

MHNG010115872022



Received on : 21/11/2022  
Registered on : 22/11/2022  
Decided on : 01/08/2026  
Duration : 03 Y., 08 M., 11 D

**BEFORE MEMBER, MOTOR ACCIDENT CLAIMS  
TRIBUNAL, ADDITIONAL TEMPORARY COURT, NAGPUR.**  
(Presided over by Smt. M.A. Baraliya)

**MOTOR ACCIDENT  
CLAIM PETITION NO. 1092/2022**

**Exh. No. 64**

**Abhiman s/o Tulsiram Meshram,**  
Aged – 48 years, Occu.  
Shopkeeper, R/o Bhiwapur,  
At Punarvasan Marupar, Post  
Virkhandi Dhaparla, Tah.-  
Bhiwapur, District Nagpur.  
Mob. No. 8007531585.

... **PETITIONER**

**--Versus--**

- 1] **Saurabh S/o Dharmapal  
Khobragade,** Aged – Major,  
Occu. - Business, R/o Tas Colony,  
Bhiwpur.
- 2] **Dharmapal Khobragade(Owner),**  
Aged – Major, Occu. - Business,  
Non-applicant Nos. 1 and 2 both  
residing at R/o C/o Parasram  
Doma Khobragade, At/Post Ward  
No. 1 Dharampur, Tah.  
Bhiwapur, Nagpur, Maharashtra-  
441201.

- 3] **The ICICI Lombard General Insurance Co. Limited,** ICICI Lombard House, 414, Veer Sawarkar Marg, Near Siddhi ... Vinayak Temple, Prabhadevi, Mumbai-400025.
- 4] **Shri Subhash L. Dhore,** Aged about :- Major, Occ. Private, R/o Ward No. 4 Ghogli Road, Adarsh Nagar, Mahadula, Dist. Nagpur-441111. ... **RESPONDENTS**

**APPLICATION FOR GRANT OF COMPENSATION UNDER SECTION 166 OF THE MOTOR VEHICLES ACT:**

**Advocates appeared :**

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Smt. Sujata Waldekar – Learned Advocate for the petitioner.  
Shri A.R. Ukey – Ld. Advocate for respondent No. 1 & 2 .  
Shri Mayur Pradhan – Ld. Advocate for respondent No. 3.  
Respondent No. 4 – Proceeded ex parte.  
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**ORAL JUDGMENT**

(Delivered on this the 1<sup>st</sup> day of August, 2026)

**INTRODUCTORY**

Petitioner's claim is under Section 166 of the Motor Vehicles Act, 1988 on account of accidental injuries sustained to him. Respondent No. 2 is the owner of motorcycle No. MH-40-AS-4173 (in short, 4173) and respondent No. 1 is his son, the driver of the said motorcycle. Respondent No. 2 is the insurer in respect of motorcycle No. MH-40-AA-6332 (in short, 6332) owned by the petitioner.

**PETITIONERS' CLAIM**

2] Briefly stated on 20/07/2019, at around 1:00 p.m. the petitioner was riding motorcycle No. 6332 on national highway No. 9 and he was trying to cross the road. At that time motorcycle No. 4173 being driven triple seat came from his opposite, rashly and negligently and dashed to the petitioner's motorcycle. In the result, petitioner sustained severe injuries to his back bone in the nature of fracture. He was initially shifted to PHC., Bhiwapur and then to GMC Hospital, Nagpur. He was unable to stand for about 2 months. Respondent No. 2 is the owner of the motorcycle No. 4173 As he is father of respondent No. 1, respondent No. 2 is also responsible for the loss of the petitioner. Petitioner's monthly income was Rs. 25,000/-. Due to his accidental injuries, he and his family members face financial difficulties. According to him, police station Bhiwapur had registered the crime against the driver of the said motorcycle. Petitioner has, therefore, calculated total compensation Rs. 4,53,110/- and claimed it with interest @ 18% per annum against all respondents jointly and severally. However, restricted the claim for Rs. 1,00,000/- for want of funds to pay court fees.

**WRITTEN STATEMENT**

3] Respondent Nos. 1 and 2 have filed common W.S. at (Exh. 20) and denied the allegations of the accident levelled against them. The rash and negligent driving on the part of the motorcyclist, accidental injuries sustained to the petitioner,

dash by motorcycle No. 4173 to the petitioner's motorcycle and the joint and several liability of respondents has been denied. It is contended that respondent No. 2 is the owner of motorcycle No. 4173. According to them, petitioner was going to wrong side and dashed against the vehicle of the respondent Nos. 1 and 2. Petitioner has filed the false and bogus documents on record and claim is also false and, therefore, contends to dismiss the petition against them.

4] Respondent No. 3, the insurer, opposed the claim vide W.S. (Exh. 24). It is alleged that claim has been delayed therefore, it is barred by limitation. Apart from it, the petition is not tenable against the insurance company, respondent No. 3. Petitioner was riding the motorcycle No 6332 and respondent No. 3 is the insurer in respect of the said motorcycle. The petitioner does not come under the ambit of third party, so tenability of the petition against insurance company and liability to compensate the petitioner has been denied. Rest of the contention has also been denied and additionally pleaded that petition is bad for non-joinder of the owner and rider of motorcycle No. 4173. The driver was driving the motorcycle No. 4173 without holding valid and effective driving licence for the breach of provision of the Motor Vehicles Act and contends to dismiss the petition.

5] Respondent No. 4 proceeded ex parte.

**ISSUES AND FINDINGS**

6] I framed the issues at (Exh. 26). Petitioner has examined himself. Respondent Nos. 1 and 2 have examined themselves and respondent No. 3 has also examined one witness. I heard learned Advocate for the petitioner. Learned Advocate for respondent Nos. 1 and 2 produced written notes of argument (Exh. 61) and respondent No. 3 (Exh. 62). Respondent No. 4 remained absent at the time of hearing and argument. I have recorded my findings against those issues for the reasons to follow :

| <b><u>Sr.No.</u></b> | <b><u>Issues</u></b>                                                                                                                              | <b><u>Findings</u></b>                                                               |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| 1]                   | Whether the petitioner sustained injuries in motor vehicle accident due to rash and negligent driving of driver of motorcycle No. MH-40-AS-4173 ? | <b>Petitioner sustained grievous injuries.</b>                                       |
| 2]                   | Whether petitioner himself was negligent and rash as he was riding motorcycle No. MH-40-AA-6332 ?                                                 | <b>Petitioner was 20% negligent &amp; driver of motorcycle No. MH40-AS-4173 80%.</b> |
| 3]                   | Whether petition is bad for non-joinder of necessary parties ?                                                                                    | <b>No.</b>                                                                           |
| 4]                   | Whether there is breach of terms and conditions of the policy ?                                                                                   | <b>No.<br/>However, claim is not maintainable against respondent No. 3.</b>          |
| 5]                   | Whether the petitioner is entitled for compensation ?                                                                                             | <b>Yes.</b>                                                                          |

If yes, to what extent and from whom?

6] What Award, cost and interest ? **As per final order.**

### Oral and documentary evidence

7] In the matter, petitioner himself has been examined as (PW 1). His evidence is on the same line of the petition. He relies upon following documents :

- i] Certified copy of claim application No. 268/2020 Exh. 26,
- ii] True copy of letter of police station Exh. 27,
- iii] Document Nos. 2 to 5 is DAR report marked as Exh. 28 collectively,
- iv] Document No. 6 FIR Exh. 29,
- v] Oral report Exh. 30,
- vi] Certified copy of Social Investigation Report in respect juvenile respondent No. 1 Exh. 31,
- vii] Copy of Crime details form Exh. 32,
- viii] Copy of form comp AA Exh. 33,
- ix] Copy of report of RTO Exh. 34,
- x] DAR Exh. 35,
- xi] True copy of RC Exh. 36,
- xii] True copy of RC of Abhiman Meshram Exh. 37,
- xiii] True copy of driving licence of Abhiman Meshram Exh.38,
- xiv] True copy of policy Exh. 39,
- xv] True copy of 7/12 extract Exh. 40, (list Exh. 17)

- xvi] Renewal copy of insurance (true copy) Exh. 41,  
xvii] Original discharge card issued by IGMCI Exh. 42.

8] Respondent No. 1 and 2, has examined Saurabh Khobragade (DW 1) and relies upon carbon copy of selling vehicle (Exh. 56).

9] Respondent No. 2 Dharmapal Khobragade (DW 2) examined himself.

10] Respondent No. 3, the insurance company, has examined Rajendra Anantram Pardhi (DW 1), Legal Manager of the company and relies upon insurance policy (Exh. 57) and certified copy of chargesheet (Exh. 58)

## **REASONS**

### **AS TO ISSUE NOS. 1 AND 2:**

11] Respondent No. 2 is the owner of the motorcycle is not disputed. Respondent No. 2 while examining himself as witness has produced carbon copy of sale-deed (Exh. 56), which shows that respondent No. 2 purchased the motorcycle No. 4173 from Subhash Dhore. In his affidavit of evidence (Exh. 53) he denied that he is the owner of said motorcycle No. 4173. However, during course of cross-examination by learned Advocate appearing for the insurance company, respondent No. 3, had deposed that at the time of accident

Subhash Dhore, was the registered owner of the vehicle and he bought said vehicle from him. Since document (Exh. 56) has been produced by respondent No. 1, his son, and it is marked as Exh. 56, it is to be believed that respondent No. 2 was in possession of the said vehicle. It may be noted that petitioner has produced true copy of registration certificate (Exh. 36) in respect of vehicle No. 4173, showing that Dharmapal Khobragade, respondent No. 2, is the registered owner of the said vehicle. Thus, respondent No. 2 is proved to be the registered owner of the said motorcycle though he has denied in his W.S. the ownership. In the matter report of DAR is produced and it has been marked as (Eh. 28) collectively. Police have produced the copy of final report showing that Saurabh Khobragade, respondent No. 1, the juvenile, has been chargesheeted before the Juvenile Justice Board for the offences punishable under sections 279, 337, 338 of IPC and sections 184, 181, 196, 128 punishable under section 177 of the Motor Vehicles Act. Filing of the chargesheet against respondent No. 1 Saurabh Khobragade, proves that he was driving said motorcycle No. 4173 owned by his father on the date of accident.

12] Learned Advocate for the respondent Nos. 1 and 2 has vehemently argued that petitioner himself was wrong and negligent while driving his motorcycle. To verify such argument, I have gone through FIR and other police papers

produced on record. It may be noted that in the petition and his affidavit of evidence petitioner has alleged that at the material time, he was taking a turn to the right side as he wanted to come to the other side of the road by crossing it. The motorcycle No. 4173 came from Nilaj fata triple seat and dashed to his motorcycle from behind. It is, thus, evident that accident took place when the petitioner was taking a right turn to cross the road and to reach other side of the road. According to him, he had also given indicator. It may be noted that when the petitioner wanted to take 'U' turn, by turning to right hand side needed to follow the rules of road regulation.

13] Thus, to enter from right to the left hand side of the road, the petitioner was needed to look the traffic around and on going traffic of the left side of the road. So it can be said that there was some sort of negligence on the part of the petitioner, who without noticing on coming traffic on the left side road turned his vehicle to right hand side and tried to come to left side. It is also matter of record that respondent No. 1 was riding the motorcycle rashly and negligently and could not control it and even could not look surrounding vehicles, otherwise he could have noticed the motorcycle of the petitioner trying to cross the road and coming to the left. Thus, respondent No. 1 was also negligent to cause the said accident.

### **Nature of the injuries sustained to the petitioner**

14] Petitioner has not examined any Medical Officer/Doctor. He relies upon original discharge certificate issued by IGMH Hospital, Nagpur (Exh. 42). Said certificate shows that petitioner was admitted on 25/07/2019 that is to say on the 5<sup>th</sup> day of accident and not immediately after the accident. It is not clearly seen in discharge certificate (Exh. 42) about the history of the accident. It may be noted that during course of cross-examination of the petitioner by learned Advocate appearing for respondent Nos. 1 and 2, it is not disputed that petitioner met with an accident. It is suggested to the petitioner that accident occurred due to his sole negligence, which the petitioner has denied. Petitioner has also denied the suggestion that vehicle running his behind was neither rash or negligent. Petitioner has not been cross-examined for delay in lodging the report so also delayed admission in the hospital. However, he has admitted that he was not wearing helmet at the material time. Thus, factum of accident is not denied and it is also proved by producing final report (Exh. 28). The nature of the injury is concerned, as mentioned in discharge card (Exh. 42) that petitioner sustained fracture of L4 and L5 in the lumbar region. Thus, sustaining of grievous injuries due to said accident is proved. In the circumstances, I have recorded my finding to Issue Nos. 1 and 2 that petitioner suffered grievous injuries and he

is negligent to the extent of 20% and respondent No. 1, Saurabh Khbragade, 80% negligent.

**Non-joinder of necessary party**

**AS TO ISSUE NO. 3 :**

15] In the matter registered owner of the motorcycle No. 4173 and driver Saurabh Khobragade, both are made parties. Apart from it, petitioner himself is the registered owner of his motorcycle No. MH40-AA-6332 and respondent No. 3 is the insurer of petitioner's vehicle. Vehicle No. 4173 of respondent No. 2 is not insured, so there is no question of arraying its insurer as a party. Rest of all necessary parties are arrayed in the matter, petition is maintainable. So I have recorded my finding to Issue No. 3 in negative.

**Breach of terms and conditions of the policy**

**AS TO ISSUE NO. 4 :**

16] Insurance company has objected the tenability of the petition against the insurance company for the reason that policy (Exh. 39) being third party policy issued in favour of the petitioner himself in respect of his motorcycle No. MH-40-AA-6332, the said insurer is not responsible to compensate the petitioner as the latter is not third party. The claim u/s 165 of the Motor Vehicle act, is related to the third parties and the petitioner being not third party, the petition itself is not tenable. It cannot be disputed as argued by learned Advocate

for respondent No. 3 that the policy below (Exh. 39) has been issued to the petitioner pertaining to his motorcycle, so he being insured is not third party coming within the sweep of third party as required u/ss 165 and 166 of the Motor Vehicles Act. So, the claim of the petitioner against the insurance company is not maintainable. As there is no liability of respondent No. 3 to the petitioner, there is no question of breach of terms and conditions of the insurance policy, So I have recorded my finding to Issue No. 4 in negative, but that claim is not maintainable against respondent No. 3.

**Compensation payable to the petitioner and who is liable to pay the compensation to the petitioner**

**AS TO ISSUE NOS. 5 & 6 :**

17] Learned Advocate for the petitioner has argued that petitioner has sustained fracture to his lumber and, therefore, unable to do his daily routine work so also the business. It may be noted that petitioner has not produced or examined any Medical Officer to prove the permanent disability. It may be noted that during course of cross-examination petitioner (PW 1) has deposed that he has resumed his work after 3 years of the accident. Thus, it is evident that he has resumed the work, so there is no question of causing any permanent loss of future income. Considering the injuries to his lumber, it can be said that he was unable to do his daily routine work, earning work and his occupation for a period of six months.

18] The nature of occupation is concerned, petitioner relies upon the documents below (Exh. 43 collectively). It is argued by the learned Advocate for the petitioner that petitioner used to sell spices door to door and also on the stall. Documents below (Exh. 43 collectively) proves such occupation of the petitioner. I have gone through the document Exh. 43 collectively. It only proves the rotation and daily sale of the petitioner, but those documents cannot show the profit earned by the petitioner by said sale. Exh. 47 collectively shows the sale of four dates 20/05/2019, 05/06/2019, 18/06/2019 and 31/06/2019 only. On the basis of these four documents nothing can be guessed about the monthly or annual turnover or income of the petitioner. Still considering involvement of the petitioner in the business of spices in the year 2019 his monthly income can be considered as Rs. 12,000/-, so there was temporary loss of earning for the period of six months of the petitioner. For the temporary loss of income, the petitioner is entitled to **Rs. 72,000/-**.

19] Since he has not produced any hospital or medical bills, no compensation can be awarded for it. Towards transportation considering spot of accident at Bhiwapur and his admission in hospital at Nagpur, he is entitled to **Rs. 5,000/-**, for special diet **Rs. 5,000/-** and for miscellaneous expenditure **Rs. 3,000/-**. Considering the nature of the injuries which were treated conservatively, he is entitled for **Rs. 30,000/-** towards pain and suffering.

20] Thus in all the petitioner is entitled for Rs.1,15,000/-. As, however, the petitioner is negligent to the extent of 20%, he is entitled for compensation **Rs. 92,000/-** with interest @ 7.5% per annum and respondent Nos. 1, 2 and 4 jointly and severally liable to compensate the petitioner. Accordingly, I have recorded my finding to issue Nos. 5, and 6.

21] In the light of above discussion, I pass following order.

### **ORDER**

Claim Petition is partly allowed with proportionate costs.

- ii] Claim petition against respondent No. 3, ICICI Lombard General Insurance Company Ltd., is dismissed.
- iii] Respondent Nos. 1, 2 and 4 jointly and severally do pay the total compensation of **Rs. 92,000/- (Rupees Ninety Two Thousand Only)** to the petitioner, inclusive of the amount of No Fault Liability (if any paid) along with simple interest @ 7.5% per annum from the date of petition i. e. from **21/11/2022**, till it's final realization.
- iv] Respondent Nos. 1, 2 and 4 jointly and severally are directed to transfer the said amount into the Bank account of petitioner by NEFT/RTGS, details of which are furnished as under, on due verification and identification.

| S.No. | Name of petitioner        | Name of Bank, Branch & IFSC Code                                                  | Savings Account No. | Amount                                                                             |
|-------|---------------------------|-----------------------------------------------------------------------------------|---------------------|------------------------------------------------------------------------------------|
| 1     | Abhiman Tulsiram Meshram. | Bank of India, Branch Bhiwapur, Dist. Nagpur-441201.<br><br>IFSC Code BKID0008714 | 8714101000<br>18946 | The compensation awarded to petitioner, with interest @ 7.5% P.A., be paid to him. |

- v] Respondent Nos. 1, 2 & 4 jointly and severally are further directed to intimate this Tribunal/report compliance, about the payment made to petitioner, within 15 days from the date of payment, without fail.
- vi] Petitioner shall deposit the amount of deficit court fees in **Current A/c No. 442401010036699** of Union Bank of India, DBA Extension Branch, Civil Lines, Nagpur, IFSC Code No. **UBIN0544248**.
- vii] Petitioner is entitled to withdraw the said compensation.
- viii] Award be drawn up accordingly, on payment of deficit court fees and by giving details of the savings account of petitioner in it, as above.
- ix] Petitioner shall pay the deficit court fees within fifteen days from the date of this order, otherwise he is not

entitled to get interest from 16<sup>th</sup> day of this order, til the date of award.

x] Dictated and pronounced this in open Tribunal today.

Sd/-

Nagpur.

(Smt. M.A. Baraliya)

Dt/- 01/08/2026.

Member,

Addl. Temporary MACT., Nagpur.

**Endorsement**

|                                |   |          |
|--------------------------------|---|----------|
| Case argued on                 | : | 15/07/26 |
| Judgment dictated on           | : | 31/07/26 |
| Transcription ready on         | : | 01/08/26 |
| Judgment checked and signed on | : | 01/08/26 |

**CERTIFICATE**

I affirm that the contents of this judgment are word to word as per original judgment uploaded in the CIS System by way of PDF File.

Name of Stenographer : A.W. Sangle.