Received on : 01 – 05 – 2023
Registered on : 01 – 05 – 2023
Decided on : 07 – 08 – 2026
Duration : Ys – Ms – Ds
03 – 03 – 06

Ex. 65

सत्यमेव जयते

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN) & PRINCIPAL DISTRICT JUDGE, BHAVNAGAR

MAC Petition No.111 of 2023

Legal Heirs of Deceased
Chhaganbhai Arjanbhai Vegad :

1) Prakashbhai Chhaganbhai Vegad,
Age: 37 years, Occu: Labourer.

2) Pappubhai Chhaganbhai Vegad,
Age: 35 years, Occu: Labourer,
Add: Valmikivas, B/h. J.C.P.W.,
Vartej, Taluka-District Bhavnagar. **..... Applicants**

VERSUS

Ashok Leyland Transit Mixer Vehicle No.GJ-04-AT-0864 :

1) Krishna R.M.C.,
(Kishorbhai Bhayabhai Chad-Aahir),
Resi: Revenue Survey No.312 Paiki 13-17,
Near Acrysil, Plot No.14 to 21, Navagam,
(Kardej)Via Vertej, Taluka-District Bhavnagar.

2) The Oriental Insurance Co.Ltd.,
Add: Kaveri Corporation, 2nd Floor,
Navapara, Bhavnagar. **..... Opponents**

Claim under Section-166 of the M.V. Act for getting compensation of Rs.20,00,000/-.

Appearance :

==

Learned Advocate for the claimants, ……..... Mr.MD Trivedi
Learned Advocate for the Opponent No.1, … Mr.TK Purohit
Learned Advocate for the Opponent No.2, … Mr.SP Rana

==

: J U D G M E N T :

1. The claimants have preferred the present Claim Petition under section-166 of the Motor Vehicles Act, 1988 (hereinafter referred as 'the MV Act') claiming compensation of **Rs.20,00,000/-** for the fatal injuries sustained by deceased – **Chhaganbhai Arjanbhai Vegad** (hereafter referred as "the deceased") in a vehicular accident, dated 11-06-2023 along with the costs and interest at the rate of **09%** per annum from the date of Petition till realization, against the opponents.

2. Brief facts of present Claim Petition are that, on 06-12-2022 at around 06.30 pm, the deceased was going on Bhavnagar – Rajkot Highway Road by walking on correct side of the road and when he reached near the place of accident, at that point of time, the opponent No.1 who came there by driving an Ashok Leyland Transit Mixer Truck bearing registration No.GJ-04-AT-0864 in rash and negligent manner, in excessive speed, endangering the human life and, therefore, he lost control over the steering and dashed his vehicle with the deceased and because of that accident, the deceased sustained grievous injuries and ultimately, he succumbed to the said injuries. It is alleged that the above referred accident has occurred because of rash and negligent driving of the opponent No.1.

2.1 The opponents are duly served with the notice and the opponents appeared before the Tribunal with their Ld. Advocates.

2.2 The opponent No.3 - Insurance Company of the said Truck filed written statement *vide* Ex.13 and denied the facts with respect to accident, age, income, fatal injury and death of the deceased in the accident. It is contended that the said Truck was not involved in the accident, but it was implanted later because, the complaint of the accident was filed after 4 days of the accident. It it is also contended that there was no negligence on part of the opponent No.1 - Driver of the Ashok Leyland Truck, but the accident occurred because of negligence of deceased himself. It is also contended that at the relevant point of time, the Driver was not holding valid and effective Driving Licence and the Owner of the insured vehicle was not having valid and effective Fitness and Permit to ply the said vehicle and, therefore, the claim against the insurer is not tenable. On the basis of these pleadings, the Insurance Company has prayed to reject the present Claim Petition.

2.3 The opponent No.1 - Owner of the said Truck filed written statement *vide* Ex.17 and admitted the facts with respect to the accident, its date, time and place, but denied the age, income and fatal injuries to the deceased. It is contended that there was no negligence on the part of Driver of the said Truck, but the accident occurred due to the sole negligence of Deceased himself. It is also contended that at the relevant time, the said vehicle was insured with the opponent No.2 – Insurance Company and, therefore, the opponent No.2 – Insurer may be held liable to pay compensation to the applicants. On the basis of these pleadings, the opponents have prayed to reject the present Claim Petition.

3. From the above referred pleadings, this Tribunal had

framed following issues :

: <u>ISSUES</u> :

1. Whether the applicants prove that deceased died due to rash and negligent driving of the driver of the vehicle involved in this accident ?

2. Whether the applicants are entitled for compensation ? If yes, what amount and from whom ?

3. What order and award ?

3.1 My findings to the above issues are as under :

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

: <u>REASONS</u> :

<u>ISSUE NO.1</u> :-

4. In order to prove negligence, the applicants have produced the following documents :

<u>Oral Evidence</u> :

Ex.No.	Description of document
28	Affidavit for Examination-in-Chief of Claimant

<u>Documentary Evidence</u> :

Ex.No.	Description of document
29	Copy of FIR

30	Copy of Panchnama of Scene of Offence
31	Copy of Inquest Panchnama
32	Copy of PM Report
33	Copy of Aadhaar Card of Deceased
34	Copy of Certificate of Registration of Truck
35	Copy of Permit of of Truck
36	Copy of Fitness Certificate of Truck
37 to 42	Copies of Aadhaar Cards and PAN Cards of Applicants
43	Copy of Bank Pass-Book
44	Copy of Driving Licence of Opponent No.1
45	Copy of Death Certificate of Deceased
46	Copy of Form No.22 – No Departmental Inquiry / Judicial Proceeding Certificate of Deceased
47	Copy of Last Pay Certificate of Deceased
48	Copy of letter for Superannuation of Deceased
49	Letter to entitle the Deceased for getting Pension
50	Copy of letter recommending the Deceased to appoint as Sweeper Class-4 after his retirement
51	Copy of Appointment Letter of the Deceased as Sweeper after his retirement
52	Copy of Bank Statement of Deceased from 01-06-2022 to 21-12-2022 showing the details about the Pension amounts
53	Copy of Bank Pass-Book showing the details about the Pension amounts deposited in the Bank Account of Deceased
54	Copy of Charge-sheet
55	Copy of Driving Licence of Opponent No.1
56	Copy of Certificate of Registration of Truck
57	Copy of Insurance Policy of Truck
58 & 59	Insurance Policies of Truck

5. I have heard Ld. Advocates for the parties and perused the record. I have also considered the written arguments submitted

by Ld. Advocate for the applicants which is recorded at Ex.63 and written arguments submitted by the Ld. Advocate for the opponent No.2 – Insurance Company which is recorded at Ex.64.

6. At this stage, it is worthy to note that, while deciding the point of negligence, it has to be borne in mind that the negligence is required to be proved in Claim Petition under section-166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of **Bimla Devi Vs H.R.T.C.,** reported in **AIR 2009 SC 2819 and Parmeshwari Devi Vs. Amir Chand,** reported in **2011 (11) SCC 635.**

7. So far as the negligence is concerned, the **claimant No.1 – Prakashbhai Chhaganbhai Vegad,** son of the deceased deposed on oath *vide* Ex.28 that, on 06-12-2022 at around 06.30 pm, the deceased was going on Bhavnagar – Rajkot Highway Road by walking on correct side of the road and when he reached near the place of accident, at that point of time, the opponent No.1 who came there by driving an Ashok Leyland Transit Mixer Truck bearing registration No.GJ-04-AT-0864 in rash and negligent manner, in excessive speed, endangering the human life and, therefore, he lost control over the steering and dashed his vehicle with the deceased and because of that accident, the deceased sustained grievous injuries and ultimately, he succumbed to the said injuries. It is alleged that the above referred accident has occurred because of rash and negligent driving of the opponent No.1.

7.1 To prove the negligence, the claimants have produced the copy of FIR at Ex.29 and Charge-sheet at Ex.54. The bare perusal of the FIR (Ex.29) and Charge-sheet (Ex.54) depicts the fact that the same is laid against the opponent No.1 and the opponent No.1 has not challenged the FIR before any forum that a false complaint was lodged against him. The further perusal of the Panchnama of Scene of Offence (Ex.30) depicts the fact that the said Truck was not found at the place of accident meaning thereby, immediately after causing the accident, the Driver of the said Truck ran away from the place of accident with his vehicle and, therefore, in the opinion of this Tribunal it is the great negligence on the part of Driver of the said Truck. Thus from the above referred discussion, it clearly appears that at the time of accident, the Driver of the said Truck was driving the said Truck in rash and negligent manner and in careless manner and, therefore, the accident occurred. Thus, all these facts prove the rash and negligent driving of the Driver of the said Truck No.GJ-04-AT-0864 - opponent No.1. Therefore, I hold that the rider of the said Truck No.GJ-04-AT-0864 - opponent No.1 was solely negligent in causing the accident.

7.2 At this juncture, I would like to note that the opponents have not examined the Driver of the alleged offending vehicle to lead evidence in rebuttal. Therefore, as per the decision of the Hon'ble Gujarat High Court reported in **2001(2) GCD 1448 (Guj.)** In the case of **Ahmedabad Municipal Transport Service Vs. Hansaben Natvarlal Dabgar**, an adverse inference is required to be drawn against the said Driver and Owner. Moreover, the Charge-sheet is also laid against the Driver of the said vehicle and in view of the ratio, laid down in the case of **New India Assurance Co. Ltd. Vs. Pazhaniammal, 2012 ACJ 1370 Kerala HC**, the filing of Charge-sheet is sufficient to hold that the alleged accident was caused because of the rash and negligent driving of the Driver of the offending vehicle. There is no involvement of any other vehicle in the accident.

7.3 Further, it is transpired from the FIR, Inquest Panchnama and PM Report that in the said accident, above named deceased -victim succumbed to the accidental injuries.

7.4 Hence, in above view of facts and circumstances, I hold that the deceased died because of rash and negligent driving on part of the Driver of the said Truck No.GJ-04-AT-0864. Hence, the issue No.1 is answered in the affirmative accordingly.

ISSUE NO.2 :

8. **The claimant No.1 – Prakashbhai Chhaganbhai Vegad –** son of the deceased has filed the affidavit of examination-in-chief and same is recorded at Ex.28. Claimant No.1 has deposed that at the time of accident, deceased was retired as a Sweeper from Community Health Centre, District Bhavnagar on 31-01-2016 due to superannuation and he was getting Rs.16,000/- p.m. as pension and in addition thereto, after his retirement, he was doing work as a Sweeper in a private firm and getting Rs.8000/- p.m. and thereby, the deceased was getting total Rs.24,000/- p.m. In support of such averments, the claimants have produced various documents containing certificates, letter, bank account details, etc. vide Exs.47 to 53 and the bare perusal of of these document

depicts that the deceased was retired as Sweeper from the Community Health Centre, District Bhavnagar and he was getting Rs.16,000/- pension per month and thereafter, after his retirement, he was working as a Sweeper in the private firm and was earning Rs.8000/- per month. The other side has not rebutted this aspect by producing any cogent and reliable evidence on record. Therefore, looking to the age, nature of work and living standard of this district, this Tribunal thinks it fit to consider income of the deceased as **Rs.24,000/- p.m. i.e. Rs.2,88,000/- p.a.**

9. As far as application of multiplier is concerned, this Tribunal is of the opinion that, multiplier should be applied based on the age of the deceased at the relevant point of time i.e. on the date of accident. In the present case, as per Aadhaar Card (Ex.33) and the Letter of Superannuation of the deceased (Ex.48), the date of birth of the deceased is 17-01-1956 and the accident has occurred on 06-12-2022. Therefore, at the time of accident, the age of the deceased was about 66-years, 10-months and 19-days years i.e. 67 years. Therefore, the age of the deceased is considered as **67** years at the time of accident. Therefore, the claimants are entitled for a multiplier of **05**.

10. Since at the time of accident, the age of the deceased was 67 years i.e. above 60 years, in view of the ratio laid down by the Larger Bench of the Hon'ble Supreme Court rendered in the case of **National Insurance Company Vs. Pranay Sethi, 2017 (16) SCC 680,** this Tribunal does not think it fit to award any increase in the income of the deceased.

11. It is an admitted fact that the deceased has left behind him, his two sons aged 37 years and 35 years respectively. As per the ratio, laid down by the Hon'ble Supreme Court in the case of **Sarla Verma Vs. Delhi Transport Corporation,** reported in **(2009) 6 SCC 121**, in a fatal case of a man, his wife, minor children and mother can be held to be the dependents on the deceased. Hence, in view of ratio, laid down in the case of **Sarla Verma** *(supra)*, the claimants i.e. major sons of the deceased cannot be termed as dependents on income of the deceased – father and, therefore, the claimants are not held to be dependents on income of the deceased.

12. The deceased left behind him his two major sons, therefore, 1/2 amount i.e. **Rs.1,44,000/- (2,88,000 / 1/2)** is required to be deducted towards the personal expenses of the deceased, to arrive at just compensation. Hence, the amount would come to **Rs.1,88,000/- (Rs.2,88,000/- - 1,88,000/-).** Since the deceased was aged about **67** years, applying the multiplier of **05**, the amount would come to **Rs.7,20,000/- (1,44,000/- x 05) i.e. Rs.7,20,000/-.**

13. As this Tribunal is deciding the Claim Petition in the year **2026**, as held in para No.61(viii) of the **Pranay Sethi's** case that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of **10% in every three years**. As **nine** years have been passed form the date of the pronouncement of the **Pranay Sethi's** case, I deem it fit to enhance the amount to

be paid under the conventional head at the rate of **30%**. Therefore, as per the directions of Hon'ble Supreme Court in **Pranay Sethi's** case, petitioners are entitled for **Rs.19,500/-** towards loss to estate and **Rs.19,500/-** towards funeral expenses.

14. So far as grant of consortium to the applicant is concerned, the Hon'ble Apex Court in the latest judgment in case of **Magma General Insurance Com. Ltd. Vs. Nanu Ram @ Churhu Ram, 2018 (18) SCC 130 and United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur, 2020 SCC Online 410 (SC) (FB) and N.I.A Com. Vs. Smt. Somwati, 2020 (9) SCC 644** has categorically held that in addition to spouse, the children are entitled for parental consortium in case of death of a parent and Filial Consortium is the right of the parents to compensation in case of death of a child and the amount to be awarded for loss of consortium will be as per the amount fixed in **Pranay Sethi's** case. Furthermore, the Hon'ble Apex Court has categorically given direction to the Tribunals and High Courts to award compensation for loss of consortium as a legitimate conventional head. Hence, in above view of facts and circumstances, this Tribunal is duty bound to follow the directions issued by the Hon'ble Apex Court in the above judgment.

14.1 Hence, in this case, the applicants are entitled for Parental Consortium of **Rs.52,000/-** each **i.e. total Rs.1,04,000/-.** Hence, the applicants are entitled to the total amount of compensation as under :

PARTICULARS	**AMOUNT**
FUTURE LOSS OF DEPENDENCY	RS. 7,20,000/-
LOSS TO ESTATE	RS.00,19,500/-
FUNERAL EXPENSES	RS.00,19,500/-
CONSORTIUM	RS.01,04,000/-
TOTAL AMOUNT OF COMPENSATION	**RS.8,63,000/-**

LIABILITY :

15. So far the liability to pay amount of compensation to the claimants is concerned, the Ld. Advocate for the Insurance Company submitted that the Insurance Policy produced at Ex.57 to 59 reveals the fact that the Insurance Policy was transferred in the name of Krisahna R.M.C. on 27-12-2022 whereas, the accident occurred on 06-12-2022 and as such, on the date of accident, Krisahna R.M.C. was not owner and the original owner of the Truck, namely, L.R.Patel & Company has not been joined and, therefore, the Insurance Company cannot be held liable to pay the amount of compensation.

16. *Per contra,* the Ld. Advocate for the claimants submitted that from Ex.57, it becomes clear that the offending vehicle was transferred in the name of opponent No.2 with effect from 03-08-2022 and the Insurance Policy further depicts the fact that the Insurance Policy was valid for the period between 03-06-2022 to 02-06-2023 and only because the Insurance Policy was later on transferred in the name of Krisahna R.M.C. on 27-12-2022 would not sufficient enough to absolve the Insurance Company from paying the amount of compensation.

17. I have heard the Ld. Advocates for the parties on the above referred point.

17.1 It is not in dispute that the offending vehicle was initially registered in the name of L.R.Patel & Company. The offending vehicle was disposed of by L.R. Patel & Company to Krisahna R.M.C. - present opponent No.1 on 03-08-2022 and necessary entry in this respect has been affected. In this connection, the document produced at Ex.57 is required to be taken into consideration. The bare perusal of the said document clearly depicts the fact that the offending vehicle was transferred in the name of opponent No.1 with effect from 03-08-2022. It is also required to be noted that the Insurance Policy produced at Exs.57 to 59 clearly reveals the fact that the offending vehicle bearing registration No.GJ-04-AT-0864 was insured by the opponent No.2 – Insurance Company and the validity period of the Insurance Policy was between 03-06-2022 to 02-06-2023. It is also not in dispute that the Insurance Policy was transferred in the name of opponent No.1 with effect from 27-12-2022 and only because the Insurance Policy was transferred in the name of opponent No.1 with effect from 27-12-2022 would not absolve the Insurance Policy from paying the amount of compensation because, on the date of accident i.e. 06-12-2022, the Insurance Policy was in existence and the opponent No.2 had assumed the risk and also agreed to indemnify the owner of the vehicle bearing registration No.GJ-04-AT-0864. Even in view of the provisions contained under section-157 of the MV Act, the Insurance Company cannot escape its liability to pay the amount of compensation on the count that on the date of accident, the

Insurance Policy was not running in the name of opponent No.1. In view of above referred discussion, I hold that the Insurance Company is liable to pay the amount of compensation.

17.2 As discussed hereinabove, deceased died in a vehicular accident involving Ashok Leyland Transit Mixer Truck bearing registration No.GJ-04-AT-0864 and as the opponent No.1 was Owner and opponent No.2 was the Insurance Company of the said Truck, the opponents Nos.1 and 2 are liable to pay the aforesaid amount of compensation to the applicants jointly and severally.

INTEREST :

18. The claimant has prayed for interest at the rate of 9% per annum. At this juncture, I have sought guidance from the judgment of the Hon'ble Constitutional Bench of the Hon'ble Apex Court, in the case of **Pranay Sethi** *(supra)*, wherein, the Hon'ble Apex Court has allowed interest at the rate of 09% p.a. Hence, I hold that the claimant is entitled for interest at the rate of 09% p.a.

19. The issue No.2, is, therefore, answered accordingly and the following final order is passed in the interest of justice.

-: O R D E R :-

[1] The present Motor Accident Claim Petition is partly allowed.

[2] The claimants are entitled to recover the amount of **Rs.8,63,000/- (Rupees Eight-Lakhs, Sixty-Three-Thousand Only)** from the opponents jointly and severally along with proportionate costs and interest at the rate of **09% (Nine**

Percentage) *per annum* from the date of filing the Claim Petition i.e. till the amount is realized.

[3] The aforesaid opponents are directed to deposit the awarded amount within one month from today in this Tribunal.

[4] Out of the amount deposited, deficit Court-Fees, if any and the amount of interim relief, be deducted first.

[5] The amount of compensation shall be equally disbursed among the applicants in the proportion that the applicant No.1 shall get **50%** and the applicant No.2 shall get **50%** each.

[6] The opponents shall deposit the amount in view of the directions contained in Circular issued by this Tribunal which was issued pursuant to the directions of the Hon'ble Supreme Court in Writ Petition No.534/2020, dated 16-11-2021 and out of the deposited amount, **60%** amount be invested in fixed deposit scheme in any Nationalized Bank in the name of the claimants, for a period of five years and same may be released in a phased manner in accordance with Motor Accident Claims Tribunal Annuity Deposit Scheme stipulated in Form XIX of the Amended M.V. Rules, 2022.

[7] The details of the Bank Account/s have been furnished by the claimant/s in the Claim Petition. Therefore, the balance

amount i.e. **40%** of the total compensation shall be released directly in the above referred Bank Account/s of the person/s held entitled to receive the compensation.

[8] In case of minor applicant/s, the whole share shall be invested in fixed deposit scheme in any Nationalized Bank in the name of the minor-applicant/s through his/her natural guardian for a period of five years or till the minor/s become/s major, whichever is later and same may be released in a phased manner in accordance with Motor Accident Claims Tribunal Annuity Deposit Scheme stipulated in Form XIX of the Amended MV Rules, 2022.

[9] The claimants shall not be entitled to get any loan, advance or withdrawal or can not create any encumbrances on the aforesaid FDR without prior permission of this Tribunal. However, interest accrued from time to time on the said FDR may be paid in cash to the claimants.

[10] Award shall be drawn accordingly.

Pronounced and signed in the open Tribunal on today 7th day of August, 2026 at Bhavnagar.

(H.S. MULIA)
Chairman
Motor Accident Claims Tribunal (Main)
Bhavnagar
(Code : GJ00915)

Date : 07-08-2026
Place: Bhavnagar

* * *

Yasin Kalvatar