Received on	:	08-11-2023		
Registered on	:	08-11-2023		
Decided on	:	01-07-2026		
Duration	:	02	07	23
		Years	Month	Days

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN),

AT : PATAN.

M.A.C.P. No. 353/2023

Exh.: 64

APPLICANTS:-

Legal Heirs of deceased Bhurabhai Khemabhai Sameja

1. **Khemabhai Chunabhai Sameja**
   Aged about 59 years, Occupation : Labour work,
   (Father of deceased)

2. **Sakarben Khemabhai Sameja**
   Aged about 55 years, Occupation : Household,
   (Mother of deceased)

Versus

OPPONENTS :-

1. **Hemantbhai Karshanbhai Rajgor**
   Age : Adult, Occupation : Business,
   R/o. Harsoliyavas, Vadi road, At.Deesa, Dist.B.K.
   {Owner of Intra No.GJ-08/AW-1029}

2. **Reliance General Insurance Co. Ltd.**
   Branch Office : S/20, Tirupati Plaza Verai Chakala,
   At. Ta. Dist. Patan.
   {Insurance Company of Intra No.GJ-08/AW-1029}

3. **Mali Kasturji Bhuraji**
   Age : Adult, Occupation : Business,
   R/o. Sutharvas, Genaji Goliya, Ta. Deesa, Dist. B.K.
   {Owner of Tractor No.GJ-08/AJ-7564}

Legal heirs of Late Kasturji Bhuraji Mali

3/1 Dineshbhai Kasturji Mali
Age : Adult, Occupation : Business,
R/o. Sutharvas, Genaji Goliya, Ta. Deesa, Dist. B.K.
{Amendment as per order below Exh.18}

4. The Oriental Insurance Co. Ltd.
Branch Office : 1st Floor, Sanskrut Shopping, Abu road,
At. Ta. Dist. Palanpur.
{Insurance Co. of Tractor No.GJ-08/AJ-7564}

CLAIM PETITION U/S 166 OF THE MOTOR VEHICLE ACT FOR COMPENSATION OF Rs.30,00,000/-

APPEARANCE *:-*

****

Mr. D. V. Parmar, learned advocate for applicants.
Opponent No.1 – Ex-parte.
Mr. H. N. Patel, learned advocate for Opponent No.2.
Mr. G. K. Gelot, learned advocate for Opponent No.3 & 3/1.
Mr. N. R. Bhavsar, learned advocate for Opponent No.4.

****

-:: J U D G M E N T ::-

1. The captioned petition has been preferred by the applicants for compensation u/s.166 of Motor Vehicles Act for compensation of **Rs.30,00,000/-** along with interest.

2. The brief facts of the petition are as under:-

OCCURRENCE OF ACCIDENT:

2.1 It is the case of applicants that, on 06/10/2023, Bhurabhai Khemabhai Sameja (herein-after referred to as "deceased) was serving as driver of Tata Intra No.GJ-08-AW-1029 (for the sake of convenience "Tata intra") - Opponent No.1 and as per instruction of owner of vehicle he was going towards Deesa by loading potatoes and when he reached in front of NIIMS hospital, driver of opponent No.3 come from wrong side with his tractor bearing RTO registration No.GJ-08/AJ-7564 (in short "tractor") and stopped his tractor without giving any signal as a result trolley of said tractor dashed with the Tata Intra vehicle and deceased sustained head, chest and both leg injuries, so he took Deesa Private Hospital Iscon I.C.U where he died during the treatment. Thus, the complaint registered before Deesa Rural Police Station vide CR.No.11195019230839/2023.

NEGLIGENCE :-

DETAILS OF COMPENSATION CLAIMED :-

2.2 It is the case of applicants that, at the time of accident, deceased was aged about 29 years old and he was healthy and well builded person and he was earning more than Rs.20,000/- per month out of serving as driver of Tata Intra and maintained his family. Thus, if the accident had not been occurred, he would have been alive and he would have more earned in future. It is further stated that, the applicants being parents of deceased have lost their last ray of their old age, so they are entitled to get compensation towards pain, shock & suffering, transportation, funeral expenses and loss of love, affection and estate. Hence, the applicants have constrained to file present claim petition.

3. The notices issued by the Tribunal upon the opponents and said has been duly served. The learned advocates for opponent Nos.2, 3/1 & 4 have filed written statements vide Exhs.19, 20, 26

& 32.

WRITTEN STATEMENT BY OPPONENT NO.2 :-

3.1 Learned advocate Mr.H.N.Patel, appearing on behalf of opponent No.2 – insurance company of Tata Intra has filed his written statement vide Exh.19 & 20, wherein he has submitted that the contents of applicants claim petition are false and deserves to be dismissed forthwith. It is submitted that the so called accident occurred due to rash and negligent driving of driver of tractor and, therefore, this opponent is not liable to pay compensation to the applicants. It is further submitted that, the driver of motor vehicle is not hold an effective driving licence at the time of accident and, therefore, insurance company is liable to pay compensation amount to the applicants.

WRITTEN STATEMENT BY OPPONENT No.3/1 :-

3.2 Mr.G.K.Gelot, learned advocate for opponent No.3/1 - owner of tractor has produced written statement vide Exh.26 in which he has denied all the facts of accident as well as age and income of deceased. He has further contended that driver of tractor had valid driving licence which was issued from R.T.O Palanpur and although if in a case of liability of replying opponent is arise, this opponent has taken insurance from opponent No.4 and, therefore, insurance company is liable to pay compensation amount to the applicants.

WRITTEN STATEMENT BY OPPONENT No.4 :-

3.3 Mr.N.R.Bhavsar, learned advocate for opponent No.4- insurance company of tractor has produced his written statement vide Exh.32 in which he has also denied all the facts of accident in toto. He has further submitted that driver of tractor was not holding a valid and effective driving licence on the date of accident and fitness and permit of tractor was also not valid hence insurance company is not liable for the claim or any part thereof as well as involved vehicle was not having valid legal permit and fitness certificate. It is further submitted that, at the relevant time of accident, tractor was driven with slow speed and on the correct side of the road, but driver of Tata Intra was came in full speed and dashed behind trolley of tractor, thus the accident in question occurred due to negligent driving of driver of Tata Intra and, therefore, insurance company is not legally liable to pay any amount of compensation to the applicants/ claimants.

4. Mr.H.N.Patel & Mr.N.R.Bhavsar, learned advocates for Opponent Nos.2 & 4 have given application u/s.170 of the M.V.Act for obtaining the necessary permission for cross-examining the witnesses on all points which were permitted by the tribunal on 01/01/2026 vide Exhs.34 & 35.

5. The learned advocate for applicants has produced following oral as well as documentary evidence.

ORAL EVIDENCE :-

Sr. No.	Particulars	Exh.
1	Deposition of applicant No.1–Khemabhai Chunabhai Sameja	33

DOCUMENTARY EVIDENCE WITH LISTS:

Sr. No.	Particulars	Exh.
1	Certified copy of F.I.R	37
2	Certified copy of Panchnama of place of incident	38
3	Certified copy of Inquest Panchnama of deceased	39
4	Certified copy of P.M. Report of Valjiji	40
5	Copy of R.C.Book of Intra	41
6	Copy of Driving Licence of Intra	42
7	Copy of Charge-sheet	52
8	Copy of police statement of complainant Himatbhai	53
9	Copy of Insurance Policy of Intra	61
10	Copy of Insurance Policy of Intra	62
11	Closing Pursis by applicants	63

6. The learned advocate for Opponent No.3/1 has produced affidavit of driver of tractor vide Exh.50.

7. The learned advocates for opponent Nos.2 and 4 have given closing pursis vide Exhs.54 & 55.

8. On the basis of aforesaid pleadings of the parties, following issues have been framed vide **Exh.24.**

-:: I S S U E S ::-

1. Whether the applicants prove that deceased died in an accident which occurred due to rash, careless and negligent driving of the drivers of the motor vehicles involved in the accident?

2. Whether the amount of compensation the applicants are entitled to get and from whom and at what rate

of interest?

3. What order and award?

9. My findings on the above issues are as under for the reason assigned hereinafter.

1. In the affirmative.
2. As per final Order.
3. As per final Order.

10. The learned advocate for applicants have produced written arguments vide Exh.56. Per contra, learned advocates for opponent Nos. 2 & 4 have produced their written arguments vide Exhs.57 & 58. Whereas learned advocate for opponent No.3/1 has relied upon and referred to the case of **Sharada and another V/s. D. Selvam and another**, reported in **2021 ACJ 2480**.

11. I have heard learned advocates for the parties at length. Perused the R & P, evidence produced by the applicants.

-:: R E A S O N S ::-

ISSUE No.1:

ISSUE OF NEGLIGENCE:-

12. The present claim petition has been preferred by the claimants u/s.166 of Motor Vehicles Act, 1988 and hence it is sine qua non on the part of the claimants to prove that the accident in question has occurred due to the rash and negligent driving of drivers of both involved vehicles.

13. After travelling through the pleadings as well as evidence led by the parties, it appears that vehicular accident took place between two vehicles i.e. tractor and Tata Intra, whereupon deceased was driving Tata Intra and, therefore, issue of negligence of the drivers of the offending vehicles would be construed as contributory negligence for the present claim.

14. Applicants have produced certified copy of F.I.R lodged against the driver of Tractor vide Exh.37. The complaint has been given by the owner of Intra vehicle against the driver of tractor. The charge-sheet has been filed against the driver of tractor. Looking to the Panchnama Exh.38, the accident occurred near NIIMS hospital, on Santalpur-Palanpur national highway road. At the road of incident, pieces of glass found here and there, dry oil stains and dry blood stains also found. Near the said place, one Intra tempo found in front damage condition. Front head light, main head glass, driver side door also broken condition. Dry blood stains found at the seat of intra vehicle. Looking to the back portion of Intra, it was found full of bags of potatoes. Looking to the Inquest Panchnama and postmortem report of deceased Exhs.39 & 40, deceased died due to sustained traumatic and hemorrhagic shock due to injuries on body.

14.1 The applicant No.1-Khemabhai Chunabhai Sameja has produced his affidavit vide Exh.33, in which he has reiterated the same facts as in pleadings. Opponent No.3/1-driver of tractor has filed his affidavit vide Exh.50 in which he has stated that he was going on Aakhol-Deesa high way road and reached near NIIMS hospital, suddenly his tractor stopped, so he parked his tractor-trolley near the divider of road side with parking light and he was going towards side road, suddenly Intra vehicle come in full speed and dashed with the back portion of trolley. Thus, during the accident, his tractor was in close/lock condition at side road and, therefore, he was not responsible for this accident. In his cross-examination, he has admitted that, charge-sheet has been filed against him for which he had not given any discharge application. He has admitted that if the tractor did not stand on road, the accident in question had not been occurred. It also appears from the cross-examination, driver of tractor-trolley parked his vehicle near the divider without any indicator, reflector or any other safety-con. He has also admitted that the owner of tractor was his father who died on 03/12/2020. He has further admitted that he is not transferred insurance policy after the death of his father, for which, he has relied upon and referred to the case of **Sharada and another V/s. D. Selvam and another(supra).**

15. After perusing oral as well as documentary evidence on record, it transpires that if both the drivers follow the traffic rules and regulations and taking care at the time of driving their vehicles, the accident in question had not been occurred and, therefore, looking to the overall evidence on record, driver of tractor found more negligent to the extent of **80%** whereas driver of Intra vehicle-deceased himself negligent to the extent of **20%** and hence accordingly I hold the issue No.1 in affirmative.

ISSUE NO.2:-

ENTITLEMENT OF COMPENSATION :-

16. Once it is established that, accident in question occurred due to rash and negligent driving of tractor & Intra vehicle drivers and it is also proved that, deceased sustained serious injuries body as a whole and died hence it is proved that applicants are entitled to claim compensation.

<u>QUANTUM OF THE COMPENSATION</u> :-

17. The next important question arises that what could be just and reasonable compensation for the applicants for the death of the deceased arised out of vehicular accident. To determine the just and reasonable compensation, which should not be luxury. This Tribunal has to assess income and age of the deceased at the time of his death as well as future prospects and contribution of deceased towards livelihood of the family.

<u>CLAIM FOR DEPENDENCY LOSS</u> :-

17.1 The claim for dependency loss of income can be computed by considering the age of deceased. And hence it is sine qua non to determine first the age, and loss of future prospect due to death of the deceased. The said aspects are discussed below.

<u>AGE OF DECEASED & MULTIPLIER</u> :-

17.2 As per affidavit of applicant, deceased Bhurabhai Khemabhai Sameja was born on 05/02/1994 i.e. at the time of accident, he was 29 years 8 months 1 day old. Hence, as ratio laid down in case of **Sarla Verma** multiplier of 17 for the age group 26-30 is applicable hence, present applicants are entitled for multiplier of **17** for the consideration of dependency loss of income.

<u>INCOME OF DECEASED</u>:

17.3 As far as income of deceased is concerned, applicants have claimed that, deceased was earning more than Rs.20,000/- per month out of doing driving work of opponent No.1. But in support of their submission, the applicants have not produced any reliable evidence on record and, therefore, this tribunal consider semi-skilled **Rs.9,400/-** as monthly income of deceased.

17.4 In the case of **NATIONAL INSURANCE CO. LTD. V/S. PRANAY SHETHI,** reported in **2017 ACJ 2700,** Hon'ble Supreme Court held that, "in case the deceased was self-employed or on a fixed salary, an addition of **40%** of the established income should be the warrant where the deceased was below the age of 40.

Keeping in mind the principle set in the case of **NATIONAL INSURANCE CO. LTD. V/S. PRANAY SHETHI, (supra)** which is consistently followed in all later cases, I add **40%** to the income of deceased in his existing income as to calculate future dependency loss in absence of cogent evidence regarding permanent job. After adding 40%, the figure arrived would be **Rs.13,160/- [Rs.9,400+ Rs.3,760(40%)]** per month.

<u>FUTURE DEPENDENCY LOSS</u>:-

17.5 Deceased was un-married and, therefore, 1/2 of his income is deducted towards his personal and pocket expense. Calculating by mathematical calculation shows result as **Rs.6,580/-** [Rs.13,160-Rs.6,580(1/2]**,** the multiplicand could be applied for assessing future dependency loss. Now, if we implies this figure into the mathematical formula, derived future dependency loss would be **Rs.6,580/- monthly dependency loss X 12 months X 17**

multiplier = Rs.13,42,320/- the amount of compensation which can be granted as future dependency loss.

17.6 In present petition, deceased was un-married and, therefore, keeping in mind the above ratio, Rs.30,000/- towards Funeral expenses & Loss of estate, in these circumstances, the Tribunal grant **Rs.36,000/- (Thirty Six Thousand rupees only)** with increment towards Funeral expenses & loss of estate as per quoted in the case of **NATIONAL INSURANCE CO. LTD. V/S. PRANAY SHETHI and OTHERS, 2017 ACJ 2700.** Moreover, applicant Nos.1 & 2 are parents of deceased, in these circumstances, the Tribunal grant **Rs.40,000/-** towards Parental Consortium to applicant Nos.1 & 2, as per case of Magma General Insurance Co. Ltd. Thus, applicants are entitled for compensation of **Rs.14,18,320/-** from the opponents jointly and severally.

18. Calculation of compensation is as per below table:

Sl. No.	Heads	Calculation
1	Compensation for Dependency loss	Rs.13,42,320/-
2	Compensation for funeral expenses & loss to estate	Rs.00,36,000/-
3	Parental Consortium to applicant Nos.1&2	Rs.00,40,000/-
	Amount of compensation	Rs.14,18,320/-

19. In total, applicants are entitled for compensation amount of **Rs.14,18,320/-(Fourteen Lakhs Eighteen Thousand Three Hundred Twenty rupees only)**.

LIABILITY TO PAY COMPENSATION :-

20. The learned advocate for opponent No.4 has vehemently argued that, owner of tractor has not transferred his name in insurance policy instead of the name of his father who died in year 2020 and taken insurance policy on the name of his father. Thus, insurance company received premium continuously two years and issued policy in the name of dead person therefore insurance company cannot take advantage of its own wrong as per case of Sharada and another, High Court of Karnataka at Bengaluru.

20.1 The learned advocate for applicants have produced the copy of Insurance Policy, R.C.Book & Driving Licence of Intra driver vide Mark/Exh.62, 41 & 42. He has also produced the copy of insurance policy & R.C.Book of tractor vide Exh./Mark-61 & 5/9 respectively. Looking to the insurance policy of Intra vehicle, which is package policy and it is commenced from 20/12/2022 to 19/12/2023, whereas looking to the insurance policy of tractor, it is commenced from 05/11/2022 to 04/11/2023 and the accident occurred on 06/10/2023 i.e. insurance covers of both the involved vehicles at the date of accident and, therefore, insurance companies of both the involved vehicles are liable to pay the compensation amount as per terms and conditions of policy.

21. Thus, as held in the issue of negligence, being drivers of both the vehicles are legally liable for this accident, whereas opponent Nos.1 & 3 being owners of Intra vehicle and tractor are also legally liable to pay compensation with interest and costs, same way opponent No.2 & 4 being insurance companies of involved vehicle are also liable to indemnify on behalf of owners of offending vehicles – opponent Nos.1 & 3. Thus, all the opponents are liable to pay the said amount of compensation with interest and costs to the applicants jointly and severally.

22. As per the decision of the Hon'ble Supreme Court in case of "**Municipal Corporation of Delhi v/s Association of Victims of Uphar Society"** [2012 ACJ 48(SC)], it would be just and proper to award an interest @ 9% per annum on the compensation awarded in favour of the claimants and therefore, the claimants are entitled to get interest at the rate of 9% p.a. from the date of filing the present claim petition.

ISSUE No.3 :-

23. In view of above said discussions, made in issue Nos.1 & 2, pass the following final order.

-:: O R D E R ::-

(1) MAC petition No.**353 of 2023** is hereby partly allowed.

(2) The claimants are entitled to get compensation of **Rs.14,18,320/-(Fourteen Lakhs Eighteen Thousand Three Hundred Twenty rupees only)** from the opponents jointly and severally with proportionate costs and running interest at the rate of 9% per annum from the date of filing of the claim petition till its realization.

(3) Opponents are hereby directed to deposit the aforesaid amount before this Tribunal within one month from the date of this order. Further, in view of the directions of the **Hon'ble**

Supreme Court of India in Writ Petition (Civil) No.534/2020, titled Bajaj Allianz General Insurance Co. Ltd. v/s Union of India. and the directions of the Hon'ble High Court, Opponents/Insurance Companies / AMTS / State Transport Corporation, as the case may be, are directed to deposit the aforesaid amounts by way of Direct Bank Transfer through **NEFT or RTGS** only to the below mentioned Current Bank Account of this Claims Tribunal as directed in Circular No.08/2022 dated 01/02/2022. The particulars of the Current Bank Account is as under :-

Name of Bank	:	Bank of Baroda, Market Yard Branch, Patan
Account Name	:	Motor Accident Claims Tribunal (Main), Patan
Current Account No.	:	08410100036624,
IFSC Code	:	BARB0MARPAT (fifth character is zero)
MICR Code		384012082
Branch Code	:	MARPAT (Last Six Characters of IFSC Code)

Further, after deposit of the awarded amount, the Insurance Company, AMTS, State Transport are instructed to ensure that deposit of the awarded amount, by way of direct bank transfer to the above said Current Bank Account in compliance of the Award passed by the Tribunal is accomplished by furnishing the following information in the format prescribed herein below along with bank payment advice to the Registry/Nazir Branch of this Court, for maintaining the account MACP Deposits by this Court. A copy of the same be also served to the claimants or their counsel as the case may be.

1	MACP Number	

2	**On the File of (Claims Tribunal Name)**	
3	**Date of Award**	
4	**Compensation Amount**	
5	**Income Tax Deduction at Source**	
6	**Bank Transaction Reference No./ Unique Transaction Reference (UTR) No.**	

(4) The deficit amount of court fees shall be recovered first. Then the amount of interim compensation, if any, awarded and paid, be deducted and adjusted in the above said amounts.

(5) Disbursement of the amount shall be made at the time of the deposition of the awarded amount by the opponents in the Tribunal.

(6) The disbursal of compensation amount shall be made directly to the credit of the bank account of the claimants, as the case may be by **NEFT or RTGS**. The claimants are directed to furnish their following information in the format prescribed herein below to the Registry/Nazir Branch of this Court, for direct credit of the compensation amount to their account.

Aadhaar Card No.	
PAN Card No.	
Bank Name & Branch	
Bank Address	
Name and address of Account holder (claimant)	
Bank Account No.	
IFSC Code	
First page of passbook with photograph of the claimant duly attested by Bank be attached	

(7) The opponents are directed to follow the guidelines of the Hon'ble Gujarat High Court in the judgment reported in **2007 ACJ 1897**, in the case of **Smt. Hansagauri Prafulchandra Ladhani & Others v. The Oriental Insurance Co. Ltd. & Others**, while calculating and deciding T.D.S.

(8) In case of Tax deduction at source, Form 16-A of the Income Tax Act be provided to the claimants/ victim on whose behalf the deduction has been made so as to enable him/her seek refund of tax deducted, if any.

(9) Registry/opponents shall ensure compliance of Hon’ble Supreme Court’s directions in **Writ Petition (Civil) No.534/ 2020, titled Bajaj Allianz General Insurance Co. Ltd. v/s Union of India**.

(10) Award be drawn accordingly.

Signed & Pronounced in the open Court today on this **01st day of July 2026**.

Date : 01/07/2026
Place: Patan.

(Prashantkumar H. Sheth)
Judge, MACT (Main), Patan
UNIQUE ID CODE NO.GJ00524

kpandey