

MHPA010023362019



Presented on : 01/08/2019

Registered on : 02/08/2019

Decided on : 27/02/2025

Duration : 5 years, 6 months, 25 days

IN THE COURT OF MOTOR ACCIDENT CLAIMS TRIBUNAL,

AT PARBHANI.

[Presided over by : Abdussalam A.A. Shaikh, Member, MACT/DJ-3.]

M.A.C.P. No. 239/2019

Exh. No.[55]

1. Shakuntala w/o Dattarao Mughatkar (Lingayat),

Age 40 years, Occu. Household,

R/o Dongarkada, Tq. Kalamnuri, Dist. Parbhani,

Now at Sundrai Nagar, MIDC Area, Parbhani.

2. Shubham s/o Dattarao Mughatkar,

Age 12 years, Occu. Education,

Petitioner No.2 is minor, under guardianship real

mother i.e. petitioner No.1,

R/o as above (8412097807)

... Petitioners.

VERSUS.

1. Jaikumar s/o Kanbarao Kamble,

Age 33 years, Occu. Business

R/o Shastri Nagar, Kalamnuri, Taluka Kalamnuri,

District Hingoli.

2. The New India Assurance Co. Ltd.,

Through its Branch Manager,
1st Floor, BL Avenue, Basmat Road,
Parbhani.

... **Respondents.**

Shri. S. B. Dhule	} Learned advocate for petitioners.
Shri. A. H. Thanedar	} Learned advocate for respondent No.1
Shri. D. H. Dodiya	} Learned advocate for respondent No.2

Claim :- Petition Under Section 166 of the Motor Vehicles
Act, 1988 for grant of compensation....

JUDGMENT

(Delivered on 27th day of February, 2025)

1. By filing this petition under Section 166 of the Motor Vehicles Act, 1988 it is prayed that compensation of Rs.9,00,000/- (Rupees Nine Lakhs only) may be granted on the ground that death of Datta s/o Ganpati Lingayat (herein-after referred to as “the deceased Datta”) took place in the motor vehicular accident which occurred on 15/08/2018.

The case of petitioners in brief is as under :-

2. Petitioner No.1 and 2 are widow and the minor son of the deceased Datta. On 15/08/2018 the deceased Datta came to meet

petitioners in village Dongarkada from village Mugat. Thereafter he was proceeding towards Dhaba for the dinner by walking from the left side of the road. When he reached near the agricultural field of Narayan Hake on Nanded to Dongarkada road at the relevant time (i.e. at about 10.00 pm suddenly one auto bearing No. MH-23-X-281 (herein-after referred to as “the offending vehicle”) came in fast and excessive speed and due to heavy speed the driver of the offending vehicle lost control over the offending vehicle and gave tremendous dash to the deceased Datta. As a result of which the deceased Datta fell down and sustained multiple fracture injuries all over his body. The deceased Datta was shifted to Rural Hospital Dongarkada for first aid treatment. But due to the sever injuries as per the advise of the doctor he was shifted to Government Hospital Nanded and he remained in that hospital as indoor patient from 15/08/2018 till 04/09/2018 and that he died in the hospital while undergoing medical treatment.

3. The deceased Datta disclosed the number of the offending vehicle to petitioner No.1 but father of petitioner No.1 without asking petitioners lodged complaint of the accident against unknown vehicle to the Police Chauki of the Government Hospital Nanded and on the said complaint crime bearing No.267/2018 under Section 279, 304-A of Indian Penal Code was registered against unknown vehicle. During the investigation police arrested the driver of the offending vehicle and filed charge-sheet against the driver of the offending vehicle in the Court of learned Judicial Magistrate First Class Kalamnuri.

4. The deceased Datta was aged 45 years at the time of accident and he was doing labour work and thereby he was earning Rs.6,000/-

(Rupees Six Thousand only) per month and he was contributing to his family.

5. At the time of accident respondent No.1 was the owner of the offending vehicle and the driver of the offending vehicle drove it with the special knowledge, permission and consent of respondent No.1 and therefore respondent No.1 is vicariously liable for the act of the driver of the offending vehicle. At the time of accident the offending vehicle was validly insured with respondent No.2 and therefore respondent No.1 and 2 are jointly and severally liable to pay compensation. They prayed that compensation of Rs.9,00,000/- (Rupees Nine Lakh only) with interest thereon @ 15% per annum from the date of accident till the realization of the amount may be granted.

6. Respondent No.1 by filing written statement at Exh.23 has strongly opposed this petition. However it is admitted by him that at the time of accident he was owner of the offending vehicle and that it was insured with respondent No.2. It is contended by him that on the date of accident the driver of the offending vehicle was driving it from proper left side of the road and when the offending vehicle reached on the spot of accident at the relevant time suddenly the deceased Datta came on the road running to stop offending vehicle and at that time the driver of the offending vehicle tried to save the deceased Datta but unfortunately deceased Datta dashed against the offending vehicle and the accident occurred and that due to the fear of public the driver of the offending vehicle ran away from the spot. The said accident occurred due to the negligent act of the deceased Datta himself and therefore respondent No.1 is not liable to pay compensation. It is further

contended that if this tribunal comes to the conclusion that the petitioners are entitled to the compensation then as per the indemnity agreement between respondent No.1 and 2, respondent No.2 is solely liable to pay the compensation to the claimants as the offending vehicle was validly insured with respondent No.2 at the time of accident. It is therefore prayed that petition may be dismissed with cost.

7. By filing say-cum-written statement at Exh.17 respondent No.2 strongly opposed this petition. It is contended by respondent No.2 that perusal of the police papers show that the alleged accident occurred on 15/08/2018 and the deceased Datta died on 04/09/2018 and up to that time no complaint was lodged against any vehicle. Even after the death of the deceased Datta on 05/09/2018 complaint was lodged against unknown vehicle. Thereafter petitioners in collusion with respondent No.1 and police falsely involved offending vehicle with the intention to dupe the public funds of the Insurance Company offending vehicle is falsely involved in this case. It is therefore prayed that petition may be dismissed with cost.

8. Considering the pleadings of the parties my learned predecessor framed issues at Exh.25 which are reproduced hereunder & after recording evidence & hearing both the sides & perusing the written argument of learned advocate for respondent No.2 at Exh.54 I have noted my findings against each of them for the reasons to follow :-

Sr. No.	Issues	Findings
1.	Whether the petitioners prove that	.. Yes.

death of Datta Ganpati Lingayat caused in the vehicular accident, which took place on 15/08/2018, at about 10:00 pm on Nanded-Dongarkada road ?

- | | | |
|----|---|---|
| 2. | Whether the accident dated 15/08/2018 occurred due to rash and negligent driving of Auto bearing No. MH-23/X-281 ? | .. Yes. |
| 3. | Whether respondent No.2 proves that there was breach of terms and conditions of insurance policy in respect of Auto bearing No. MH-23/X-281 ? | .. No. |
| 4. | Whether petitioners are entitled for compensation ? If yes, to what extent and from whom ? | .. Petitioners are entitled for compensation of Rs.9,68,000/- |
| 5. | What order and award | .. As per final order. |

:: REASONS ::

9. Petitioners have filed evidence affidavit of petitioner No.1 (PW1) at Exh.30 and also filed evidence affidavit of Babarao @ Munna

Shankarrao Kadam (PW2) at Exh.47 and filed certain documents and closed their evidence by filing pursis at Exh.48. However Insurance Company (respondent No.2) has not examined any witness but filed certain document and closed evidence by filing pursis at Exh.53.

As to Issue No.1 to 5 :-

10. It is argued by learned advocate for petitioners that petitioner No.1 (PW1) is the wife of deceased Datta and she is not educated. She did not see the incident. Since she is not the eye witness and she has not seen that place of incident & her evidence on the point of incident should not be relied upon. It is further argued by him that respondent No.1 is the owner of the offending vehicle and he has admitted the accident. However there is no evidence to show that driver of the offending vehicle against whom charge-sheet is filed with respect to the present crime of accident has challenged the same in any manner. It is further argued that eye witness Baba Kadam (PW2) has supported the evidence of petitioners. It is further argued that since 15/08/2018 till 04/09/2018 wife of the deceased and the family members of petitioners were under tension as the deceased was in unconscious condition and therefore there is delay in lodging the report. It is therefore argued that petition may be allowed. In support of his argument he has relied upon the following authorities :-

(1) Ravi Vs. Badrinarayan, 2011, C.A. No.1926 of 2011, ACJ 911, Supreme Court.

(2) Neha Nilesh Arlekar Vs. S. D. Rocky, FA No.23 of 2015, 2023 ACJ 284, Bombay High Court.

(3) Sneha Saularam Bankar Vs. Hanumant Vaman Pednekar, 2016 ACJ 1976, Bombay High Court, Goa Bench, FA No.22 of 2010.

(4) National Insurance Co. Ltd. Vs. Shila Debi, 2020 ACJ 916, High Court of Calcutta, FMAT No.193 of 2014.

(5) Rammurti Vs. Rudresh B. Tiwari, 2016 ACJ 2350, High Court Bombay, Nagpur Bench, FA No.336 of 2003.

11. In the case of Ravi (supra), Hon'ble Supreme Court observed in para No.21 to 23 as under :-

“ 21. The purpose of lodging the F.I.R. in such type of cases is primarily to intimate the police to initiate investigation of criminal offences. Lodging of F.I.R. certainly proves factum of accident so that the victim is able to lodge a case for compensation but delay in doing so cannot be the main ground for rejecting the claim petition. In other words, although lodging of F.I.R. is vital in deciding motor accident claim cases, delay in lodging the same should not be treated as fatal for such proceedings, if claimant has been able to demonstrate satisfactory and cogent reasons for it. There could be variety of reasons in genuine cases for delayed lodgment of F.I.R. Unless kith and kin of the victim are able to regain a certain level of tranquility of mind and are composed to lodge it, even if, there is delay, the same deserves to be condoned. In such circumstances, the authenticity of the F.I.R. assumes much more significance than delay in lodging thereof supported by cogent reasons.

22. In the case in hand, the Claims Tribunal as well as the High Court, committed grave error in not appreciating the mental agony through which Suresh was passing, whose son was severely injured.

23. In the light of the aforesaid discussion, we are of the considered opinion that the M.A.C.T. as well as High Court committed error in coming to the conclusion that lodging the F.I.R. belatedly would result in dismissal of the claim petition. ”

12. In the case of **Neha Nilesh Arlekar (supra)**, Hon’ble Bombay High Court, Goa Bench observed in para No.19, 20 as under :-

“ **19.** Apart from the aforesaid, in this case, Tukaram Patil (AW 2) has deposed to witnessing this accident. He deposed that a black Activa that was driven in a rash and negligent manner dashed Nilesh, as a result of which he fell and sustained injuries. AW 2 deposed that he was a taxi driver operating from the Calangute stand and though he witnessed this accident, he could not stop because he had passengers in his taxi and thereby insisted on him to proceed because they were getting late. He deposed that on the next day, he came to know that it was Nilesh Arlekar, who had sustained injuries in the accident and had succumbed to the injuries.

20. In the cross-examination of Tukaram Patil (AW 2), all that was put to him was that his statement was not recorded by the police and that he had not witnessed the accident. Based on such cross-examination and applying the law laid down by the Hon’ble Supreme Court in *Anita Sharma* (supra) and other decisions referred to above, the court should

not have disbelieved AW 2. Merely because the police may not have recorded AW 2's statement or cited him as a witness does not mean that AW 2 was not an eyewitness to the accident. ”

13. In the case of **Sneha Saularam Bankar (supra)**, Hon'ble **Bombay High Court, Goa Bench** observed in para No.18, 19, 20 as under :-

“ 18. It is pertinent to note that respondent No.1 was prosecuted for the offence punishable under sections 279 and 304-A of *Penal Code* as well as under section 134 (a) and (b) of the *Motor Vehicles Act*. This fact has been admitted by respondent No.1 during his cross-examination. Therefore, I am of the opinion that while deciding the accident cases the Tribunal or court shall bear in mind the caution struck by the Apex Court that the claim before the Motor Accidents Claims Tribunal is neither a criminal case nor a civil case. In a criminal case order to have a conviction the matter be proved beyond reasonable doubt, in the civil case the matter is to be decided on the basis of preponderance of probability, but in the claim petition before Motor Accidents Claims Tribunal, the burden of proof is much below than what required in the criminal case as well as the civil case. Undoubtedly, the inquiry before the Tribunal is a summary inquiry and, therefore, does not require strict proof applicability.

19. In the present case, the FIR is lodged against respondent No.1 and charge-sheet is also filed. It is further seen that after the incident, respondent No.1 fled away from the spot. Therefore, the documents referred by the claimants are sufficient to establish the the fact of the

accident and evidence produced by the claimants is sufficient to establish negligence on the part of respondent No.1 while driving the vehicle. Mr. Mulgaonkar, learned counsel appearing for claimants-appellants, has therefore rightly relied upon the observations in the case of *Bimla Devi v. Himachal Road Trnns. Corpn.*, 2009 ACJ 1725 (SC), wherein it has been observed at para 15 thus :

“ 15) In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.”

20. Considering the broad principles which are to be kept in mind while deciding the claim for compensation and the observations of the Apex Court in this behalf, this court is of the opinion that the learned Tribunal has wrongly disbelieved the evidence of the claimants on a very hyper-technical ground. Therefore, the findings recorded by the learned Tribunal need to be set aside. ”

14. In the case of **National Insurance Co. Ltd. Vs. Shila Debi (supra)**, Hon’ble Calcutta High Court, observed in para No.22, 27 as under :-

“ **22.** Section 134 of the MV Act has three components. The first component provides for the duty and obligation of the driver or the other person in charge of the vehicle soon after the accident by conveying the injured immediately to nearest hospital for securing his medical attention and the corresponding duty of the doctor of hospital. The second component deals with the duty of the driver to furnish information of accident to nearest police station within 24 hours stating the action, if any taken or if no action is taken, explain the circumstances for not taking reasonable steps, as contemplated under the first component. The third component speaks about the duty/obligation of the driver including registered owner of the vehicle to furnish information of accident in writing to the insurer. The duty/obligation, contemplated to be performed under section 134 (a) of MV Act, does not go with any unfettered terms. It is qualified by the following terms: “(a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control”. In the instant case no evidence was adduced by the insurance company that there was no mob fury or any other convincing circumstances justifying the driver causing the accident to strictly follow the duties as contemplated under section 134 (a) of the said Act. The chance of reasonable apprehension of receiving physical assault by the driver out of fear soon after the accident thus could not be eliminated. There may be many circumstances beyond the control of the driver to occur for not adhering to duties spelt out in section 134 (a) of the said Act.

27. After a critical appreciation of evidence adduced and exhibited documents produced by the parties, we found no reason to take a view

at variance with that of the learned Tribunal. The reasoning contained in the judgment while granting the award by the Tribunal in the given circumstances relied upon by the Tribunal leading to the death of the deceased victim is germane to the ultimate conclusion that a false cause was not set up for advancing a claim case for compensation, as sought to be established by appellant. The loss of dependency determined and the multiplier so chosen by the Tribunal in granting the award was perfectly made after due consideration of the precedents governing the subject. As a result, the finding of the Tribunal would remain unaltered.”

15. In the case of **Rammurti (supra)**, Hon’ble Bombay High Court, **Nagpur Bench** observed in para No.10 as under :-

“ 10. I have considered the evidence on record in the light of citations and the aforesaid well established principles of appreciating evidence in cases of the motor vehicle accidents. In my opinion in the facts and circumstances of the case the Tribunal committed error of law and failed to properly appreciate the evidence led on record. Rammurti, widow of the deceased Ramprakash Mishra, deposed in the Tribunal. She deposed about the motor vehicle accident occurred on 6.10.1994, while her husband Ramprakash, also known as Ramkrishna, was proceeding towards Nagpur from Umred Road when truck No. MWY 7567 forcibly dashed his scooter. Ramprakash was removed to the hospital at Nagpur. Her husband died on 2.11.1994 during the course of his medical treatment. She incurred medical expenses to the tune of Rs.1,25,000/- (bills, Exh.24).She deposed that Police Station Kuhi and provided the police papers of their inquiry, i.e., F.I.R., spot panchnama,

accident report, P.M. report, charge-sheet (Exhs.25 to 30. In claim petitions in respect of motor vehicle accidents such evidence need to be disregarded in the larger interest of justice. One cannot act stubbornly to insist strict evidence in the inquiry of a claim petition in respect of motor vehicle accident as if it is criminal trial requiring the evidence to be proved beyond all reasonable doubts. The evidence in the form of depositions corroborated by the police investigation material may be considered as adequate evidence of the motor vehicle accident caused by offending motor vehicle driven rashly and negligently by its driver as per police report notwithstanding acquittal of the driver of criminal charges. The witness deposing in an accident case need not necessarily be an eyewitness. Close relative and dependent of the deceased or injured can come forward to depose as to the facts which came to their knowledge. They can assist the Tribunal to complete the inquiry of a summary nature in such cases of motor vehicle accident claim. The witness, widow of the deceased, had specifically denied the suggestion put to her that Ramprakash fell on his own from the scooter. There was no serious challenge to the veracity of the version put up by the widow of the deceased. Police investigation papers were marked as exhibits and must be read in support of the deposition. Hence the learned Member of the Tribunal fell in error to disbelieve the case of the claim applicants praying for the compensation for the death of Ramprakash Mishra in the motor vehicle accident. ”

16. On the other hand it is argued by learned advocate for respondent No.2 Insurance Company that First Information Report is registered against unknown vehicle in respect of the accident which

took place on 15/08/2018 and the First Information Report is registered on 05/09/2018 by the father-in-law of the deceased after the gap of 20 days of the accident and this fact shows that up to 05/09/2018 they were not knowing the number of vehicle which gave dash to the deceased Datta. The charge-sheet is filed against the driver of the offending vehicle though the crime is registered against the unknown vehicle. It is further argued that it is the case of Insurance Company that it is an afterthought and false and fabricated case and that police in collusion with owner of the offending vehicle has falsely implicated the offending vehicle in this case. Cross-examination of PW2 shows that he called father-in-law of the deceased in the hospital and he informed the father-in-law of the deceased and the police about the accident. He has admitted that he never went to the Police Station to narrate the incident. If he had informed about the involvement of the offending vehicle in the said accident to informant and the police or to the doctor then this fact must have been reflected in the First Information Report or in the report of the doctor but PW2 is a got up witness. This false case is prepared against the offending vehicle in collusion with the owner of the offending vehicle. It is further argued that the burden lies on the petitioners to prima facie prove that the offending vehicle gave dash to the deceased and petitioners have failed to prove this fact. He has further argued that driving licence of the auto rickshaw driver or driver of the offending vehicle is valid up to 2016 but his transport licence is valid up to 2023 and in this way driving licence of the driver of the offending vehicle was not valid. It is therefore argued that petition may be dismissed with cost. In support of his argument he has relied upon following authorities :-

- (1) Shriram Insurance Company Ltd. Vs. Vanita and Others, 2020.
- (2) T.A.C. 922 (Bom.), Bombay High Court (Aurangabad Bench).
- (2) Smt. Gaura Devi and Others Vs. Shahzad Khan and Others, 2013 (1) T.A.C. 606 (All.), Allahabad High Court.
- (3) Mataji Bewa and others Vs. Hemanta Kumar Jena and another, 1994 (1) T.A.C. 413, High Court of Orissa.
- (4) Bajaj Allianz General Insurance Co. Ltd. Vs. Meera w/o Raju Choudhary, 2014 CJ (Bom) 627, High Court of Bombay (Aurangabad Bench).
- (5) United India Insurance Company Vs. Manju Sharma and Others, 2014 CJ (P&H) 151, High Court of Punjab & Haryana.
- (6) Reliance General Insurance Co. Ltd. Vs. Munshi Singh and others, 2015 CJ(P&H) 174, High Court of Punjab and Haryana (Chandigarh Bench).
- (7) Sri Prasenjit Saha Vs. Tukan Roy alias Sibasish Roy & Others, 2015 CJ(tri) 77, High Court of Tripura (Agartala Bench).
- (8) Regional Office, United India Insurance Co. Ltd. Vs. Gayathridevi and Ors., 2012 CJ(Kar) 1277, High Court of Karnataka.
- (9) Bimla Devi and others Vs. Gurjeet Singh and others, 2012 CJ(P&H) 5541, High Court of Punjab & Haryana.

(10) The Branch Manager, The United India Insurance Co. Limited Vs. Rashidabano wd/o Raheman Khan Pathan, & Or., 2017 CJ(Bom) 1642, High Court of Bombay (Nagpur Bench).

(11) New India Assurance Company Ltd. Vs. Ashalata, First Appeal No.2829 of 2015, High Court of Bombay, Bench at Aurangabad.

(12) Anil & Ors. Vs. New India Assurance Co. Ltd. & Ors., Supreme Court of India, Civil Appeal No.3291 of 2011.

(13) M/s I.C.I.C.I. Lombard Insurance Company Ltd. Vs. Hajratbee & Ors., High Court of Bombay, Bench at Aurangabad, First Appeal No.1366 of 2012.

(14) M/s. Shriram General Insurance Company Ltd. Vs. Tilottam w/o Sandip Sonawane, 2022 CJ(Bom) 260, High Court of Bombay (Aurangabad Bench).

17. In the case of **Shriram Insurance Company Ltd. Vs. Vanita and Others (supra)**, Hon'ble Bombay High Court observed in para No.15 as under :-

“ 15. There is no doubt that Dhanaji expired in vehicular accident but the burden was on the claimants to prove that the said accident was caused due to the negligence on the part of the driver of Tata Magic bearing No.MH 13/B2719. Testimony of CW 2 Dipak Lokhande is untrustworthy and the claimants have failed to examine the important witnesses, who had seen the accident. The accident had taken place at about 6.00 p.m. on 27th May, 2011, that means, in the summer season

and therefore, there would have been sufficient light to identify the vehicle as well as note down the number. None of the eye witnesses had approached the police prior to 21st June, 2011 raises doubt. Hence, I come to the conclusion that the claimants had miserably failed to discharge the initial burden of proof regarding the involvement of Tata Magic bearing No. MH 13 / B-2719. The conclusion drawn by the learned Tribunal is erroneous in that respect. Hence, the point is answered in the negative. ”

18. In the case of **Smt. Gaura Devi (supra)**, the **Hon’ble Allahabad High Court** observed in para No.7 as under :-

“ 7. Learned Counsel for appellants has argued that after investigation police has submitted charge-sheet against the respondent No.1, so no other conclusion can be drawn except that the accident took place due to his rash and negligent driving of the jeep. This argument has no force. The claimants have not examined the investigation officer in support of their case. Charge-sheet by the police in a criminal case pertaining to the accident does not *ipso facto* proves that the concerned accused is solely responsible for the accident. In motor accident claim petition under Section 166 of Motor Vehicles Act no such inference can be drawn. In this case the claimants have not examined the material witness to prove the rash and negligent driving of respondent No.1. Merely because respondent No.1 has been charge-sheeted by the police in criminal case pertaining to the instant accident, it cannot be held that he was responsible for the accidental death of the deceased. The claimants have miserably failed to prove that the accident was caused by the jeep, while the prompt police report lodged by uninterested

police official clearly indicated that an unknown tractor-trolley had hit the motor-cycle of the deceased. ”

19. In the case of **Mataji Bewa (supra)**, the Hon’ble High Court of Orissa observed that contents of a charge-sheet filed in the criminal case cannot possibly be treated as an evidence in the claims proceeding.

20. In the case of **Bajaj Allianz General Insurance Co. Ltd. Vs. Meera w/o Raju Choudhary (supra)**, the Hon’ble Bombay High Court (Aurangabad Bench) observed in para No.6 as under :-

“ 6. The fact remains, the matter hinges to the narration of Chandrakant, a Police Officer, who allegedly carried investigation. Reading his evidence, it is illustrative that he has done nothing in the matter barring filing of final report. He says, having learnt by discreet sources of involvement of the vehicle, however, such discreet source or statement of any person under Section 161 of Cr.PC. was not annexed to final report nor the said person was examined before the learned Member. There was no authorization to Police Inspector, Chandrakant to carry investigation in the matter, otherwise it was imperative for him to have disclosed the same in the final report or in his evidence. ”

21. In the case of **United India Insurance Company Vs. Manju Sharma (supra)**, the Hon’ble High Court of Punjab & Haryana observed in para No.7 as under :-

“ [7] The arguments advanced on behalf of the appellant are convincing because there was three persons allegedly present who saw the driver and also noticed the number of the truck but none of them reported the

matter to the police nor even tried to call the police. Some army people came there who informed Anil Kumar and the police. What occasion those persons had to inform Anil Kumar, remained unexplained. How did Anil Kumar come in the picture is not understandable. It has not come on record that he was related to the deceased. Said Anil Kumar did not step into the witness box despite the fact that he was author of the FIR. The appellant was deprived of its right to cross examine Anil Kumar who was the best person to explain as to why he did not give the number of the vehicle and name of the driver to the police. The claimants withheld the best evidence which would give rise to a presumption that they were aware that there was no such evidence involved and that Anil Kumar would let the cat out of the bag. The accident took place on 29.6.2008 whereas the petition was filed in January 2009 and by that time the claimants had ample time to cook up a story in involving the alleged offending vehicle and its driver Sukhdev Singh. It is, therefore, held that a false case was set up by the claimants to extract compensation from the Insurance Company as they wanted some validly insured vehicle to be shown as offending one. ”

22. In the case of **Reliance General Insurance Co. Ltd. Vs. Munshi Singh (supra)** the **Hon'ble High Court of Punjab and Haryana (Chandigarh Bench)** observed in para No.11 as under :-

“ **11.** It is seen from the material made available on record that the deceased was going on a motorcycle with another person on the pillion. A vehicle had hit them from behind at about 10:00 PM. The FIR was lodged by Bir Singh who stated that he was following the motorcycle a distance away and could not note the details of the vehicle nor could

see the driver. The FIR had been registered against an unknown vehicle and unknown driver. It is interesting to note that not even the make of the vehicle or the colour of the vehicle was provided to the police. The supplementary statement made by Bir Singh was not adduced in evidence. Bir Singh in his statement in the Court had deposed that the details of the vehicle had been provided to him by Subhash and Babu. It was not shown that Subhash and Babu had made any statement to the police. It was the duty of the claimants to adduce reliable evidence. The accident had taken place when it was pitch dark. It was a loud thud which led Bir Singh to the spot who saw the injured lying on the road. He did not see the speeding vehicle. This was the tenor of the First Information Report. No particular vehicle was identified by him. It was in a later version that it was claimed that a third person had noted the details and had passed it on to Bir Singh and he informed the police. Interestingly the pillion rider made a statement in the Court that he had noted the details of the offending vehicle when the evidence is that he had fallen unconscious after the accident. He was not in a condition to note the details or provide any information to the police and it appears that the claimants with the help of the informant had provided the details of a vehicle which was convenient and the accident clearly was a hit and run case involving an unknown vehicle. The fact that the police had filed a challan against the driver is not sufficient. The police invariably puts in the challan on the basis of the statement without getting into the truthfulness of the statements. The presence of any other witness at the accident site is also suspicious and is artificial and is not believable and no liability could have been placed upon the insurance company as the claimants could not establish the involvement

of the offending vehicle. ”

23. In the case of **Sri Prasenjit Saha (supra)** Hon’ble High Court of **Tripura (Agartala Bench)** observed in para No.19 as under :-

“ **19.** In view of the above discussion, I am clearly of the view that the learned Tribunal was fully justified in coming to the conclusion that the petitioner-claimant and the owner of the vehicle had connived with the each other in filing a false claim and trying to fasten the liability on the insurance company. Even if the accident was proved, the insurance company could not have been held liable because the driving licence of the driver produced by the owner does not show that it was valid on the date of accident. ”

24. In the case of **Regional Office, United India Insurance Co. Ltd. Vs. Gayathridevi (supra)** the Hon’ble High Court of Karnataka observed in para No.34 as under :-

“ **34.** In that view of matter, this Court find there is no justifiable reason to go into the same and give its finding when prima facie it is established that entire claim is based on fraudulent oral and documentary evidence and the entertaining of claim petitions by tribunal itself is defective, inasmuch as, there is non appreciation of pleadings, oral and documentary evidence available on record by tribunal. Hence, this Court find that tribunal erred in holding that accident involving motor-cycle bearing No. KA-03/U.4267 is caused by goods tempo bearing No. KA-07/2107 without any basis. Further, death of driver Kumara Naik, pillion riders M. Rajan and Mohan Prakash

cannot be attributed to the death caused due to rash and negligent driving of goods tempo bearing No. KA-07/2107. In that view of matter, the question of fastening liability of paying compensation on the owner and insurer of aforesaid vehicle does not arise. The compensation awarded by the tribunal to claimants in all the claim petitions is without any basis. ”

25. In the case of **Bimla Devi (supra)** Hon'ble High Court of **Punjab & Haryana** observed in para No.16 as under :-

“ **16.** Admittedly, the occurrence in this case has taken place on 29.1.2001. According to the complainant, his statement was recorded on 25.2.2001. This witness is resident of the same village as that of deceased. He has stated that driver of the car ran away and he also left the spot. On the next day, he had gone out in connection with some personal work and returned after 15 days. According to this witness, Dharam Pal was the person who has met with an accident. This witness has not informed the police on 29.1.2001, although according to him he reached at the spot after the accident. He has not taken the injured to the hospital. The natural conduct of a person is that if a person saw another person in an injured condition or dead condition, in that case he would inform the police or the relative immediately. The factum that for 26 days, the police was in dark to prove the fact that the claimant in order to extract the compensation has involved the car in question. The very fact that owner and driver have not seriously contested the claim petition further lends support to the case of insurance company that car has been named after 26 days only simply to extract the compensation. Statement of ASI Jagdish Chand (PW-4) also does not advance the case

of the claimants. According to this witness, Gurjit Singh was arrayed as accused only on 25.2.2001 i.e. after 26-27 days of 18.4.2001. ASI Jagdish Chand has stated that he recorded the statement of Jai Bhagwan on 25.2.2001 in which he has stated that he has seen the occurrence. That statement runs counter to the statement made by Jai Bhagwan as he has stated that he reached the place of occurrence after the occurrence. This witness has admitted that Yag Dutt Sharma has made statement that accident was caused by some unknown vehicle by unknown person. He even not mentioned the make of the vehicle or whether it was a car, bus or any other vehicle. So, in these circumstances, it is proved that there can be chances of false implication for extracting the compensation in that case, this Court should not interfere. ”

26. In the case of **The Branch Manager, The United India Insurance Co. Limited Vs. Rashidabano (supra) Hon'ble High Court of Bombay (Nagpur Bench)** observed in para No.11 as under :-

“ **11.** All the facts and circumstances discussed thus far would show that conduct of PW1 and as well as PW2 was highly unnatural in the instant case and it was unnatural for obvious reason, that none of them witnessed anything which was stated before Court by the both and which they wanted the Court to believe. ”

27. In the case of **New India Assurance Company Ltd. Vs. Ashalata (supra) Hon'ble Bombay High Court (Bench at Aurangabad)** observed in para No.12 as under :-

“ 12. In the circumstances, unless there is slightest material on record which is sufficient to point finger towards the offending truck and its driver regarding their involvement in the accident, even applying the principle of preponderance of probability, neither the offending vehicle nor its driver can be connected with the motor vehicular accident dated 22.04.2006 which resulted into the death of deceased. Therefore, after careful examination of the documents placed on record, I am fully satisfied that even the slightest evidence is not available on record which is sufficient to prima facie connect the offending truck and its driver with the motor vehicular accident dated 22.04.2006. If only on the basis of filing of charge-sheet the liability is fastened against the offending vehicle and its Insurance Company, the ultimate decision of every motor accident claim cases would be entirely at the whims of the Investigating Officer, who files charge-sheet. However, law does not permit this. ”

28. In the case of **Anil & Ors. (supra)** Hon'ble Supreme Court of **India** observed in para No.4 as under :-

“ 4. On a careful analysis of the judgment of the High Court and the material on record, we find no reason to take a view at variance with that of the High Court. The reasoning contended in the award of the Tribunal was perfunctory. The Tribunal failed to notice crucial aspects of the case which have a bearing on the question as to whether the death of Ram Kanwar was caused as a result of the accident caused by the tractor. Each of the circumstances relied upon by the High Court is germane to the ultimate conclusion that a false case was set up to support a claim for compensation. The applicants have not been able to

displace the careful analysis of the evidence by the High Court and the findings which have been arrived at. ”

29. In the case of **M/s I.C.I.C.I. Lombard Insurance Company Ltd. Vs. Hajratbee (supra) Hon’ble Bombay High Court (Bench at Aurangabad)** observed in para No.11 as under :-

“ **11.** In the case at hand, from the police papers placed on record i.e. FIR (Exh-29), spot panchnama (Exh-31) and inquest panchnama (Exh-33), it emerges that accident occurred on 31st October, 2008 and FIR was lodged on 1st November, 2008 i.e. within reasonable period. However, in the FIR (Exh-29), the offending vehicle was not involved. On the other hand, it is specifically mentioned in the FIR (Exh-29) that unknown vehicle gave dash to the deceased when he was walking by the road. This FIR was lodged by Abdul Karim Mehtabsab Bagwan. However, this informant is not examined by the claimants at least to prove his supplementary statement recorded on 26th November, 2010 wherein for the first time, the informant stated before the police regarding involvement of the offending vehicle and name of the driver. The learned Tribunal, though exhibited this supplementary statement (Exh-30), the same cannot be read in evidence in absence of evidence of Abdul Karim Mehtabsab Bagwan or the Investigating Officer. Otherwise also, Osman Mohd. Bagwan, who provided information to Abdul Bagwan – the informant regarding involvement of the offending vehicle, is not examined by the claimants. Thus, absolutely, no material is available on record to prove involvement of the offending vehicle in the above-said accident. As already held by this Court, mere filing of charge-sheet against the driver of the offending vehicle, is not sufficient

to prove the involvement of the offending vehicle in the motor vehicular accident. ”

30. In the case of **M/s. Shriram General Insurance Company Ltd. Vs. Tilottam (supra) Hon'ble High Court of Bombay (Aurangabad Bench)** observed in para No.15 as under :-

“ **15.** The Tribunal, in the present case, has simply relied on the factum of filing of charge sheet against the tractor driver. Admittedly, the report of the accident was lodged against unknown vehicle. It is only after three weeks a person comes forward claiming to have had witnessed the accident. He recalled of the accident only on having seen the hoarding depicting the picture of the deceased – Sandip. According to the alleged eye witness, some person had gathered on the spot of accident. Had it really been so, involvement of the offending tractor could have come to light immediately, i.e., on the same day of the accident. Same suggests that no person had witnessed the accident. The conduct of the alleged eye witness – Atul Gade in coming forward after three weeks of the accident, is unnatural and does not stand to reason. He was residing at a nearby village. On having seen such an accident, he left the place without intimating the same to anyone else. Residing to have had witnessed the accident only on having seen the hoarding and picture of the deceased, leads this Court to observe that this person is a got up witness only with a view to earn the compensation. This Court is, therefore, not inclined to rely on the evidence of this witness. ”

31. Perusal of the evidence affidavit of petitioner No.1 (PW1) shows that her evidence is similar to the contents of the petition. In

her cross-examination she has admitted that after the accident for 15 days doctor provided medical treatment to her husband but her husband did not regain consciousness and that after 15 days of the accident her husband expired in the state of unconsciousness. This admission given by her clearly go to show that no conversation took place in between her and her husband from the time of accident till her husband expired.

32. Petitioner No.1 has admitted in her cross-examination that she was given information that some unknown vehicle gave dash to her husband. After receiving that information she along with her father and brother went to Government Hospital Dongarkada to see her husband and at that time it was 1.00 am or 2.00 am. At that time her husband was not in conscious condition. Other persons did not meet them in the hospital. At that time she, her brother and her father were present in the hospital and no other person was present there. At that time she did not get information as to who brought her husband in the hospital. She has admitted that doctor told them that the accident took place with unknown vehicle. She has admitted that doctor told her that such information was given to the doctor. She has admitted that when doctor gave such information at that time she, her brother and her father were present there. She has admitted that doctor advised her to take her unconscious husband for further treatment to Nanded. She has further admitted in her cross-examination that her husband and her father made inquiry but they could not understand as to which vehicle gave dash to her husband. She has admitted that during that period of 15 days her parents and her brother used to come and meet her in

Government Hospital at Nanded. She has admitted that during that period of 15 days nobody stated to her brother and parents that which number vehicle gave dash to her husband. Her cross-examination further shows that she does not know as to which vehicle gave dash to her husband but she has voluntarily stated that auto rickshaw gave dash to her husband but she could not understand the number of that auto rickshaw.

33. After perusal of the evidence of petitioner No.1 (PW1) it becomes clear that she is not the eye witness of the accident and that no conversation took place between her and her husband after accident till the death of her husband as her husband was in unconscious condition till his death. Her evidence further shows that nobody informed her as to which number vehicle gave dash to her husband. But her evidence is clear on the point that due to the dash given by the vehicle to her husband her husband sustained injury and died due to that injury while undergoing medical treatment in Government Hospital at Nanded.

34. Perusal of the certified copy of the First Information Report at Exh.34 pertaining to this accident shows that informant namely Balaji Laxman Sarodkar is father-in-law of the deceased Datta and this complaint is lodged by the informant on 05/09/2018 though the accident took place on 15/08/2018 and in this way there is a delay of about 20 days in lodging the complaint about the accident to police. Perusal of the First Information Report further shows that informant came to know from other persons that on 15/08/2018 about 10.00 pm his son-in-law was given dash by some unknown vehicle on Nanded to Dongarkada road at the distance of 1 and ½ kilometre of Dongarkada

village and thereby caused serious injury to him and that because of that accident his son-in-law Datta sustained serious injury to his both the legs and other parts of his body. Since his relation with his son-in-law Datta was not good he did not go to see his son-in-law Datta. Other members of the public took his son-in-law to Government Hospital Dongarkada for medical treatment and from that hospital his son-in-law was shifted to Government Hospital Vishnupuri Nanded through ambulance 108. Thereafter after some days he went to Government Hospital Vishnupuri Nanded and that his son-in-law sustained injury to his both the legs and other parts of body and that on 04/09/2018 at about 12.20 noon while undergoing medical treatment his son-in-law Datta expired and that his son-in-law was aged 45 years old and that the said accident took place due to the rash and negligent driving on the part of the driver of the unknown vehicle. So on the report of the informant the crime for the offences punishable under Section 279, 304-A of Indian Penal Code 1860 and under Section 134 and 187 of the Motor Vehicles Act was registered with Police Station Nanded Rural. In his further statement recorded on 25/11/2018 informant stated that Narayan Hake who is the resident of his village had given the said information about the accident to him but since his relation with his son-in-law Datta was not good he did not go to see his son-in-law Datta in the Government Hospital Dongarkada.

35. Petitioners have also filed evidence affidavit of eye witness namely Babarao @ Munna Shankarrao Kadam (PW2) at Exh.47. Evidence of this witness shows that he is resident of village Dongarkada Taluka Kalamnuri District Hingoli. His evidence shows that on

15/08/2018 at about 10.20 pm he along with Narayan Hake was coming towards their village from the agricultural field of Narayan Hake. At that time suddenly one auto rickshaw dashed one person on Nanded to Dongarkada road and that person fell down. At that time that auto stopped there and they saw the number of that auto as MH-23 X-0281 from the lights of the vehicles which were going behind the auto. Thereafter that auto went away. They saw the injured person and they realized that the injured person was Datta Ganpati Lingayat who is the son-in-law of Balaji Sarodkar who is the resident of their village. So they brought Datta to Dongarkada hospital and got him admitted in that hospital. He gave information about the accident to Balaji Sarodkar. His evidence further shows that due to rash or negligent driving on the part of the driver of the aforesaid auto rickshaw this accident took place.

36. His cross-examination shows that his agricultural field is there at the distance of 1 and ½ kilometre and that his agricultural field is having Gat No.103. His cross-examination further shows that when the accident took place at that time he was at the distance of 50 metre from the spot of incident. His cross-examination further shows that spot of incident is high way road and it is traffic road. After hearing the sound up to the time he went to the spot of incident 2 to 4 person stopped there on the road and at that time the waiter of that hotel was also came to the spot of incident. So long as those persons were present there up to that time that auto was present there. He and those persons tried to catch that auto driver but that auto rickshaw driver fled away.

37. He has further deposed in his cross-examination that those four persons who were gathered there were having vehicle with them and that they were having motorcycle and car also. He did not say to them to go and catch the auto rickshaw and catch the auto rickshaw driver. He did not tell that waiter to go to the house of Datta and inform that such incident took place. He cannot say the name of those four persons and the waiter.

38. His cross-examination further shows that there is police Chauki in the village Dongarkada. He has admitted that during that period he did not tell Narayan Hake or any other person to bring police or other person. He has deposed that from that place he and Narayan Hake took the injured to the Government Hospital Dongarkada and that motorcycle was of Narayan Hake. He did not tell Narayan Hake to go and catch auto rickshaw driver with the help of motorcycle. His evidence further shows that they brought injured Datta Lingayat in Government Hospital Dongarkada at about 10.30 pm to 10.45 pm he brought injured Datta in Government Hospital Dolngarkada. At that time in that hospital one Police Constable namely Bhabde came there. He remained in that hospital up to 15 to 20 minutes to half an hour. During that period Datta's father-in-law came into the hospital. His cross-examination further shows that he stated to the doctor of that hospital that so and so auto gave dash. In the same way he stated to Datta's father-in-law and aforesaid police auto rickshaw of that number gave dash to Datta. He has admitted in his cross-examination that he never went to Police Station to lodge complaint about the incident. Police recorded his statement about the incident after 8 to 10 days of

the incident and at that time police called him. He has deposed that when police recorded his statement Datta's father-in-law was present there. Balaji did not file complaint in his presence but Balaji told him that he lodged complaint in the hospital. Evidence of this witness is not supported from the contents of First Information Report as perusal of the First Information Report shows that informant stated that he came to know from other persons that some unknown vehicle gave dash to Datta. Further statement of the informant shows that information about the accident was given to him by Narayan Hake. If this witness had given information to informant that so and so number auto rickshaw gave information to Datta then informant would have mentioned the number of auto rickshaw to the police while lodging this complaint to police but no such number of the auto-rickshaw is mentioned in the complaint. So the evidence of this witness (PW2) on this point that he gave information to Datta's father-in-law that so and so number auto rickshaw gave dash to Datta becomes weak & cannot be relied upon.

39. Evidence of this witness (PW2) shows that he gave information to the doctor and the aforesaid police constable that so and so number auto rickshaw gave dash to Datta. Evidence of this witness is not supported by the evidence of any witness or by any documentary evidence and therefore this part of this evidence of this witness becomes weak and cannot be relied upon.

40. Evidence of this witness (PW2) shows that suddenly auto gave forcible dash to one person and that auto stopped there and that from the light of the vehicles which were coming from behind he saw that its number was MH-23 X-0281 i.e. the offending vehicle and

thereafter that auto fled away. On this point if we consider the say filed by respondent No.1, the owner of the offending vehicle at Exh.23 the say of respondent No.1 shows that he has come with the case that on the day of incident driver of auto bearing No. MH-23 X-281 was driving the vehicle from proper left side of the road and the driver of the said auto is a prudent and careful but when he reached near the spot of incident at the relevant time suddenly deceased came on the road running to stop the said auto due to which the driver of the said auto tried to save the deceased but unfortunately the deceased dashed against auto and accident occurred and due to fear of public the driver ran away from the spot. This case of respondent No.2 which is mentioned in his written statement/say at Exh.23 supports the evidence of PW2 that after the accident the driver of the offending vehicle ran away from the spot.

41. There is no evidence on record to show that driver of the offending vehicle made any complaint to police or to the other higher authorities about the incident. The driver of the offending vehicle has also not entered into the witness box nor he is examined by the respondent No.1 nor by the Insurance Company respondent No.2 to prove that the said accident did not take place due to the fault or rash or negligent driving on the part of the driver of the offending vehicle.

42. Considering aforesaid stand taken by the respondent No.1 and the fact that driver of the offending vehicle ran away from the spot of incident after the accident and that driver did not lodge any complaint to police or other higher authorities about the accident and that the driver of the offending vehicle has not entered into the witness

box in this case to prove that there is no fault on his part in the said accident and that there is nothing to show that inspector of the Insurance Company has come to the conclusion that no such accident took place I am of the view that the driver of the offending vehicle was at fault in the said accident and that this accident took place due to the rash or negligent driving of the driver of the offending vehicle and because of that reason he ran away from the spot of incident.

43. Perusal of the certified copy of the Form AA i.e. report about motor vehicle shows that in respect of the accident Crime No.267/2018 was registered on 15/09/2018 with Akhada Balapur Police Station in respect of the accident which occurred on 15/08/2018 at 22.00 hours and the vehicle which was involved in the accident was auto No. MH-23 X-281 i.e. the offending vehicle and that Prakash Gangadhar Ghuge is the driver of the vehicle at the time of accident and the charge-sheet is filed before the Court of learned Judicial Magistrate First Class Kalamnuri.

44. Certified copy of Exh.1 of the charge-sheet at Exh.33 shows that charge-sheet pertaining to this accident is filed against driver namely Prakash Gangadhar Ghuge for the offences punishable under Section 279, 304-A of Indian Penal Code 1860 and under Sections 134 and 187 of Motor Vehicles Act 1988 in the Court of learned Judicial Magistrate First Calss Kalamnuri. There is nothing to show that from that charge-sheet accused was discharged by the learned Trial Court or by the Sessions Court or by the Hon'ble High Court.

45. It is true that there are many deficiencies and weakness in the evidence of PW2 even then considering the overall evidence and the say of respondent No.1 it can be said that it is proved on the basis of preponderance of probabilities that due to the fault or rash or negligent driving on the part of the driver of the offending vehicle the accident took place.

46. Perusal of the certified copy of postmortem report at Exh.37 shows that in para 5 of postmortem report it is mentioned that as per police inquest and requisition that deceased died with history of dash by unknown vehicle on 05/08/2018 at 22.00 hours and died during the treatment in Ward No.30 on 04/09/2018 at 12.20 hours in Dr. S.C.G.M. Nanded Government Hospital. The probable cause of death as per the opinion of doctor is "Septicemia in an treated case of thoracic spine injury". Under the circumstances it can be said that deceased Datta died due to the aforesaid injury sustained by him in the said accident while undergoing medical treatment in Government Hospital at Nanded.

47. Evidence of petitioner PW1 shows that at the time of accident her husband was aged 45 years old. In her cross-examination she has stated that her husband was 10 year older than her. However her evidence affidavit shows that she has put her thumb impression. This fact shows that she is illiterate. She has not produced any documentary evidence in respect of her age or in respect of the age proof of deceased Datta. Perusal of the true copy of First Information Report at Ex.34, spot panchnama at Exh.35, inquest panchnama at Exh.36 and postmortem report at Exh.37 shows that age of deceased Datta is mentioned as 45 years. Under the circumstances it can be assessed that at the time of

accident age of deceased Datta was 45 years.

48. Evidence affidavit of informant shows that her husband i.e. deceased Datta was doing labour work and thereby getting monthly income of Rs.6,000/- (Rupees Six Thousand only). Considering the fact that the accident occurred in the present case on 15 August 2018. There is no reason for me to disbelieve the evidence of petitioner that her husband was earning Rs.6,000/- (Rupees Six Thousand only) per month by doing labour work.

49. As per the guidelines laid down by Hon'ble Supreme Court in the case of **National Insurance Company Limited Vs. Pranav Sethi and Ors. AIR 2017 S.C. 5157** in the case of self employment or of fixed salary and addition of 25% should be done where the deceased is in between the age of 40 to 50 years. Considering the fact that age of deceased Datta at the time of accident is assessed as 45 years addition of 25% should be made in order to calculate the income of the deceased. In this way the calculation would be done as under :-

$\text{Rs.6,000/-} \times 1,500\text{/-} \text{ (25\% of rs.6,000/-)} = \text{Rs.7,500/-}.$

50. Annual income of the deceased would be as under :-

$\text{Rs.7,500/-} \times 12 = \text{Rs.90,000/-}.$

51. Evidence of petitioner No.1 shows that she and her minor son petitioner No.2 are the heirs of deceased Datta. In view of the guidelines of the Hon'ble Supreme Court in the case of **Sarla Varma & Ors. Vs. Delhi Transport and others, 2009 (4) ALL MR 429 SC** when the

deceased is married and has left 2 to 3 dependents then deduction would be 1/3rd towards personal and living expenses. In this way the calculation would be done as under :-

$$\text{Rs.90,000/-} \times \frac{1}{3} = \text{Rs.30,000/-}$$

$$\text{Rs.90,000/-} - \text{Rs.30,000/-} = \text{Rs.60,000/-}.$$

52. Considering the age of the deceased Datta assessed as 45 years at the time of accident multiplier of 14 would be applicable as per the guidelines laid down by the Hon'ble Supreme Court in the Case of **Sarla Varma (Supra)** and in this way the loss of dependency would be as under :

$$\text{Rs.60,000/-} \times 14 = \text{Rs.8,40,000/-}.$$

53. Considering the fact that deceased Datta left petitioner No.1 and 2 as dependent in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Satindar Kaur @ Satvinder Kaur & Ors. Vs. United India Insurance Company Limited, Civil Appeal No.2706 of 2020 decided on 30 June 2020** petitioners are entitled to Rs.44,000/- (Rupees Forty-Four Thousand only) towards loss of consortium total amounting to Rs.44,000/- x 2 = Rs.88,000/- (Rupees Eighty-Eight Thousand only).

54. Petitioners are also entitled for funeral expenses of Rs.20,000/- (Rupees Twenty Thousand only) and expenses towards loss of estate of Rs.20,000/- (Rupees Twenty Thousand only).

55. In this way petitioners are entitled to claim following compensation, loss of dependency Rs.8,40,000/- (Rupees Eight Lakh Forty Thousand only). Loss of consortium for petitioner No.1 and 2 Rs.44,000/- x 2 = Rs.88,000/- (Rupees Eighty-Eight Thousand only). Loss of estate Rs.20,000/- (Rupees Twenty Thousand only). Funeral expenses Rs.20,000/- (Rupees Twenty Thousand only). Total Rs.9,68,000/- (Rupees Nine Lakh Sixty-Eight Thousand only).

56. Petitioners are also entitled to get aforesaid compensation with interest thereon @ 6% per annum from the date of application till the realization of the entire amount.

57. Perusal of the police certified copy of insurance policy at Exh.41 shows that offending vehicle was standing in the name of respondent No.1 and it was insured with respondent No.2 and that period of insurance was from 2 March 2018 to 1 March 2019. The accident in question took place on 15/08/2018 and therefore it can be said that at the time of accident insurance policy of the offending vehicle was valid.

58. It is true that there is delay in lodging the First Information Report but the said delay took place because immediately after the accident the deceased Datta was brought in Dongarkada hospital and thereafter he was shifted to Government Hospital at Nanded he remained in unconscious condition till the time of his death i.e. up to 04/09/2018. Under the circumstances his family members might have remained under tension for the treatment of deceased Datta and that can be the reason for delay in lodging the First Information Report. That

delay cannot be fatal in this case.

59. Perusal of the extract of driving licence at Exh.51 of the driver of the offending vehicle shows that it is mentioned in it that the validity of Non Transport is 30/01/2013 to 29/01/2033 & that validity of Transport is 05/12/2013 to 04/12/2016. Under the circumstances it becomes clear that his non-transport driving licence was valid at the time of accident. Therefore it can be said that at the time of accident the driver of the offending vehicle was having valid driving licence.

60. For the reasons stated above my answer to Issue No.1 is “Yes”. My answer to Issue No.2 is “Yes”. Respondent has failed to prove that there was breach of the terms and conditions of the insurance policy. My answer to Issue No.3 is “No”. My answer to Issue No.4 is “Petitioners are entitled for compensation of Rs.9,68,000/- (Rupees Nine Lakh Sixty-Eight Thousand only) inclusive of amount awarded under Section 140 of Motor Vehicles Act 1988 with interest thereon @ 6% per annum from the date of petition till the realization of entire amount. My answer to Issue No.5 is “As per final order”.

61. For the reasons stated above petition deserves to be partly allowed with proportionate cost. Hence I pass following order :-

ORDER

1. Petition/claim is partly allowed with proportionate cost.
2. Respondent No.1 & 2 are directed to pay jointly and severally to petitioner No.1 and 2 the compensation

amount of **Rs.9,68,000/- (Rupees Nine Lakh Sixty-Eight Thousand only)** inclusive of the amount if any granted/awarded under Section 140 of the Motor Vehicle Act 1988 with interest thereon @ 6% per annum from the date of petition till the realization of the entire amount.

3. Respondent No.1 and 2 are directed to deposit the award amount by RTGS or NEFT or DD or Cheque into a bank account bearing No.40731600849 IFSC Code SBIN0003667 State Bank of India, Main Branch, Parbhani maintained by the Tribunal in the name of Ex-Officio Member, Motor Accident Claims Tribunal, Parbhani.
4. Office is directed to recover the deficit Court Fees if any, due against petitioners before the realization of the amount by way of cheque/D.D.
5. Out of compensation amount sum of **Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only)** be deposited in fixed deposit in the name of minor petitioner No.2 in any nationalized bank for the period till he attains the age of majority and on his attaining majority the deposited amount along with interest accrued thereon be given to him on his due identification without any reference to this Tribunal.

6. Remaining amount be paid to petitioner No.1 by account payee cheque on her due identification.
7. Award be prepared accordingly.

Sd/-

(Abdussalam A. A. Shaikh)

Place : Parbhani }
Date : 27/02/2025 }

Member, M.A.C.T./District Judge-2,
PARBHANI.