RECEIVED ON : 06/02/2020
REGISTERED ON : 06/02/2020
DECIDED ON : 29/01/2026
DURATION : Y. M. D.
Ex. 53 05 11 29

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUXI.)
AT GONDAL

MOTOR ACCIDENT CLAIMS PETITION NO. 11 OF 2020

APPLICANTS:-

LEGAL HEIRS OF LATE DINESHBHAI ARJANBHAI BHOJANI :-

1. **SARDABEN DINESHBHAI BHOJANI,**
   (Wife of deceased)
   Female, Age: 43, Occu. Household Work,
2. **SAGARBHAI DINESHBHAI BHOJANI,**
   (Son of deceased)
   Male, Age: 22, Occu. Labour Work,
3. **KANJIBHAI DINESHBHAI BHOJANI,**
   (Son of deceased)
   Male, Age: 19, Occu. Study,
   Address: Street No.18/37, Bagvatpara,
   Beside Tower, Near Khoja Kabrastan,
   Gondal, Dist. Rajkot.

V E R S U S

OPPONENTS:-

1. **TRUCK NO. GJ-03-BT-9438**
   OWNER:- MAHESHBHAI POPATBHAI VADHER,
   C/o Kanaiya Transport,
   Gulmahor Road, Gondal.

2. **ICICI LAMBARD GENERAL INSURANCE COMPANY**
   Address: 3rd Floor, Orbit Plaza, Office No.301, Yagnik Road, Opp. Swami Vivekanand Statue, Rajkot.

TRUCK NO. CG-13-LA-5934

3. **PARTHO SARATHY MUKHERJEE**
At: Junwani, Post: Kharsia, Pin Code 496 661
Dist. Raigarh, State: Chhattisgarh.

4. **UNITED INDIA INSURANCE COMPANY LTD.**
'Sugar House', Opp. Trikon Bag,
Dhebarbhai Road, Rajkot.

Appearance:

H.T. Satodiya, The learned Advocate for applicants.
A.J. Patadiya, The learned Advocate for opponent No.1
S.H. Modha, The learned advocate for opponent No.2.
M.H. Khakhar, The learned advocate for opponent No.4.
The opponent No.3 served – absent.

SUBJECT:- CLAIM PETITION U/S.166 OF THE M.V.ACT TO RECOVER AN AMOUNT OF RS.18,00,000/-.

~~~~~~

// JUDGMENT \\

1. The present applicants have filed this claim petition under Sec.166 of the M.V.Act to get compensation of Rs.18,00,000/- together with interest at the rate of 18% p.a. from the date of claim petition till its realization from the opponents jointly and severally on account of the death of deceased caused in vehicular accident.

2. The short facts of applicants' case are that on 23/06/2019 at around 8:30 PM., the deceased Dineshbhai Arjanbhai Bhojani was on his paid driver duty and was going to Bilaspur from Morbi on his Truck No.GJ-03-BT-9438, and when he reached near Shimga police station D. Baloda bazar in Chhattisgarh state, at that time, one Truck No.CG-13-LA-5934 was parked in the middle of the road without any type of blinking light or side signal and because of that truck the deceased could
~~~~~~

not see the vehicle coming from the opposite side and deceased could not control his truck and dashed with stationary vehicle Truck No.CG-13-LA-5934 and hence, the accident has happened and due to the accident, the deceased had sustained grievous injuries and ultimately died. It is the say of the applicants that the accident has taken place due to sole negligent of the driver of Truck No.CG-13-LA-5934 because he has parked his truck on the middle of the road without any safety measures. It is the say of the applicants that at the time of accident, the deceased was aged about 46 years and doing paid driver Job and earning about Rs.12,000/- per month and also getting Rs.100/- as daily allowance. Due to death of the deceased, the applicants have lost the permanent income of the deceased and therefore, the applicants on the strength of legal heirs of the deceased have filed this claim petition to get compensation of Rs.18,00,000/- from the opponents jointly and severally with running interest @ 18% per annum under Sec.166 of the M. V. Act.

3. The opponents are duly served with the notices of the Tribunal. The opponent No.3 has not appeared before this Tribunal to resist the claim petition. The opponent No.1 has appeared before this Tribunal through his learned advocate and he has filed Written Statement vide Exh.22 denied all the averments made in the claim petition. It is denied that accident took place because of sole negligence on the part of driver of Truck No.GJ-03-BT-9438. It is contended that insurance of driver of Truck No.GJ-03-BT-9438 was also covered with the insurance of the vehicle therefore he is not liable to pay the compensation but insurance company is liable to pay the compensation of

vehicle and driver. Lastly, it is prayed to dismiss claim petition with costs.

3.1 The opponent No.2 has appeared before this Tribunal through his learned advocate and he has filed Written Statement against the claim petition of the applicants at Exh.18 and denied all the averments made in the claim petition. It is denied that accident took place because of sole negligence on the part of driver of Truck No.GJ-03-BT-9438. It is contended that the accident took place because of sole negligence on the part of driver of Truck No.CG-13LA-5934. It is contended that the deceased driver of Truck No.GJ-03-BT-9438 was driving his vehicle at a moderate speed and on the correct side of the road and blowing horn as and when found necessary but the driver of Truck No.CG-13LA-5934 had parked his truck on the middle of the road without putting any hurdles on front side and rear side and had also not started side lights or indicators and that too during night hours and due to that deceased could not see the parked truck and the accident took place and there was no negligence on the part of deceased driver of Truck No.GJ-03-BT-9438. It is further contended that the deceased himself was driving Truck No.GJ-03-BT-9438 at the material time of alleged accident and hence the present claim is not the claim in respect of death or any third party and deceased himself being rider steps into shoes of owner of vehicle and insured under the policy cannot be said to be third party within the meaning of M.V.Act and therefore, the opponent No.2 is not liable to indemnify the act of driver and thereby not liable to pay compensation to the applicants. It is contended that at the time of accident, the driver of involved truck No.GJ-03-BT-9438 was not holding valid and effective driving license to drive the vehicle and further was not qualified for holding or obtaining such driving licence and further has not satisfied the requirements of the Rule No.3 of the Central Motor Vehicles Rules,1989. The opponent No.2 has denied the date, time and place of accident as well as the death of deceased due to accident, involvement of truck No.GJ-03-BT-9438 and age, income and profession of the deceased. Lastly, it is prayed to dismiss claim petition with costs.

3.2 The opponent No.4 has appeared before this Tribunal through its learned advocate and filed Written Statement against the claim petition of the applicants at Exh.25 and denied all the averments made in the claim petition. It is contended that at the time of accident, the driver of GCV Public carrier was driving the vehicle bearing registration No.CG-13-LA-5934 without holding any valid and effective driving license to drive the said vehicle and further has not satisfied the requirements of the Rule No.3 of the Central Motor Vehicles Rules,1989. It is denied that the allegations regarding the manner in which the alleged accident said to have occurred. The allegations that the deceased was travelling as on Truck No.GJ-03-BT-9438 was passing through the spot of the accident, at that time Truck No.CG-13LA-5934 was stationary vehicle and without any shine in road and therefore dashed with truck and happened serious accident. It is contended that FIR and charge sheet are filed against the driver of Truck No.GJ-03-BT-9438 and due to the sole negligence of the driver of Truck No.GJ-03-BT-9438, the accident has happened and therefore, the opponent No.4 is not liable to pay compensation to the applicants. The opponent No.4 has denied the date, time and place of accident as well as the death of deceased due to accident, involvement of GCV Public carrier vehicle bearing registration No.CG-13-LA-5934 and age, income and profession of the deceased. Lastly, it is prayed to dismiss claim petition with costs.

4. Learned predecessor of this Tribunal has framed following issues at Ex.26.

1. Whether the applicants prove that the deceased died in a vehicular accident occurred in between vehicle No. GJ-03-BT-9438 and vehicle No.CG-13-LA-5934 due to the negligent driving of the driver of Vehicle No.CG-13-LA-5934 ?
2. Whether the applicants prove that they are entitled to the amount of compensation claimed ? If yes, then what amount and from whom ?
3. What Order ?

5. My findings to the above issues are as under:

1. Partly in the affirmative
2. Partly in the affirmative & as per final order.
3. As per final order.

-// **R E A S O N S** \\-

6. In order to prove the negligence, the applicants have produced the following oral as well as documentary evidences.

// **ORAL EVIDENCES** \\

Sr.No	Particulars of Evidences	Ex.No.
1.	Affidavit of applicant No.1 Shardaben Dineshbhai Bhojani	33

// **DOCUMENTARY EVIDENCES** \\

Sr.No	Particulars of Evidences	Ex.No.
1.	Death Certificate of Vanitaben Arjanbhai Bhojani	29
2.	Copy of Police FIR	34
3.	Copy of Spot Panchnama	35
4.	Copy of R.C.Book of Truck No.GJ-03-BT-9438	36
5.	Copy of Insurance Policy of truck No.GJ-03-BT-9438	37
6.	Copy of RTO Permit of truck No. GJ-03-BT-9438	38
7.	Copy of Driving Licence of deceased	39
8.	Copy of R.C.Book of truck No.CG-13-LA-5934	40
9.	Copy of Insurance Policy of truck No.CG-13-LA-5934	41
13.	Copy of Post Mortem Report of deceased	42

6.1. The opponent No.4 has produced following documentary evidences.

// **DOCUMENTARY EVIDENCES** \\

Sr.No	Particulars of Evidences	Ex.No.
1.	Copy of Insurance Policy of Vehicle No.CG-13-LA-5934	43
2.	Copy of Final Report of Vehicle No.GJ-03-BT-9438	44

7. The learned advocate for the applicant has filed evidence closing pursis at Ex.45 whereas the learned advocate for the opponents has not filed evidence closing pursis.

8. Read the claim petition and written statements filed by the respective opponents as well as perused the documentary and oral evidences produced by the concerned parties. I have gone through the written argument of applicant vide Exh.50 and I have also gone through the written arguments of opponent No.2 vide Exh.51 and opponent No.4 vide Exh.52.

ISSUE NO.1:-

NEGLIGENCE :

9. In support of their case, the applicant No.1 Shardaben Dineshbhai Oza, the wife of deceased has filed affidavit vide Exh.33 and reiterated the averments made in the Claim Petition. She has been cross examined by the learned advocate for the opponent No.2 wherein she admits that her husband was working as driver with opponent No.1 but she has not produced any evidence to that effect. She has also been cross examined by the learned advocate for the opponent No.4 wherein she admits that she is not eye witness to the accident; she admits that FIR regarding accident has been filed against the driver of Truck No.GJ-03-BT-9438; she denies that even there was no negligence on the part of truck driver, she stated false facts in her affidavit. She admits that she has no personal knowledge about the accident. No other material thing come out from her cross examination.

10. So far as negligence is concerned, the learned advocate for the opponent No.2 insurance company has submitted in its written arguments produced at Ex.51 that the FIR has been filed against the driver of Truck No.GJ-03-BT-9438 and it has been clearly stated in the FIR that the driver of Truck No.GJ-03-BT-

9438 has driven his vehicle in rash and negligent manner and dashed with stationary truck and caused accident. He has further submitted that the driver of Truck No.CG-13LA-5934 had parked his truck on the middle of the road and has not put any hurdles on rear or front side of the truck and had also not started indicator or side light or brake light and due to that Truck No.GJ-03-BT-9438 dashed on the rear part of the said truck and accident took place. It is further submitted that though FIR has been filed against the driver of Truck No.GJ-03-BT-9438 i.e. deceased of the case, the accident took place because of sole negligence on the part of driver of Truck No.CG-13LA-5934 and there was no negligence on the part of driver of Truck No.GJ-03-BT-9438. He further submits that it appears from the panchnama of scene of offence that accident took place on the middle of the road and no any hurdles arranged by the driver of Truck No.CG-13LA-5934 and therefore, it can be said that the accident has happened due to sole negligence on the part of Truck No.CG-13LA-5935 and there was no negligence on the part of driver of Truck No.GJ-03-BT-9438 and therefore, the opponent No.2 is not liable to pay compensation to the applicant and prayed to dismiss the claim petition with costs.

11. On the other side, the learned advocate for the opponent No.4 insurance company has submitted in his written arguments produced at Ex.52 that as per the information received by the opponent No.4, the driver of Truck No.CG-13LA-5934 was driving his vehicle very carefully, but the driver of Truck No.GJ-03-BT-9438 has driven his vehicle very fast, carelessly and negligently and dashed with Truck No.CG-13LA-5934 and

therefore, the accident took place because of negligence on the part of driver of Truck No.GJ-03-BT-9438. He has further submitted that the FIR and charge sheet have also been filed against the driver of Truck No.GJ-03-BT-9438 and therefore, the driver of Truck No.CG-13LA-5934 cannot be held liable for the occurrence of accident and hence, the opponent No.4 is not liable to pay compensation to the applicants and prayed to dismiss the claim petition with costs.

12. On the other side, the learned advocate for the applicants submitted in his written argument at Ex.50 that on 23/06/2019 the deceased was on his paid driver duty and was going to Bilaspur from Morbi on his Truck No.GJ-03-BT-9438, and when he reached at the place of accident, at that time, Truck No.CG-13-LA-5934 was parked in the middle of the road without any safety measures and without traffic rules and due to heavy lights of upcoming vehicles, the deceased could not see the vehicle coming from the opposite side and deceased could not control his truck and dashed with stationary vehicle Truck No.CG-13-LA-5934 and hence, the accident has happened and due to the accident, the deceased had sustained grievous injuries and ultimately died. He has further submitted that the accident has taken place due to sole negligent of the driver of Truck No.CG-13-LA-5934 because he has parked his truck on the middle of the road without any safety measures and hence, the applicants are entitled to get compensation from the opponents.

13. Now, looking to documentary as well as oral evidences and considering the arguments of rival sides, it appears from the copies of FIR and panchnama produced at Ex.34 & 35 that the

accident in question has taken place and in said accident deceased sustained grievous injuries and ultimately succumbed to the injuries. It also appears from the record that on 23/06/2019 the deceased driver of Truck No.GJ-03-BT-9438 was driving his truck and going from Morbi to Bilaspur and when he reached at the place of accident, at that time, Truck No.CG-13-LA-5934 was parked on the middle of the road without any safety measures and without traffic rules and due to heavy lights of upcoming vehicles, the deceased could not see the vehicle coming from the opposite side and deceased could not control his truck and dashed with stationary vehicle Truck No.CG-13-LA-5934 and hence, the accident has happened and due to the accident, the deceased had sustained grievous injuries and ultimately died and therefore, the FIR and charge sheet regarding accident have been filed against the driver of Truck No.GJ-03-BT-9438. Moreover, it also appears from the copy of panchnama produced at Ex.35 corroborates the said fact and at the time of panchnama, both the involved vehicles were found lying at the place of accident in accidental condition. It also appears from the copy of post mortem report produced at Ex.42 that cause of death of deceased is due to cardio respiratory failure as a result of injuries and their complications. Moreover, So, it can be said that the deceased died due to accidental injury. So, considering FIR, panchnama and other evidences produced on record, it is evident that at the time of accident, Truck No.CG-13-LA-5934 was parked on the road and it also appears from the panchnama that no any safety measures like fencing, blinking indicators, back lights etc. were not applied by the driver of Truck No.CG-13-LA-5934 and parked his truck on the road. Moreover, it also appears from the record that the driver of Truck No.GJ-03-BT-9438 has driven his vehicle at an excessive speed and in rash and negligent manner and did not take care to see that any vehicle has parked on the road or not and driven his vehicle in such a manner to endanger human life and ultimately dashed with stationary vehicle i.e. Truck No.CG-13-LA-5934 and hence the accident has happened and in such accident he sustained grievous injuries and ultimately succumbed to the injuries as stated in the post mortem note. Moreover, it can be said that it is the duty of the deceased driver of Truck No.GJ-03-BT-9438 to take some extra care and caution to ply his vehicle particularly during night hours and to see the vehicle parked on the road side or not while plying his vehicle and if he would have taken care and caution or driven his truck at a moderate speed, in that case the accident would have been avoided and deceased would have not sustained injuries and would have not died. Same way, it is also the duty of deceased driver of Truck No.CG-13-LA-5934 to take safety measures like blowing indicators, back lights, fencing surrounding the truck while parking his vehicle and park his vehicle in such a manner to avoid possible danger, but he has also not done so and hence, the accident has happened and deceased had sustained injuries and ultimately succumbed to the injuries. So, on perusing the FIR and panchnama and other police papers and medical papers, it seems that the drivers of both the involved vehicles are negligent for the occurrence of accident to some extent. Moreover, the opponents have also not examined the driver of Truck No.CG-13-LA-5934 to rebut the evidences produced by the applicants. Hence, adverse inference is required to be drawn against them. Therefore, considering above documentary and oral evidences, this Tribunal is of the view that the deceased driver of Truck No.CG-13-LA-5934 appears to be more careless and negligent while driving his vehicle because during night hours he had to drive his vehicle in such a moderate speed and to see the vehicle parked on the road and ultimately dashed with the stationary vehicle Truck No.CG-13-LA-5934 from the back side and caused accident and therefore, the FIR regarding accident has been filed against the deceased driver of Truck No.GJ-03-BT-9438, therefore, this Tribunal is of the view that the deceased driver of Truck No.GJ-03-BT-9438 is held 90% negligent while, the driver of Truck No.CG-13-LA-5934 is held 10% negligent because he has also contributed for the occurrence of accident as he has parked his vehicle without any safety measures like fencing, blowing indicators and back light on. Hence, in view of above discussion, issue No.1 is replied partly in the affirmative.

ISSUE NO.2:-

QUANTUM

14. So far as the question of quantum is concerned, the applicant No.1, the wife of the deceased has stated in plaint as well as in affidavit that at the time of accident, her deceased husband was working as paid driver of opponent No.1 i.e. the owner of Truck No.CG-13-LA-5934 and earning Rs.12,000/- per month. In support of their case, the applicants have not produced any documentary evidence to prove the income of the deceased. But, considering the fact that at the time of accident, the deceased was serving as driver in truck of opponent No.1 and and opponent No.1 has admitted in his written statement that at the time of accident, deceased was driving his truck and considering the fact that the accident in question has happened in the year,

2019, this Tribunal is of the view to assess monthly income of the deceased as Rs.10,000/- which comes to Rs.1,20,000/- (10,000x12) per year to calculate the quantum of compensation.

AGE AND MULTIPLIER

14.1. So far as the age of the deceased at the time of accident is concerned, it appears from the copy of driving licence of the deceased produced at Ex.39 that the date of birth of the deceased is 01/06/1972 whereas the accident has happened on 23/06/2019. So, at the time of accident, the deceased was aged about 47 years and 22 days. Hence, multiplier of 13 years is required to be applied in the present case so as to assess the future loss of income of the deceased as he was falling in age group of 46 to 50 years.

14.2. **FUTURE PROSPECT & PERSONAL DEDUCTION:-**

As discussed above and considering the future prospectus, at the time of accident, deceased was earning Rs.1,20,000/- per year, in his income, 25% prospective income as per the Judgment of Hon'ble Supreme Court of India conferred in ***Spl. Leave Petition (Civil) No. 25590/14 in case of National Insurance Company Limited Versus Pranay Sethi and Ors.***, as deceased was self employed and falling between the age group of 40 to 50 years, 25% future prospectus income should be added then his yearly income would become Rs.1,50,000/- (Rs.1,20,000+30,000). So far as the deduction towards the personal and living expenses of the deceased is concerned, it is undisputed fact between the parties that at the time of accident, the deceased was married and applicant No.1 is his wife and applicants No.2 and 3 are his sons and hence, as per the principles settled in case of **Sarla Varma Vs. Delhi Transport Corporation AIR 2009 SC 3104**, 1/3rd deduction is required to be made and after such deduction, the amount would come to Rs.1,00,000/- (Rs.1,50,000-50,000). Therefore, dependency would be Rs.1,00,000/- per year. Thereafter, applying multiplier of 13 years with annual dependency, the amount would come to Rs.13,00,000/- (Rs.1,00,000x13). So, the applicants are entitled to get Rs.13,00,000/- towards the compensation.

14.3. **CONVENTIONAL HEAD & LOSS OF CONSORTIUM:-**

Now, so far as the point of conventional heads is concerned, the Full Bench of the Hon'ble Apex Court in National Insurance Co. Limited vs. Pranay Sethi and Ors., 2017 ACJ 2700 (SC), after taking into considerations all the factors fixed the figures of compensation under conventional heads, namely, Loss to the Estate, Loss of Consortium and Funeral expenses. In terms of the ratio laid down in the aforesaid decision, the applicants have lost deceased and hence, they are entitled to get Rs.15,000/ under the head of Loss of Estate and Rs.15,000/ for Funeral Expenses etc. Moreover, it is also held in the above judgment that the aforesaid amount should be enhanced at the rate of 10% in every three years. So, the said judgment was pronounced by the Hon'ble Supreme Court in the year 2017 and this claim petition is decided in the year 2026 i.e. after more than 6 years and therefore, the aforesaid amount is required to be enhanced at the rate of 10% twice (i.e.20%). So, the applicants are entitled to **get Rs.18,000/- towards loss of estate, Rs.18,000/- towards funeral expenses.**

14.4. Furthermore, as per the recent judgment of the Hon'ble Apex Court in the case of ***Magma General Insurance Vs. Nanu Ram @ Chuhru Ram & Othrs; 2018 ACJ 2782***; the wife and two son of the deceased are also entitled for 'filial consortium'. Therefore, wife and two son of the deceased are entitled to get the amount under the head of filial consortium. The amount of compensation under this head shall also be calculated as the judgment of the Hon'ble Apex Court in the case of ***Pranay Sethi (supra)***, i.e. Rs.40,000/- to wife and two son of deceased with 20% enhancement. So, the applicants are entitled to get Rs.1,44,000/- towards filial consortium.

15. In view of all the above considerations, as well as taking in to account the Judgments of the Hon'ble Supreme Court in the cases of: ***Sarla Verma Vs. Delhi Transport Corporation; AIR 2009 SC 3104 and National Insurance Co. Ltd. vs. Pranay Sethi & ors.;*** the following compensation matrix is carved out:

1.	Future Loss of Income	Rs.13,00,000/-
2.	Loss of Estate	Rs. 18,000/-
3.	Funeral Expenses	Rs. 18,000/-
4.	Loss of consortium	Rs. 1,44,000/-
5.	**Total Compensation**	**Rs.14,80,000/-**

Accordingly this tribunal reaches to a conclusion that the applicant is entitled to receive a compensation of Rs.14,80,000/-.

LIABILITY TO PAY COMPENSATION: -

16. So far as the liability to pay compensation is concerned, as discussed above, the accident has happened due to 90% rash and negligent driving on the part of deceased driver of

Truck No.GJ-03-BT-9438 and 10% negligence on the part of driver of Truck No.CG-13-LA-5934.

17. The learned advocate for the opponent No.2 Insurance Company has submitted in his arguments that at the time of accident, the deceased driver of Truck No.GJ-03-BT-9438 was not paid driver of the opponent No.1 i.e. the owner of Truck No.GJ-03-BT-9438 and therefore, the opponent No.2 insurance company is not liable to pay compensation to the applicants. It is further submitted that deceased himself was driving Truck No.GJ-03-BT-9438 at the material time of alleged accident and the present claim is not the claim in respect of death of any third party. The deceased himself being the rider steps into shoes of owner of the said vehicle and insured under the policy cannot be said to be third party within the meaning of M.V.Act and therefore also, the present claim petition is required to be dismissed and opponent No.2 insurance company is not liable to pay compensation to the applicants.

18. On the other side, the learned advocate for the applicants submit that at the time of accident, the deceased was paid driver of involved vehicle Truck No.GJ-03-BT-9438 which was owned by the opponent No.1 and he was driving the said truck at the material time. He has further submitted that the opponent No.1 has admitted in his written statement Ex.22 that at the time of accident, the deceased was serving as his driver in Truck No.GJ-03-BT-9438 and opponent No.1 was paying salary to the deceased. He has further submitted that as per the insurance policy of Truck No.GJ-03-BT-9438 produced by applicants at Ex.36 clearly shows that the opponent No.1 owner

of Truck No.GJ-03-BT-9438 has paid extra premium of Rs.50/- towards Legal Liability to paid driver and Rs.100/- towards conductor/ cleaner employed for operations. Therefore, he has argued that at the time of accident, the deceased was paid driver of opponent No.1 and opponent No.1 has paid extra premium of Rs.50/- towards paid driver to opponent No.2 insurance company and therefore, opponents No.1 being the owner of the involved vehicle Truck No.GJ-03-BT-9438 and opponent No.2 being the insurance company of Truck No.GJ-03-BT-9438 are liable to indemnify the act of driver and owner and also liable to pay compensation to the applicants. In support of his arguments, the learned advocate for the applicants has relied upon the judgment reported in **2021 ACJ 2262 HIGH COURT OF GUJARAT IN THE CASE OF VALIBEN LAXMANBHAI THAKORE (KOLI) AND OTHERS VS. KANDLA DOCK LABOUR BOARD AND ANOTHER** and prayed to allow this claim petition as prayed for.

19. After considering documentary and oral evidences and considering the arguments of both the sides, if we peruse the oral as well ad documentary evidences produced by the applicants, it appears that at the time of accident, the deceased was paid driver of involved vehicle Truck No.GJ-03-BT-9438 which was owned by the opponent No.1 and deceased was driving the said truck at the material time. Moreover, copy of insurance policy of Truck No.GJ-03-BT-9438 produced by the applicants at Ex.36 clearly shows that the opponent No.1 owner of Truck No.GJ-03-BT-9438 has paid extra premium of Rs.50/- towards Legal Liability to paid driver. Therefore, considering above documentary evidences, it can be said that at the time of

accident, the deceased was paid driver of opponent No.1 and opponent No.1 owner of Truck No.GJ-03-BT-9438 has paid extra premium of Rs.50/- towards legal liability of paid driver to opponent No.2 insurance company and opponent No.2 insurance company has accepted the said extra premium of Rs.50/- from opponent No.1 towards legal liability of paid driver. Moreover, in the judgment relied upon by the learned advocate for the applicants, the Hon'ble High Court of Gujarat in the judgment of ***VALIBEN LAXMANBHAI THAKORE REPORTED IN 2021 ACJ 2262 (SUPRA)*** held that that Additional Premium paid towards Legal Liability of paid driver – Liability of insurance company – Whether insurance company having received additional premium towards legal liability of paid driver is liable to pay compensation as per Motor Vehicles Act for death or injury to the driver arising out of accident solely due to driver's own negligence – Held : Yes; insurance company on accepting additional premium to cover legal liability of paid driver enlarges the scope for unlimited liability and it cannot raise the issue of self-negligence of driver; the claimants are entitled to exercise their option to claim under Motor Vehicles Act as per Sec.167, but if no additional premium is paid then liability would be as per Employee's compensation Act. So, considering the ratio laid down in above judgment of Hon'ble High Court of Gujarat, in the present case also, the opponent No.2 insurance company has received additional premium of Rs.50/- towards legal liability to paid driver from the opponent No.1 owner of Truck No.GJ-03-BT-9438 and that at the time of accident, the deceased was paid driver of opponent No.1 and the opponent No.1 has paid additional premium of Rs.50/- towards legal liability to paid driver and the opponent No.2 insurance company has accepted the said additional premium and therefore, the opponent No.2 insurance company is liable to indemnify the act of opponent No.1 owner of involved Truck No.GJ-03-BT-9438 and to pay compensation to the applicants. Moreover, it appears from the record that the opponent No.1 is owner of involved Truck No.GJ-03-BT-9438 and the opponent No.2 insurance company has insured the said involved Truck No.GJ-03-BT-9438 and accepted additional premium of Rs.50/- from opponent No.1 owner towards legal liability to paid driver and the policy produced at Ex.36 produced by the applicants covers the date of accident and also covers the risk and legal liability of paid driver i.e. deceased. Therefore, as discussed above, the opponents No.1 and 2 are jointly and severally liable to pay 90% amount of total compensation to the applicants.

20. Now, on the point of liability, the learned advocate for the opponent No.4 insurance company has submitted in his written arguments at Ex.52 that the driver of Truck No.CG-13LA-5934 was not holding any kind of valid and effecting driving licence at the time of so called alleged accident and therefore this being a breach of specific condition of the policy and has not satisfied the requirement of Rule No.3 of the Central Motor Vehicles Rules, 1989 and therefore, the opponent No.4 cannot be held liable for the payment of compensation to the applicants. He further submits that the opponent No.4 has issued legal notice to opponent No.3 owner of Truck No.CG-13LA-5934 to provide the copy of valid and effective driving licence of driver of Truck No.CG-13LA-5934 but till today he has not

produced valid and effective driving licence of driver of Truck No.CG-13LA-5934. The opponent No.4 insurance company has produced copies of registered A.D.Notice & its registered A.D.slips at mark 47/1 and 47/2. But inspite of serving with such notice, the opponent No.3 owner of Truck No.CG-13LA-5934 has not produced valid and effective driving licence of the driver of Truck No.CG-13LA-5934 and therefore, it can be believed that at the time of accident the driver of Truck No.CG-13LA-5934 was not holding valid and effective driving licence and the driver and owner of Truck No.CG-13LA-5934 have committed breach of terms and conditions of insurance policy and therefore, the opponent No.4 insurance company is not liable to indemnify the act of driver and owner and also not liable to pay compensation to the applicants and prayed to exonerate the opponent No.4 from the liability to pay compensation to the applicants.

21. Now, if we peruse the record, it is evident that at the time of accident, Truck No.CG-13LA-5934 was a stationary vehicle and its driver must have parked Truck No.CG-13LA-5934 at the place accident. Moreover, it further appears from the record that the opponent No.3 owner of Truck No.CG-13LA-5934 has not produced the copy of driving licence of driver of Truck No.CG-13LA-5934 who has parked the said stationary vehicle at the spot of accident to prove the fact that at the time of accident, driver of Truck No.CG-13LA-5934 who has parked the said vehicle was holding driving licence. Moreover, it also appears from the copies of notices, its registered A.D. Slips produced at mark 47/1 and 47/2 by the opponent No.4 that the

insurance company has issued notice to owner of Truck No.CG-13LA-5934 calling upon them to produce driving licence of driver of Truck No.CG-13LA-5934 but the opponent No.3 owner of Truck No.CG-13LA-5934 has not produced the same. So, the opponent No.4 insurance company has proved that at the time of accident, the driver of Truck No.CG-13LA-5934 was not holding valid and effective driving licence to drive Truck No.CG-13LA-5934. Now, on the point of non-holding of valid and effective driving licence, this Tribunal relies upon the judgment of Hon'ble Supreme Court of India in the case of **NATIONAL INSURANCE COMPANY LTD. VS. SWARNA SINGH REPORTED IN AIR 2004 SC 1531, SHAMANNA VS. DIVISIONAL MANAGER, ORIENTAL INSURANCE COMPANY LTD. REPORTED IN 2018 ACJ 2163(SC) AND PARMINDERSINGH VS. NEW INDIA ASSURANCE COMPANY LTD. REPORTED IN 2019 ACJ 2401** wherein it has been held that *even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. To sub-serve the ends of justice, the insurer shall pay the claim amount awarded by the Tribunal to the appellants in the first instance, with liberty to recover the same from the owner of the vehicle in accordance with law.* Moreover, in case of *Shamanna and Parmindersingh (supra), the Hon'ble supreme Court has also directed to pay and recover in case of no valid and effective driving licence by the owner/driver of offending vehicle.*

22. So, in the case on hand, as discussed above, the opponent No.4 insurance company has established the breach of policy condition to the effect that the driver of Truck No.CG-13LA-5934 was not holding valid and effective driving licence at the time of accident. But, in view of the decisions of Hon’ble Apex Court in the cases of *Swarna Singh, Shamanna and Parmindersingh (supra),* the opponent No.4 insurance company of Truck No.CG-13LA-5934 cannot be exempted from its liability towards insured or against the third party and the deceased in the present case was third party for Truck No.CG-13LA-5934 at the time of accident. Therefore, looking to ratio laid down in above referred judgment and in view of above discussion, the opponent No.4 insurance company cannot be exonerated from its liability to pay compensation to the applicants and opponent No.4 insurance company should first pay the 10% amount of total compensation to the applicants and then at liberty to recover the same from the opponent No.3 owner of Truck No.CG-13LA-5934.

23. It appears from the record that at the time of accident, the opponent No.1 is the owner of Truck No.GJ-03-BT-9438 and opponent No.2 insurance company has insured the said involved Truck No.GJ-03-BT-9438. Moreover, it appears from the copy of insurance policy of Truck No.GJ-03-BT-9438 produced by the applicants at Ex.36 that the policy covers the date of accident. Hence, the opponent No.1 being the owner of Truck No.GJ-03-BT-9438 and opponent No.2 being the insurer of Truck No.GJ-03-BT-9438 are jointly and severally liable to pay 90% amount of total compensation to the applicants. Whereas

opponent No.3 is the owner of Truck No.CG-13LA-5934 and opponent No.4 insurance company has insured the said involved Truck No.CG-13LA-5934. Moreover, it appears from the copy of insurance policy of Truck No.CG-13LA-5934 produced by the opponent No.4 insurance company at Ex.41 that the policy covers the date of accident. Hence, the opponent No.3 being the owner of Truck No.CG-13LA-5934 and opponent No.4 being the insurer of Truck No.CG-13LA-5934 are jointly and severally liable to pay 10% amount of total compensation to the applicants. Hence, issue No.2 is replied partly in the affirmative and as per final order.

INTEREST:-

24. As per the Judgment of Hon'ble Supreme Court in the case of ***Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy reported in 2012 A. C. J. - 48*** and latest Judgment of Hon'ble Gujarat High Court reported in ***First Appeal No. 73 of 2014 in the case of New India Assurance Co. Ltd. Vs. Rajkumar Dharamsingh and others*** and looking to the prevailing rate of Bank interest, the awarded amount shall carry interest at the rate of 9% per annum from the date of filling of the application till its realization.

25. In view of the above discussion, the following order is passed in the interest of justice.

//- O R D E R -

1. This Claim Petition is hereby partly allowed.
2. The applicants are entitled to get **Rs.14,80,000/-** (Rupees Fourteen Lakh Eighty Thousand only) towards compensation u/s. 166 of M. V. Act 1998.

3. The opponents No. 1 and 2 are jointly and severally liable and ordered to pay 90% amount of total compensation to the applicants.

4. The opponents No.3 & 4 are jointly and severally liable and ordered to pay 10% amount of total compensation to the applicants.

5. The opponent No.4 insurance company is hereby directed to first pay the amount of compensation as stated above with interest to the applicants and then at liberty to recover the same from the opponent No.3 i.e. owner of Truck No.CG-13LA-5934, according to law.

6. The opponents No.1 & 2 and opponents No.3 & 4 are hereby directed to deposit amount of compensation of their respective share with running interest @ 9% p.a. from the date of filing the petition within 1 month from date of the order of this petition.

7. After the amount is deposited in the office of Tribunal, the office is directed to deduct the requisite court fees and amount of interim compensation paid, if any, and thereafter from the remaining amount, 30% amount be paid to applicants through **ONLINE PAYMENT MODE RTGS/NEFT** and remaining 70% amount be invested in their names in any Nationalized Bank for a period of 5 years. The applicants are entitled to withdraw interest accrued on the said fixed deposit. The applicants will not be entitled to take any loan or advance against this fixed deposit and the Bank shall not borrow any loan or advance against the said fixed deposit without permission of this Court. A specific note to that effect is to be made on the receipt of Fixed Deposits by the Tribunal.

8. The opponents are further directed to deposit amount of compensation with interest through **ONLINE PAYMENT MODE RTGS/NEFT** directly in the Bank Account of Additional District Judge Court, Gondal viz. **Canara Bank**, Opp. Shyam Wadi, Gondal, District - Rajkot bearing **Current Account No.120024069484 IFSC Code No.CNRB0003277**.

9. The opponents are further directed to inform/intimate this Tribunal after depositing such amount in the above Bank

Account through Online Payment Mode **RTGS/NEFT** accordingly.

10. In view of the judgment of Hon'ble High Court of Gujarat given in a case of *Hansagauri Prafulchandra Ladhani, reported in 2007 ACJ, 1897 and guidelines given in Special Civil Application No.4800 of 2021 in the case of the Oriental Insurance Company Ltd. Vs. Chief Commissioner of Income Tax 16* (TDS) decided on 05/04/2022, no Tax will be deducted from the amount of compensation awarded by this Tribunal.

11. The opponents do pay the cost of the petition to the applicants and shall bear their own costs.

12. Award to be drawn accordingly.

Signed and pronounced in the open court today on
this **29th Day of January, 2026 at Gondal.**

Date:- 29/01/2026
Place:- Gondal

B.L.Thaker

(**H. A. TRIVEDI**)
M.A.C.T.(AUXI.) &
5th Addl.District Judge
GONDAL
(Unique I.D.Code No.GJ00591)