Received on 21.04.2018
Decided on 31.07.2026
Duration of 08 years 03 months 10 days

Before the Motor Vehicle Accident Claims Tribunal – 3, Palghar.

Motor Accident Claim Application number 49 of 2018
CNR number MHTH150003182018
Exhibit number 53

1. Mr Santosh Kusha Patil, Age: 53 years, Avocation: Service.
2. Ms Apeksha Santosh Patil, Age: 25 years, Avocation: Student.
3. Mr Vedant Santosh Patil, Age: 22 years, Avocation: Student.

[applicant number 2 and 3 initially represented by applicant number 1 as a next friend cum guardian]

All Residence: Flat number 10, H - Wing, Second Floor, Vrundavan Darshan, Vangaon. Dahanu. Palghar. Maharashtra. **[Applicants]** [represented by Mr Ramesh Chavanke, advocate].

Versus

1. Mr Rajeshbhai Angur Ahir, Age: Major, Avocation: --, Residence: Achhad, Govarpada. Talasari. Palghar. Maharashtra.

2. Iffco – Tokio General Insurance Co Ltd, Third Floor, Tritan Dream building, Next to Chevrolet Show Room, Near Dharam Veer Naka, Service Road, Panchpakhadi, Thane (W) 400 602. Maharashtra. **[Respondents]** [represented by Mr P T Sonar, advocate].

J U D G M E N T

1. The application has been filed under section 166, Motor Vehicles Act, 1988 (in short, the Act) seeking compensation. Applicants being a widower, children of the one Samiksha Santosh Patil (the deceased) who expired on account of injuries sustained in a motor vehicle accident filed a claim application seeking a just compensation.

2. **Factual background:** The incident occurred on 11.02.2018 at or about 2:30 PM at Vangaon Railway Gate (E) on Vangaon – Charoti Road. Deceased was a pillion rider on the motor-cycle driven by applicant number 1. The motor-cycle was stopped safely behind the said closed railway gate while waiting for it to open. A Tempo bearing registration number MH43U4562 failed to apply the brakes and lost control. It dashed against the motor-cycle to its rear side injuring the deceased. The deceased was immediately shifted to Vangaon Rural Hospital, Vangaon. She was declared brought dead.

3. The accident occurred due to the rash and negligent driving of the driver of the Tempo. An offence bearing FIR number 3 of 2018 has been registered with the Vangaon Police Station, Palghar against the driver of Tempo. The respondent number 1 is the owner thereof. The Tempo was insured with the respondent number 2 at the relevant time of the occurrence.

4. The deceased was in his 40s. She was an employee at Grammangal's Muktashala, Aine earning ₹ 20,000/- per month. She was contributing to the family expenses. Thus, the claim application came to be filed claiming just and fair compensation.

5. The application has been tried *ex parte qua* respondent number 1. The respondent number 2 has tendered reply at exhibit 15. It is in the nature of traversal. The respondent number 2 has denied the rash and negligent driving of the Tempo. The respondent number 2 has blamed the negligent riding of the motor-cycle by the applicant number 1 for the occurrence. Further, it has been pleaded that Tempo was plied on road without valid permit and fitness. The respondent number 2 has denied its liability to pay the compensation.

6. **Issues and findings:** Pondering over the pleadings the issues came to be framed at exhibit 16. With aesthetic changes those are reproduced below. I have also given my findings stated against the issues for the reasons discussed thereafter in following paragraphs.

> I. Whether applicants proves that the deceased died in a vehicular accident which occurred on 11.02.2018 due to rash and negligent driving of the driver of Tempo bearing registration number MH43U4562? …YES.
>
> II. Whether the respondent number 2 proves that the respondent number 1 committed breach of the terms and conditions enshrined in insurance policy? …YES.
>
> III. Whether the applicants are entitled for compensation? If yes, what amount? … YES. Entitled for **₹ 51,86,390**/-.
>
> IV. What order? …Application is allowed as per final order.

7. **Evidence:** To substantiate the claim the applicant number 1 has filed proof affidavit at exhibit 16 and has also examined Mr Mangesh Pawar at exhibit 35 who is the Head Master of the Institution wherein deceased was employed. The documents relied on by the applicants are documents forming part and parcel of FIR number 3 of 2018, *et cetera*. These documents are at exhibit 20 to 32.

8. Respondent number 2 has examined Vaibhav Salunke at exhibit 44. He is an employee of the respondent number 2 company. His evidence has proved insurance policy related documents of the offending Tempo at exhibit 47 to 51.

9. **Discussion: As to issue number I.** The testimony of the applicant number 1 has been in the line of the pleadings. The applicant number 1 has reiterated to the effect that he and deceased were on a motor-cycle. He was riding and deceased was a pillion rider. He stopped at a Vangaon Railway Gate as crossing was closed. The Tempo bearing registration number MH43U4562 dashed the motor-cycle from behind. The accident snuffed out the life of deceased.

10. The cross-examination of the applicant number 1 has not dented the cogency and credit worthiness of the evidence. Nothing could be extracted in the cross-examination to raise any doubt or disbelieve the testimony. The ocular evidence of the applicant number 1 has been duly supported and corroborated by the police documents on record. The FIR exhibit 20 and site panchnama exhibit 21 effectively substantiates the point that the deceased was hit from behind by the Tempo bearing registration number MH43U4562. The inquest panchnama exhibit 22, post mortem report exhibit 23 reflects that the deceased died due to the injuries sustained in the road accident.

11. The Tempo hitting the motor-cycle from behind is fundamentally presumed to be rash and negligent act. The Tempo driver is at fault for failing to follow the safe speed, control and to maintain proper lookouts. Thus, the rash and negligent driving of Trailor driver is evident from the evidence.

12. It was argued from the side of respondent number 2 that deceased was travelling on the motor-cycle without wearing a helmet and hence, she too contributed negligently for the mishap. Yes, there is no affirmative evidence to bring to the fore that at the time of accident deceased was wearing a helmet. But then, that is not *per se* rash and negligent driving under the Act nor in general perception of human behavior it is a rash and negligent act. Under the Act it is classified as a safety violation attracting a standard fine. It is a passive violation. Unless it is proved that the non-wearing of a helmet is the direct cause to the accident, the said violation cannot be dubbed as a contributory negligence. Hence, I reject the arguments of the respondent number 2.

13. In assessment, the rash and negligent driving of Tempo is sufficiently proved. The deceased lost her life in the road accident caused by the Tempo driver. Corollary, this issue is answered in affirmative.

14. **As to issue number II.** The respondent number 2 has graced the witness box through its Legal Officer. The witness has deposed that the offending Tempo was without valid permit. The copy of permit has been produced and proved at exhibit 48. It shows that the period of permit for offending Tempo expired on 17.10.2017. The applicants have not contested this aspect of the evidence in the cross-examination. Under section 66 of the Act a transport vehicle without a valid permit issued by the State or Regional Transport Authority cannot be plied on a public road. It is a statutory breach of insurance policy condition. Thus, this issue is answered in affirmative.

15. **As to issue number III.** The deceased has died in the road accident caused due to the rash and negligent driving of the Tempo driver. Hence, applicants number 2 and 3 are entitled for compensation. Applicant number 1 being a earning member is not entitled for substantive compensation on the loss of income component but for peripheral components of the compensation.

16. For fixing the compensation amount, let me dissect the evidence on the income of the deceased. The applicants have examined Mangesh Pawar on this point. He is a Head Master at the Garammangal Mukt Shala, Aina. He has stated that deceased was a volunteer in the said school earning a monthly salary of ₹ 20,000/-. I may say that his evidence does not evince interest to rely on. The respondents have seriously contested the employment and salary of the deceased. During cross-examination the witness has admitted of not producing any document on record to reflect that the deceased was working with the said school or was drawing a monthly salary. It is not the case that school does not maintain any record. The witness has conceded that the school has maintained records of staff members. But then no explanation has been provided for omission to produce the same in the Court. Thus, the evidence does not support the applicant number 1's version that deceased was a salaried woman. In absence of any cogent and credible evidence regarding the employment of the deceased in the face of respondents' vehemently contesting and challenging the employment of deceased, the evidence of the applicant number 1 and of Mangesh Pawar cannot be believed.

17. The evidence leads us to the arena of notional income. As held in the case of ***Shishu Pal vs Surjeet, 2026 INSC 634*** compensation for the death of a homemaker must include a new head of 'loss of domestic care', fixed at ₹ 30,000/- per month and where the homemaker has no proven income, this sum stands in as notional monthly income. I may say that even husband is entitled for the share in the compensation granted under this head. Thus, applicant number 1 is entitled for the share in compensation allowed towards 'loss of domestic care'.

18. The personal and living expenses of the deceased should be deducted from the income to arrive at the contribution to the dependents. Herein, the dependents are 2 persons. Hence, deductions towards personal and living expenses would be one-third ($1/3^{rd}$). Subtracting the one-third portion for the deceased from the yearly income of ₹ 3,60,000/-, the dependents share would be ₹ 2,40,000/-. [see:

Sarla Verma vs Delhi Transport Corporation and Anr, AIR 2009 SC 3104].

19. On the future prospects of the income it is necessary to determine the age of the deceased. The applicant number 1 has stated deceased's age as 40 years. The school leaving certificate exhibit 39 of the deceased reflects her birth date as 09.09.1977. Thus, it could be held that deceased was aged 41 at the time of her death. Resultantly, the addition to future prospects would be 30%. Calculating the future prospects from the dependents share of ₹ 2,40,000/-, it would come to ₹ 72,000/-. Thus, the monthly income of the deceased considering the components of salary and future prospects would be ₹ 3,12,000/-. [see: ***Sarla Verma vs Delhi Transport Corporation and Anr, AIR 2009 SC 3104***].

20. The deceased was aged 41 at the time of her death. The appropriate multiplier to be adopted would be 14. Therefore, the loss of dependency would be ₹ 43,68,000/-.

21. Next, the applicants are entitled to a sum of ₹ 15,000/- under the head of loss of estate, ₹ 15,000/- towards funeral expenses. The applicant number 1 is entitled for loss of spousal consortium ₹ 40,000/-. The applicant number 2 and 3 each are entitled for loss of parental consortium ₹ 40,000/-. [see: ***Magma General Insurance Co Ltd vs Nanu Ram alias Chuhru Ram and Others, (2018) 18 SCC 130; United India Insurance Co Ltd vs Satinder Kaur and Ors, AIR 2020 SC 3076***].

22. Therefore, in total the applicants would be entitled to a sum of ₹ 45,18,000/- under the following heads:

Heads	**Compensation in ₹**
Loss of domestic care	43,68,000/-
Loss of spousal consortium	40,000/-
Loss of parental consortium	40,000/- x 2 = 80,000/-
Loss of estate	15,000/-
Funeral expenses	15,000/-
Total	**45,18,000/-**

23. The applicants are entitled for an interest on the said amount. A sneak preview of the Order-Sheet reveals that respondents appeared in June 2018. The applicants were diligent in pursuing the application. The issues were framed in March 2020. But then the lockdown began due to Covid – 19 pandemics. The absence of parties was natural. Yes, the applicants wasted the time of around six months after the opening of markets and Courts in a full-fledged manner in March 2022. But then that is not so significant when viewed in overall scenario.

24. The grant of interest for compensation is in the realm of equity. The applicants did not issue prelitigation demand notice to respondents. The respondents were unaware of any such claim of the applicants until they were served with Court summons of this claim application. Halsbury, volume 32 (page 53, para 106) defines 'interest' as – 'the return or compensation for the use or retention by one person of a sum of money belonging or owed to another…'. Thus, applicants would be entitled for interest from June 2018 onwards when summons were served to them. The transaction is not a commercial one. Hence, *ex debito justitiae* interest @ 6% per annum would be proper.

25. As the respondent number 1 has breached the terms of insurance policy, the respondent number 2 is exonerated from the liability. The respondent number 2 cannot be fastened with the liability. However, with the application of 'pay and recover' doctrine the respondent number 2 shall pay the compensation amount and recover the same from the respondent number 1. (see: ***Sunita and Ors vs United India Insurance Co Ltd and Ors, 2025 INSC 867***).

26. **In conclusion:** The respondent number 1 is liable to pay compensation of ₹ 45,18,000/- with interest @ 6% per annum from June 2018 till deposit within the period of one month from today. Respondent number 2 shall satisfy the said amount and recover the same from the respondent number 1.

27. Applicant number 1, 2 and 3 shall be entitled to receive compensation in the ratio of 34:33:33. The compensation awarded to applicants along with proportionate interest shall be released in their favor after compliance of clause 28 mentioned below.

28. Applicants shall deposit the deficit Court-fees for the *lis.*

29. Award shall be drawn accordingly.

30. File shall be consigned to records.

Judgment pronounced on Friday, 31 July 2026 at Palghar.

JAIN AKHIL OMPRAKASH

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Date: 2026.07.31 12:37:43 +0530

(Akhil Jain)

Motor Vehicle Accident Claims Tribunal – 3, Palghar.