Pimpalwadi for unloading the tanker. It is carefully note in the tanker the driver deceased was also carrying other passengers. The passengers had also sustained injuries. It is worth to be taken note the tanker is not a commercial passenger vehicle, it allows only driver and cleaner in the vehicle. The driver himself has been negligent in carrying the passengers including females in the vehicle.

17. As far as the accident is concerned it is not in dispute, the question before is who is at fault liability. As according to the documents submitted and produced by the claimants the accident is not disputed by the respondents. Moreover, the respondents have taken a defence of contributory negligence of deceased.

18. In the facts and circumstance of the case when there is involvement shown of two tankers colliding with each other and deceased being driver of the tanker was carrying passengers in the vehicle, it itself shows his negligence and responsible for the injuries caused to the other injured. The cabin of the tanker has only space for two persons, though as it appears from the allegations, there were many others were sitting.

19. It is pertinent to note respondent no.1 is the owner of the offending vehicle, the driver of the offending vehicle is not made party, neither has been examined which indicates further towards the

claimants are unable to prove sole rash and negligence of driver of offending vehicle.

20. The defence of contributory negligence has been raised. On carefully considering the available record and the evidence in support of the documents the dispute is whether there was a negligence on the part of the deceased as the accident had been occurred by collusion between two vehicle. It is an admittedly head on collusion i.e. face to face accident

21. Undisputedly in postmortem report the probable cause of death is shown head injury with hemorrhage shock due to road traffic accident.

22. It is pertinent to note that the Hon'ble Supreme Court in the case of Hon'ble Kerela High Court **Sibypaul Vs. Pravinkumar, reported in 2009 (11) ACC, 533 (DB)** therein Lordship had made observation in regards to contributory negligence in the accident caused between vehicles. It was observed the accident could be caused by contributory negligence of both the drivers and same has to be proved under the fact and circumstance. Both the drivers are required to take equal precautions.

23. The claimant no.1 in her affidavit of examination in chief has specifically submitted that the accident has been caused and due to which the deceased sustained injuries and died on the spot. The said fact is supported by FIR Exh. 42, spot panchanama Exh. 44, inquest panchnama Exh. 45 and postmortem report Exh. 46. Postmortem report at Exh. 46 states the opinion as to the probable cause of death is due to head injury with hemorrhage shock due to

road traffic accident.

24. It is apparent to note that the insurance company of the tanker in which deceased was driving and met with an accident is not made party, though the owner of Tankar bearing registration No. MH-15-AG-8847 is made party and thereby claimants have been demanding compensation from his own employer i.e. respondent no.3. In the said fact and circumstance, in absence of insurance policy of the Tankar bearing registration No. MH-15-AG-8847 and otherwise also it is not the case of sole negligence wherein application is filed u/s. 163-A of the M.V. Act wherein negligence is to be excluded. In the said fact and circumstances, the owner of the said tanker i.e. respondent no.3 cannot be held liable in the petition. The claimants can take their own course of action against respondent no.3 under the other provisions. Hence, accordingly respondent no.3 cannot held liable and responsible for the death of deceased driver.

25. The idea of negligence and duty are strictly co-relative the negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term but it is a relative one. It is rather comparative term. No absolute standard can be fixed and no mathematically exact formula can be laid down by which negligence or like of it can be in fallingly measured. What constitute negligence varies under different conditions and in determining whether negligence exists in particular case, or whether mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. The omission to do what the law obligates or even the failure to do anything in a manner would equally an per se constitute

negligence.

26. In the said aspect the human factor plays its own role, accidents resulting in injuries (fatal or permanent) and damage to property are normal and indigenous to the presence of motor vehicles on the highways. Every motorist is at some time, guilty of inadvertence or mistaken judgment and it is only a matter of chance that such inadvertence might occur at a time when some other person is made to or likely to suffer as a result of it. In view of the above observation, I hold the deceased with contributory negligence up to the extent of 25% and the driver of offending vehicle was negligent up to the extent of 75%.

27. On carefully verifying the spot panchnama and sketch drawn of the exact spot of incident. It is apparent to note that alleged incident had occurred on 09.02.2017, on the next day inquest panchnama Exh. 45 was drawn indicating the death is the result of road trafficular accident. The further documents in regards to death is the postmortem Exh. 46 which was carried out subsequently on the next day. The cause of death is shown due to injuries caused in RTA. Though Postmortem is conducted on the basis of inquest panchnama, it does speaks about the death is the result of road traffic accident.

28. It is pertinent to note the incident is reported on 09.02.2017 on the same day of accident and also the spot panchnama is effected on 09.02.2017. There is no delay.

29. The inquest panchanama was drawn on the basis of accidental death report. Therefore, it leaves no room to doubt that the injured was taken to the hospital and it is quite natural the police

would have reached the hospital.

30. It is necessary to borne in mind that strict proof of accident caused by a particular vehicle in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touch stone on the preponderances of probabilities. The standard of proof beyond reasonable doubt could not have been applied.

31. The respondent/opponent No.2 insurance company have taken an objection as to age proof of deceased. To show the age of deceased, claimants have filed on record copy of Adhar Card of deceased wherein his date of birth is mentioned as 25.03.1983. On the basis of said Adhar card it has come on record that on the date of accident i.e. on 09.02.2017 deceased was about 33 years, 10 months old.

32. In the said aspect can the Insurance Company say that accident has not taken place at all. Can the Insurance Company say that person is neither dead or injured, particularly when, the application is substantiated by necessary medical evidence, what may be available to the Insurance Company to dispute would be the age and income of the victim/deceased.

33. To buttress their claim, the claimants have examined claimant no.1 at Exh. 40 and claimant no.5 at Exh. 54 and thereby narrating the facts and circumstance under which deceased met with an accident and also the documents regarding the age proof is submitted. However, they were cross-examined by the respondent, but nothing could be elicited to disbelieve their version in respect of

occurrence of the accident and involvement of both the tanker vehicles.

34. The insurance company further disputed the source of income of deceased. However, when the claimant comes with necessary affidavit about the income, may or may not be supported by necessary evidence of the same, the same can be controverted by the Insurance Company provided they had with them necessary evidence.

35. As per the Section 158(6) and 166 of the M.V. Act, it is obligatory on the part of the police officer to provide with the necessary information stated in this sub-section and these details are the details which are required for deciding application U/s. 166 as questions of negligence is not required to be gone into.

36. As considering the beneficial object of the act it would be proper for the insurer to satisfy the award though in law it has no liability. It is been held and observed by ***Hon'ble High Court, Bombay Bench At Nagpur in Oriental Insurance co Ltd. vs. Suhas and others*** .

37. Evidently there is nothing on record to indicate the income of the deceased there is mere bare contentions.

38. In the present case in hand admittedly the accident has arisen out of the use of a motor vehicle; the said accident has resulted in death of deceased; the claim is made against the owner and the insurer of the motor vehicle involved in the accident. Regarding the licence the scheme of the provisions of Section 166 provides a scope to raise a plea in defence so as to challenge the claim on the ground of no licence or category thereof being different because U/s. 166 as

stated the sums on ad hoc basis under social obligations has to be paid notwithstanding other provisions. The defence contentions therefore gains no ground to stand upon. Hence, mere allegations of breach is not enough and insurer cannot escape from the liability to compensate .

39. It is also very natural after death the expenses for funeral is consequent the expenses may differ place to place hence it can not be said exact amount spent during the funeral and other religious ceremony after death. Admittedly, the claimants have not filed any document to show the expenditures of funeral, here, it is pertinent that it is not expected to write and note down all the expenses incurred of last rites rituals. It is obvious there is expenditure which follows death of any person and it is natural in that event claimants had to spent reasonable amount as funeral expenses.

40. Learned advocate for claimants argued that deceased was working as a driver with respondent no.3 Bhausaheb Chechare and was earning Rs. 15,000/- per month. The said fact is not disputed by the respondent no.3 in his written statement. Though, there is no evidence, the court can consider the income of a married man having three children, wife and old aged mother would earn sufficient income to support his family.

41. Undisputedly claimants failed to produce any documentary evidence on the aspect of source of income neither examined any witness to that effect.

42. The Ld. Advocate for the claimants submitted there are 5 persons entirely dependent on income of deceased. Admittedly, in the

absence of any cogent and clinching proof of income of deceased, hence in the view of the above said facts and circumstance the average notional income per month of the deceased can rightly be considered as Rs. 5,000/- per month.

43. Admittedly, it is not disputed on the day of incident the offending vehicle owned by respondent no. 1. It is pertinent even though respondent no.2 appeared and filed their written statement neither they raised any objection nor they denied the ownership of offending vehicle as stated in the claim petition, in the said circumstance it can be rightly hold the offending vehicle was owned by respondent no.1. As far as the driver of the offending vehicle is concerned, respondent no.4 was alleged shown driving the offending vehicle at the relevant time of incident. Despite of his appearance, he failed to contest the petition to disprove the claim with positive evidence regarding the deceased was negligent. The offending vehicle is duly insured with Respondent No.2, the policy is on record. Hence, the respondent nos.1, 2 and 4 are jointly and severally liable to pay the compensation for the act and omission of respondent no.1’s driver.

44. As far as the future prospects is concerned as there is nothing on record to show deceased had fixed employment and was earning fixed income per month, I do not find substance for consideration of future prospects.

45. Regarding the quantum of compensation is concern the age of applicant was 33 years, 10 months, the income is calculated to Rs. 5,000/- per month. Hence, in the said circumstance the notional

average income can be assessed Rs.5,000/- per month the said income multiplied by 12 (5,000 X 12 = 60,000) deduction of 1/4th as personal expenses i.e. Rs.15,000/- (60,000 – 15,000 = 45,000 p.a.) multiplier as per the table adopted from *Sarla Verma* Case (Supra) 45,000 X 16 = 7,20,000/-).

46. Out of the total compensation amount, 25% amount is to be deducted as contributory negligence (7,20,000/- – 1,80,000/- = Rs.5,40,000/-).

47. The claimants are also entitled Rs.15,000/- as a funeral expenses, loss of estate Rs. 10,000/-, Loss of Consortium Rs.50,000/- and Loss of Love and affection Rs. 10,000/-.

48. Hence, the claimants are totally entitled for Rs. (5,40,000 + 15,000 + 10,000 + 50,000 + 10,000 = 6,25,000). Thus, in present fact and circumstances of the case as wife and minor children of deceased have to spent entire life alone without any support. Hence, I hold that, total amount of compensation of Rs. 6,25,000/- can be granted to the claimants as a just and proper compensation.

49. Taking into consideration the fact and circumstance of the case, I am of the opinion that interest @ 6% per annum over the above said amount of compensation Rs.6,25,000/- from the date of claim petition till its realization and thus I proceed to pass following order :

ORDER

1. Petition is partly allowed with proportionate cost.

2. The respondent Nos. 1, 2 and 4 are hereby jointly and severally liable to pay compensation of Rs.6,25,000/-(Rs. Six Lakhs twenty-five thousand only) as a just compensation, including NFL amount if any, with interest at the rate of 6% per annum, from the date of petition till its realization.

3. Respondents shall deposit the compensation amount in the account of Member Motor Accident Claim Tribunal, Rahata Dist. Ahmednagar i.e. Saving Account No. 43297330495 in State Bank of India, Branch - Rahata, IFSC Code No. SBIN0004317.

4. The amount of compensation be apportioned amongst the claimants as under :

a) Applicant No. 1 wife 20% plus interest.

b) Applicant Nos. 2 to 4 minor children 20% each plus interest.

c) Applicant No. 5 mother 20% plus interest.

5. Out of the amount payable to claimant nos.1 and 5, an amount of Rs. 50,000/- each be invested in fixed deposit in their name in any nationalized bank of their choice for a period of 3 years.

6. The amount payable to claimant nos.2 to 4 be invested in fixed deposit in their names in any nationalized bank of the choice of claimant No.1 till they attain age of majority.

7. Rest of the amount be transferred to the account of claimants as per the apportionment mentioned above.

8. If amount withdrawn by claimants under section 140 the M.V. Act be deducted from the above compensation amount.

9. Claimants to deposit deficit court fees within one month from the date of order, if any. Till the deficit court fees is not deposited, the claimants shall not be entitled for any delayed interest from respondents.

10. Award be drawn accordingly.
(Dictated and pronounced in open court)

RAJESH SHIVRAM GUPTA

Digitally signed by RAJESH SHIVRAM GUPTA
Date: 2025.11.03 18:40:25 +0530

(Rajesh S. Gupta)

Date : 31.10.2025.

Member,
Motor Accidents Claim Tribunal,
Rahata.

CERTIFICATE

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

Name of Stenographer	--	S. M. Patil, Stenographer Grade-I
Name of the Court	--	District Court-1 & Addl. Sessions Court, Rahata.
Date of Decision	--	31.10.2025
Order signed by the Presiding Officer on	--	31.10.2025
Order uploaded on	--	03.11.2025