

MHKO010025012020



Presented on : 07/10/2020
Registered on : 22/10/2020
Decided on : 04/08/2026
Duration : 05Y 09M 28D

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLHAPUR
AT : KOLHAPUR
(Presided over by Smt. R.V. Adone, Member, M.A.C.T., Kolhapur)

M.A.C.P NO. 185/2020

CNR No.: MHKO010025012020

Exhibit :41/A

- 1] Vanita Dhondiba Kamble,**
Aged 30 years, Occ. - Household,
R/o. Bouddhawadi, Yelvan Jugai,
Yelan J. Gai, Tal. Shahuwadi,
Dist. Kolhapur.
 - 2] Kum. Ajit Dhondiba Kamble,**
Aged 12 years, Occ. -Education,
R/o. As above.
(Applicant No.2 is minor hence
represented through his mother
as minor guardian i.e. applicant No.1)
 - 3] Smt. Bababai Ganpati Kamble,**
Aged 62 years, Occ. - Household,
R/o. As above.
- ... Applicants.**

..Versus..

- 1) Shri. Suraj Ikabal Balbale,**
Age 48 yrs., Occ. Business,
R/o. 2355, Haladkar Parisar, Brahmapuri,
Kolhapur 416 003.
 - 2) Shri. Samir Ikabal Balbale,**
Age 40 yrs., Occ. Business,
R/o. As above.
- ... Opponents.**

Appearances :

Advocate Mrs. N.M.Potdar for applicants.
Advocate Smt. M.D.Raul, for opponents No.1 and 2.

: J U D G M E N T :

(Delivered on 04rd August, 2026)

1] This is an application under Section 166 of the Motor Vehicles Act, 1988 (Hereinafter referred as 'M.V. Act') for claiming compensation about accidental death of deceased Dhondiba Ganpati Kamble.

2] **Brief facts of the case :-**

On 21/3/2020 deceased was travelling by motorcycle bearing No. MH-03-AP-6652 from Kolhapur to his house at Yelan J. Gai, Tal. Shahuwadi. Deceased was driving said motorcycle in slow speed and from correct side of road. When he reached on Panchal to Kolhapur road within jurisdiction of village Pendakale, Goulwada, Tal. Shahuwadi, Dist. Kolhapur one truck bearing No. MH-08-H-1285 came in rash and negligent manner from front side, it left the road and came towards side of deceased. Said truck gave dash to motorcycle of deceased. Deceased fell down and sustained grievous injuries. Deceased died at spot and his postmortem was conducted in Rural Hospital, Malkapur. As accident took place due to rash and negligent driving of truck by it's driver, offence was registered against opponent No.2 i.e. driver of offending truck vide C.R.No. 82/2020 in Shahuwadi Police Station for offences p/u/s.304-A, 279 of Indian Penal Code (Hereinafter referred as 'IPC) and p/u/s. 184 of M.V.Act.

3] Deceased was strong, healthy, young person of 35 years. He was working as a Mason in Mauli Construction Kolhapur and was getting Rs.10,000/- per month. He was permanent employee. Due to sudden death of deceased, applicant No.1 lost her husband in young age. Other applicants being family members were depending on deceased and they lost financial support. Considering love and affection, consortium, loss of dependency, applicants claimed total compensation of Rs.21,10,000/- and restricted their claim up to Rs.1,00,000/-. Opponent No.1 is owner, opponent No.2 is driver of truck bearing No. MH-08-H-1285 and both opponents are jointly and severally liable to pay compensation.

4] Opponents No.1 and 2 resisted claim by filing Written statement at Exh. 19 and denied age, income and occupation of deceased. It is denied that accident took place due to rash and negligent driving of opponent No.2 and they are liable to pay compensation. Manner and nature of accident is denied. Application is not tenable and contents about involvement of truck bearing No. MH-08-H-1285 is denied. Applicants by joining hand with Police Patil gave false vardi and police registered false offence. It is admitted that opponent No.1 was owner and opponent No.2 was driver of truck bearing No. MH-08-H-1285. It is denied that deceased was working as Mason and getting Rs.10,000/- per month. As opponent No.2 was not rash and negligent and truck is not involved in accident opponents prayed to dismiss claim.

5] Heard Advocate Mrs. N.M.Potdar for applicants, Smt. M.D.Raul for opponents no.1 and 2. Following issues are framed and findings for same with reasons thereon are as follows.

<u>S.No.</u>	<u>Issues</u>	<u>Findings</u>
1]	Whether the applicants prove that on 21/3/2020 at 06.00 p.m., on Pachal to Kolhapur road, at village Pendkhale Goulwada, Tal. Shahuwadi while travelling by motorcycle No. MH-03-AP-6652 met with an accident due to dash given by Truck vehicle No.MH-08-H-1285?	In the affirmative.
2]	Whether the applicants prove that deceased died due to accident occurred due to rash and negligent driving of opponent No.2 ?	In the affirmative.
3]	What was age and income of the deceased at the time of incident ?	35 Years, Rs.9,000/- p.m.
4]	Whether the applicants are entitled to get compensation ? If yes, to what extent and from whom and under which heads?	In the affirmative, Rs.16,82,800/- applicants are entitled to get compensation from opponents no. 1 and 2 jointly and severally.
5]	What award and costs. ?	: As per Final Order.

REASONS

As to issues No. 1 and 2:-

6] It is undisputed fact that applicant No.1 is wife, applicant No.1 is minor son and applicant No.3 is mother of deceased Dhondiba Kamble. Applicant No.1 i.e. wife of deceased filed affidavit of evidence and re-iterated averments in application. Applicant No.1 deposed that on 21/3/2020 deceased i.e. her husband Dhondiba Kamble was travelling by motorcycle bearing No. MH-03-AP-6652 from Kolhapur to their house at Yelan J. Gai, Tal. Shahuwadi. Deceased i.e. her husband was driving said motorcycle in slow speed

and from correct side of road. When he reached on Panchal to Kolhapur road within jurisdiction of village Pendakale, Goulwada, Tal. Shahuwadi, Dist. Kolhapur, one truck bearing No. MH-08-H-1285 came in rash and negligent manner from front side, it left the road and came towards side of deceased. Said truck gave dash to motorcycle of deceased. Deceased fell down and sustained grievous injuries. Deceased died at spot and his postmortem was conducted in Rural Hospital, Malkapur. As accident took place due to rash and negligent driving of truck by it's driver, offence was registered against opponent No.2 i.e. driver of offending truck vide C.R.No. 82/2020 in Shahuwadi Police Station.

7] From her evidence documents i.e. FIR, spot panchanama, inquest panchanama, PM Report, Vehicle Information of RTO of offending vehicle, driving licence of opponent No.2, xerox copies of Aadhaar Cards of applicants are proved at Exh.No.21 to 29. In cross-examination she admitted that she learnt about accident from neighbors after two hours. She never went at spot. She denied that accident took place due to driving of motorcycle in high speed by her husband, he could not control vehicle and it slipped. She denied that her husband was not holding driving licence and insurance of vehicle. She denied that her husband was wearing helmet. It is defence of opponents that Truck bearing MH-08-H-1285 is not involved in accident. Applicants in collusion with Police Patil gave false information of accident. It is denied that accident took place due to rash and negligent driving of Truck bearing MH-08-H-1285 by opponent No.2. It is admitted that opponent No.1 was owner, opponent no.2 was driving Truck bearing Registration No.MH-08-H-1285, opponent No.2 was having valid and effective driving licence

at the time of accident.

8] Advocate of opponents emphasized that in FIR, first informant Yuvraj Kamble i.e. Police Patil stated that he learnt from people that person viz. Dhondiba Ganpati Kamble died in accident. Further in spot panchanama at Exh.22 name of deceased is Dhondiba Kamble. In inquest panchanama, postmortem notes at Exh. 23 and 24, name of deceased is Dhondiba Kamble. In FIR name of Dhondiba is written by using pen and other FIR contents are in printed format. Advocate of opponents filed copy of charge-sheet which is collectively marked at Exh.38. In that charge-sheet on page No. 3 in brief facts it is stated that accused i.e. opponent No.2 drove Eicher Truck bearing No. MH-08-H-1285 in rash and negligent manner, dashed against Passion plus motorcycle bearing No. MH-03-AP-6652 from opposite direction and in accident motorcycle rider Bajirao Dnyaneshwar Kamble died. Due to said contents in FIR, statement of first informant in charge-sheet showing name of deceased Bajirao Kamble, Advocate of opponents submitted that there are doubtful circumstances and all police papers are prepared in collusion.

9] Opponent No.2 filed affidavit of his evidence at Exh. 36 and he deposed that on 21/3/2020, he was travelling from Kolhapur to Rajapur by Eicher Truck bearing No. MH-08-H-1285 at 5.45 to 6.00 p.m., on Kolhapur to Panchal road, within jurisdiction of Pendakale, Tal. Shahuwadi, he saw one motorcycle and three persons were lying on road. After parking truck at left side, he went there. He with the help of people took injured person at side of road and people sent injured to hospital. Afterwards he received call from Shahuwadi Police that crime was registered against him so he and his brother Suraj went in police Station with truck. He orally

complained to police that he and his vehicle are not involved in accident but no cognizance was taken. Then he was produced before JMFC through V.C. on 18/5/2020. He filed written complaint to SP Office, Kolhapur, then he received notice in present matter. But copy of that complaint is not filed. Police failed to take cognizance of his complaint application and false FIR and Charge-sheet are filed against him.

10] In cross-examination by applicants, opponent No.2 admitted that while preparing draft of written statement he stated to his Advocate that one motorcycle and three persons were lying on road. It appears that said defence is not taken in written statement and only evidence is adduced about it. In further cross-examination opponent No.2 admitted that police of Shahuwadi Police Station registered offence against him. He filed written complaint to Senior Police but its receipt is not with him. He denied that he filed false affidavit. Advocate of opponents relied on contents in papers of charge-sheet. As per charge-sheet documents, inquest panchanama, advance certificate, postmortem report, name of deceased is Dhondiba Ganpati Kamble. In statements of witnesses viz. Sharad Kamble, Nilesh Bode, they stated name of deceased Bajirao Kamble. However death certificate in Charge-sheet is of Dhondiba Kamble. As per post-mortem report deceased Dhondiba Kamble died before 6.00 p.m.. In DAR filed in charge-sheet name of motorcycle rider is Bajirao Kamble who is showed as deceased.

11] Advocate of opponents relied on authorities cited in (i) **United India Insurance Co. Ltd; Vs. Manojkumar Parmeshwar Mahato and Anr. Reported in MACJ – 79** in which as per pleadings deceased was running tea stall and earning Rs.5,000/- per month.

There was head-on collision between motorcycle and offending vehicle. It is observed by Hon'ble Bombay High Court that party personally knowing the facts of case has bounden duty to give evidence. Tribunal ought to have drawn adverse inference against driver of offending vehicle, if he did not appear as witness.

(ii) **Shriram Insurance Company Limited Vs. Vanita Dhanaji Marekar and Ors, reported in 2019 DGLS (Bom.) 865** in which it is observed by Hon'ble Bombay High Court that claimants have to discharge initial burden cast on them to prove accident, involvement of vehicle and death of deceased. Mere production of police papers and exhibiting those documents does not dispense the proof of contents of those documents. If claimants discharged their initial burden then onus shifted on Insurance company to disprove said fact.

(iii) **New India Assurance Company Ltd; Vs. Sandeep Dhar, reported in 2007 DGLS (J & K) 174**, in which claimants respondents have not proved copy of FIR. Claimants are not witnesses of accident. Their evidence with regard to accident is hearsay. There is no direct evidence about rashness and negligent in driving Maruti car by respondent No.2 except averments in petition and FIR copy. It is for claimants to prove negligence. In some cases it is difficult to prove exact cause of accident. In such cases, the Courts apply the principle of 'Res Ipsa Loquitur' that accident speaks for itself or tells its own story. Claimants have not produced photographs of accident. Motor Vehicles Act is a social legislation but the technicalities and niceties cannot be allowed to raise in order to defeat the purpose of Act. When claim is not genuine, claimants have to cross the technicalities and niceties of law as accident is not bonanza for the claimants.

12] Ratios laid down in above cited rulings are noted and considered. As per guidelines burden is on claimants to prove rash and negligent driving by opponent driver. Advocate of applicants submitted that in Motor Accident Claims strict rules of evidence are not applicable. Advocate of applicants relied upon authority cited in **Kusum Lata and Ors. Vs. Satbir and Ors. reported in (2011) AAC 896** in which it is observed by Hon'ble Apex Court that Motor Accident Claims require proof by preponderance of probability, not beyond reasonable doubt and witness testimony may be reliable despite not being in the initial FIR. Fact that name of witness not mentioned in the initial FIR is not sufficient ground to discard their otherwise reliable testimony, especially in the context of Motor Accident where deponent in FIR was under traumatic condition. It is necessary to do complete justice.

13] Ratio laid down in above cited ruling is noted and considered. Opponent No.2 relied upon copy of charge-sheet therefore police papers are to be taken into consideration. In most of police papers, i.e. material documents viz. FIR, inquest panchanama, post-mortem report, spot panchanama name of deceased is mentioned as Dhondiba Ganpati Kamble which is correct as per case of claimants. It appears that person viz. Bajirao Dnyaneshwar Kamble has identified body of deceased firstly. Further said defence about the name is nowhere raised in written statement or evidence of opponent No.2. Therefore on the basis of oral and documentary evidence it is clear that in accident husband of applicant No.1 viz. Dhondiba Kamble died.

14] So far as rashness and negligence is concerned, FIR is filed against opponent No.2 i.e. driver of Truck bearing No. MH-08-H-

1285 alleging that he drove said truck in rash and negligent manner, in high speed and dashed against motorcycle of deceased from opposite direction. As per spot panchanama at Exh. 22, spot of accident is on road proceeding from Pachar to Kolhapur at left side of tar road in area of village, Gavalan-Pendakale. On left side of road one person was lying in injured condition in supine position. There were blood stains on road. At its side there was Passion Plus Motorcycle bearing No. MA-03-6692, its headlihgts and other parts in broken contion. In four boundaries of spot of incident towards East side there was land property of forest department, west side land proprety of Suresh Raut, northern and southern side there is Anuskhura to Kolhapur road. As per post-mortem report death due to blunt trauma to chest.

15] If situation and circumstances of spot are considered then it appears that deceased was proceeding from motorcycle by left side of road and offending Truck bearing No. MH-08-H-1285 came from opposite direction and dashed against motorcycle of deceased. Opponent No.2 has no reason to take truck towards extreme left side of road by leaving its side. Therefore things speak for itself and it is clear that opponent No.2 failed to take into consideration circumstances of road, he was rash and negligent while driving truck. There is nothing on record to show that he has taken precaution to avoid accident. Though by filing evidence opponent No.2 tried to show that he only helped injured and is not involved in accident, same is not proved from his evidence. His evidence alone is not sufficient to deny his involvement in accident.

16] It has come on record that filing of FIR, charge-sheet against opponent No.2 is nowhere challenged by him. Therefore it

can be gathered that opponent no.2 was driving Truck bearing No. MH-08-H-1285 without taking proper care, precaution. As it was in high speed, he could not control it though deceased was coming from opposite direction. From manner of accident, situation at spot, it is clear that opponent no.2 was driving his Truck in rash and negligent manner. Considering above documents, preponderance of probabilities, it is proper to infer that deceased died in vehicular accident caused due to dash given by Truck bearing No. MH-08-H-1285 being driven by opponent no.2. It was owned by opponent No.1. Hence issues no.1 and 2 are answered in affirmative.

As to Issues No.3 to 5 :-

17] According to applicants and as per evidence of applicant no.1, deceased was 35 years old and working as a Mason in Mauli Construction, Kolhapur at a time of accident. In Inquest panchanama at Exh.23 and postmortem report at Exh.24 age of deceased is mentioned as 34 years. Accident took place on 21-03-2020 so it can be gathered that on the date of accident deceased was 35 years old. In respect of income of deceased as a Mason, no documentary evidence is proved. As per pleadings and evidence of applicant No.1 deceased was earning Rs.10,000/- per month. In cross-examination by opponents No.1 and 2 it has come on record that deceased was 35 years old at the time of accident. He was doing Mason work. Their family was joint. They have no agricultural land. Though applicant No.1 stated that she was going to examine witness from Mauli Construction but same is not examined. Therefore certificate issued by Mauli Construction showing deceased was getting Rs.400/- per day and his monthly income Rs.10,000/- is not proved.

18] Advocate of applicants relied on authorities cited in (i) **Jakaria Mondal @ Jakai @ Jakai Vs. The National Insurance Co. Ltd; Anr. Reported in Civil Appeal No. 2633 of 2025 dt. 17/2/2025** in which it is observed by Hon'ble Apex Court that compensation for motor accident victims must be calculated fairly, considering minimum wages, future prospects and nature of disability. Non pecuniary damages must be commensurate with severity of injuries. Minimum wages at relevant time must be considered as the basis of income calculations when evidence of employment is not definitive. In above cited rulings claimant appellant was an embroider and his income was assessed Rs.6,000/- per month.

(ii) **Manusha Sreekumar and Ors. VS. The United India Insurance Co. Ltd; reported in 2022 LiveLaw (SC) 858**, in which it is observed by Hon'ble Apex Court that in Motor Accident Claims, in absence of salary certificate, the minimum wages notification along with some amount of guesswork that is not completely detached from reality shall act as a yardstick to determine the income of deceased. Deceased was driver and as per Kerala Fair Wages Act his notional income was considered as Rs.15,600/- per month. Ratios laid down in above cited rulings are noted and considered. In case in hand documentary evidence of income of deceased is not proved. So guidelines are to be considered.

19] Advocate of opponents relied on authority cited in **Kalpana Madhu Gavali and Ors. Vs. Maharashtra State Road Transport Corporation, reported in 2023 DGLS (Bom.) 3774** in which as per pleadings deceased was agricultural labour and earning Rs.3,000/- per month. It is observed by Hon'ble Bombay High Court that the Motor Vehicles Act is a beneficial and welfare legislation.

The Court is duty bound to award just compensation. Amount of Rs.15,000/- towards loss of estate is appropriate. Future prospects are with regard to probable income to be received in the future and there is no requirement to compensate the claimant by way of future interest for the loss that is to occur in the future as future is yet to happen. So there cannot be interest on future prospects.

20] Ratio laid down in above cited ruling is noted and considered. There is no documentary evidence about income of deceased. But considering nature of his work, in absence of documentary evidence regarding specific skill, by relying on oral version and minimum wages, it is proper to assess notional income of deceased. In view of evidence, minimum wages, notional income regarding Mason work i.e. labour work in 2020, it is legal and proper to assess monthly income of deceased Rs.9,000/-. It is not disputed that offending vehicle was not insured. As per evidence opponent no.2 is driver of offending vehicle. Exh. 25 is Vehicle Information Form of Truck bearing Registration No.MH-08-H-1285 in the name of opponent No.1. Exh. 26 is driving licence of opponent No.2. Hence being owner and driver, opponents no.1 and 2 are liable to pay compensation to applicants who are wife, son and mother of deceased.

21] Considering above discussion it is clear that deceased was 35 years old and his monthly income is considered as Rs.9,000/- per month. As per guidelines in **Sarla Varma ..Vs.. Delhi Transport Corporation reported in AIR 2009 SC 3104 and National Insurance Company Ltd. .Vs. Pranay Sethi reported in AIR 2017 SC 5157**, out of above income, as deceased was married, therefore his wife, son and mother i.e. applicants no.1 to 3 were depending on him. So out

of income 1/3 ought to have deducted towards personal and living expenses and multiplier 16 is applicable to age group of deceased between 31 to 35 years. In view of above guidelines, below 40 years age, 40% is the amount of future prospectus. Hence calculation of compensation in tabular form is :

Age	:	35 years
Multiplier	:	16
Deduction of living expenditure	:	1/3
Monthly income	:	9,000/-
Towards Loss of dependency	:	Rs. 9,000/- + 40% future prospects i.e. Rs.3,600/- = 12,600/- - 4200/- (deduction of 1/3 living expenditure)
Total Rs.	:	Rs. 8,400/- x 12 x 16 = Rs. 16,12,800/- (Loss of dependency)
Other affirmative Heads	:	Rs. 70,000/- (consortium Rs. 40,000/- + loss of love and estate Rs. 15,000/- + Funeral Expenditure Rs. 15,000/-)
Total compensation amount	:	Rs.16,82,800/-

22] From above discussion it is clear that accident has taken place due to rash and negligent driving of Truck bearing No. MH-08-H-1285 owned by opponent no.1 and it was being driven by opponent no.2. They are liable to pay compensation jointly and severally. In this matter interest is claimed at the rate of 18% p.a. Matter is old one and offending vehicle is not insured. Opponents

No.1 and 2 are private persons hence it is proper to charge interest at the rate of 6% p.a.. Hence applicants are entitled for compensation under Section 166 of Motor Vehicle Act from opponents no. 1 and 2 jointly and severally. So issues no.3 is answered accordingly, issue No. 4 is answered in affirmative and accordingly, issue no. 5 is answered as per final order and following order is passed:

ORDER

- [i] Application is partly allowed with proportionate costs.
- [ii] Opponents no. 1 and 2 are jointly and severally liable to pay compensation of Rs.16,82,800/- to applicants No.1 to 3 alongwith interest thereon at the rate of 6% p.a. from date of filing of the application till realization of amount.
- [iii] Applicant no.1 is entitled to receive compensation amount in ratio i.e. 60%, applicants no.2 and 3 are entitled to receive compensation amount in ratio 20% each.
- [iv] Applicant No.2 is being minor, amount of his share be kept in fixed deposit in Nationalized Bank till he attaining age of majority.
- [v] The amount of interim compensation of Rs. 50,000/- if already withdrawn by applicants, be adjusted out of the said amount of compensation.
- [vi] Opponents shall satisfy award as above by depositing compensation amount in bank account maintained by Tribunal by RTGS or NEFT.
- [vii] Award be drawn accordingly after payment of necessary court fees, if deficit.

Kolhapur.
Date : 04/08/2026.

(Smt. R. V. Adone)
Member, M.A.C.T., Kolhapur.

CERTIFICATE

I affirm that the contents of this PDF file Judgment are same word to word, as per the original Judgment.

Sd/-
(A.A.Patil)
Steno.(Grade-1)