Received On	28/12/2020
Registered On	28/12/2020
Decided On	18/03/2026
Duration	Y. M. D.

EXHIBIT-

IN THE COURT OF 9th ADDITIONAL DISTRICT JUDGE (M.A.C.P. Auxi.), AT AHMEDABAD (RURAL)
==

M.A.C. Petition No. 1179 / 2020

- **Legal heirs and representatives of deceased Padamchand @ Pappubhai Bhagvandas Agrawal**

1.	Wife	**Krishnaben Padamchand Agrawal** Age : 46 Years, Occu. : Household work,
2.	Son	**Yash Padamchand Agrawal** Age: 18 years, Occu. Study

Both residing at : C/37, Patel Society, Opp. Jivandeep Hospital, Hansol, Ahmedabad.

.....Claimants

VERSUS

Car No. GJ-27-CM-2794

1.	Driver/ Owner	**Chandansingh Jabbarsingh Rajput** R/o. A/404, Satyam Residency, Viratnagar road, 100 Ft. Road, Beside Mangal Pande, Nikol, Ahmedabad.
2	Insurance co.	**Bajaj Alliance General Insurance Co. Ltd.** Add.; 4th Floor, Torcouise building, Nr. Panchvati Circle, C.G. Road, Ellise bridge, Ahmedabad.

Auto Rickshaw No. GJ-18-BU-0252

3.	Owner	**Safimiya Bhikhumiya Pathan** R/o. 413, Prajapati vas, Mu. Kadadara, Tal. Dahegam, Dist. Gandhinagar.
4.	Insurance co.	**Go-Digital Insurance Co. Ltd.** Add.; A/1002, 10th Floor, Ratnakar Nine Square, Nr. Keshav bag, Vastrapur, Ahmedabad.

.....Opponents

<u>Sub. : Claim under Section 166 of Motor Vehicle Act, 1988 to get the amount of compensation of Rs. 31,00,000/- on account of accidental death of Deceased Padamchand @ Pappubhai Bhagvandas Agrawal</u>

- **<u>Appearance :</u>**

1.	Ld. Advocate Mr.P.K. Rathod for the Claimants
2.	Ld. Advocate Mr.G.K. Patel for the Opponent No.2
3.	Ld. Advocate Mr. Y.N. Shah for the Opponent No.4 – Insurance Co.

<u>: J U D G M E N T :</u>

1. The claimants who are heirs and legal representatives of deceased **Padamchand @ Pappubhai Bhagvandas Agrawal** have preferred the present claim petition under Section 166 of Motor Vehicle Act, seeking the amount of compensation of **Rs.31,00,000/-** with interest **@ 15 % p.a.** and costs of the claim petition from the opponents on account death of the deceased, in a motor vehicular accident took place on **31/01/2020.**

2. **<u>Brief facts leading to the present Claim Petition are as under;</u>**

That on 31/01/2020, deceased **Padamchand @ Pappubhai Bhagvandas Agrawal** was returning from his job by Auto Rickshaw No. GJ-18-BU-0252. At about 7:30 am when the rickshaw in which deceased was traveling was passing on the road of Dahegam circle, opponent No. 1, driver of Car No. GJ-27-CM-2794 came with full speed and in rash and negligent manner and dashed with the Rickshaw. In such vehicular accident, deceased sustained fatal injuries and succumbed to such injuries. As per the allegation made in the FIR, it is stated that the aforesaid accident was taken place due to rash and negligent driving of the driver of the aforesaid vehicle. FIR was registered with Police Station. Pursuant thereto present claim petition has been filed.

3. The opponents were duly served. The Opponent No.2 was appeared through his Ld. Advocate and filed reply vide Exh. 22 wherein he contended that accident took place due to sole negligent act on the part of the driver of rickshaw. It is therefore contended that the opponent No. 2 is not responsible to pay compensation.

3.1 Opponent No. 4 insurance company has filed written statement vide **Exh. 17** and denied the contents of claim petition in ***ToTo.*** It is inter-alia contended that this application is not maintainable and not legally tenable. It is further contended that there is no negligence on the part of the driver of vehicle No. GJ-18-BU-0252 entire accident occurred due to the negligence of driver of vehicle No. GJ-27-CM-2794.

4. On behalf of the claimants the following oral as well as documentary evidence are produced :-

ORAL EVIDENCE :

Sr. No.	**Exhibit No.**	**Particulars of document.**
1.	32	Deposition of claimant No. 1 Krishnaben Padmachand Agrawal

DOCUMENTARY EVIDENCE :

Sr. No.	Exhibit No.	Particulars of document.
1	37	Copy of FIR
2	38	True copy of Panchanma of place of incident
3	39	True copy of Inquest panchnama of deceased
4	40	Copy of PM Report
5	42	Copy of charge-sheet
6		Closing pursis

4.1 The Ld. Advocate for the Opponent No. 4 has produced oral as well as documentary evidence as follows.

ORAL EVIDENCE :

Sr. No.	**Exhibit No.**	**Particulars of document.**
1.	50	Deposition of Divakar Dineshkumar Raval

DOCUMENTARY EVIDENCE :

Sr. No.	**Exhibit No.**	**Particulars of document.**
1.	45	Copy of Insurance policy of vehicle No. GJ-18-BU-0252
2.	53	Closing pursis

5. I have heard Ld. Advocates for the respective parties and taken into consideration the oral as well as documentary evidence produced on record.

6. *Per contra*, Ld. Advocate for the opponent No. 2 has submitted that the accident took place due to negligent

driving of the driver of the auto rickshaw and therefore, this Insurance co. is not liable to pay compensation. It is also submitted that there was a composite negligence and this opponent should be exonerated from its liability.

7. On the other hand Ld. Advocate for the opponent No. 4 for the insurance company has submitted in his written arguments that the applicants have failed to prove any negligence on the part of the driver of Rickshaw hence, this opponent is not liable to pay compensation to the applicants. Furthermore, it is submitted that the Rickshaw driver was not holding a valid and effective driving license at the time of accident. It is further submitted that the Insurance co. is not liable to pay compensation as prayed for and therefore, it is submitted that applicant's application should be dismissed with cost. Furthermore, he relied upon following judgments.

1. Civil Appeal No. 10145/2016
2. First Appeal No. 262/2022
3. First Appeal No. 2329/2006
4. MAC. Appeal No. 408/2009
5. Civil Appeal No. 2943/2012
6. SLP (C) No. 10351/2019
7. First Appeal No. 2331/2015
8. First Appeal No. 2180/2012

8. In view of the above, for determination of present claim petition, my Ld. Predecessor has framed following issues.

ISSUES

1. Whether the petitioners prove that deceased died due to the injuries sustained by him in a vehicular accident due to rash and negligent driving of the driver of the vehicle involved in the accident ?

2. Whether the petitioners are entitled to get compensation ? If yes, what amount and from whom ?

3. What award ?

9. My finding to the above stated issues, for the reasons stated below are as under:-

1. In the affirmative.

2. As discussed.

3. As per final order.

REASONS

ISSUE NO.1

10. At this juncture, reference needs to be made toward the judgment of the Hon'ble Gujarat High Court in the case **Shaktabhai Ramabhai Patel v. Meghabhai Bhemabhai Patel 2023(0) JX (Guj) 1138** it was held in para 3.4 as under,

> "3.4 In Mangla Ram Vs. Oriental Insurance Company Limited And ors. (supra), the Apex Court has explained the concept of negligence in connection with the claim compensation cases in the motor vehicular accident. The relevant observation is as under:
>
> *"Negligence is only one of the species for compensation in respect of the accident arising out of the use of motor vehicles. There are other premises for such cause of action. Even if there is no negligence on the part of the driver or owner of the motor vehicle, but accident happens while the vehicle was in use. should not the owner be made liable for damages to the person who suffered on account of such accidents? This question depends upon how far the rule in Fletcher, (19680 LR 3 HL 330 can apply in motor accident cases. Like any other common law principle, which is acceptable to out jurisprudence, the rule in Rylands case can be followed at least until any other new principle which excels the former can be evolved, or until legislation provides differently. Hence, said rule is adopted in claims for compensation made in respect of motor accidents".*

11. In view of the aforesaid dictum of law, while deciding cases arising out of motor vehicular accidents, the standard of proof to be borne in mind by the MAC Tribunal must be of preponderance of probability and not the strict standard of proof beyond all reasonable doubt which is followed in criminal cases.

12. So far as the issue of negligence is concerned, the Claimant has filed affidavit of examination-in-chief and reiterated the contents of the claim petition and in support of his claim petition he has produced the copies of F.I.R., Inquest Panchnama and Panchnama of Place of accident, P.M. Report etc. respectively as described herein above.

13. The said claimant has been cross-examined by the Ld. Adv. for the Opponent No. 2 & 4 wherein she has admitted that she has no personal knowledge about the accident. Further, she stated that she relied on the FIR and Panchnama. She denied that the accident was occurred due to the negligence on the part of the rickshaw driver. Further she admitted that she has not produced any evidence in regard of income of the deceased.

14. Now it is undisputed fact that the FIR was lodged by brother of the deceased. As per the allegations made in the FIR when the deceased was traveling in the auto rickshaw and the alleged accident took place with Car No. GJ-27-CM-2794. Now considering the Panchnama Exh. 38 it appears that the auto rickshaw No. GJ-18-BU-0252 was found there at the spot in a damaged condition. It is clearly mentioned in the Panchnama that rear part of the rickshaw came to be damaged due to the alleged accident and hood of the rickshaw is also found to be in a torn condition Having regard to the aforesaid documentary evidence the one thing can be inferred that the accident took place in a manner as narrated

by the complainant in the FIR. Now considering the evidence on record the opponent No. 2 Insurance co. has failed to examine the driver of the offending car insured with it. The aforesaid fact suggests that being the one of the eye witnesses and being driver of the offending vehicle if the negligency is denied on his part, it is his duty to lead necessary evidence. But such evidence is not brought on record by the defendant No. 1. It is required to be noted that when the FIR is lodged against the driver of car and charge-sheet came to be filed against the driver of the Car hence, in view of the evidence on record this Tribunal comes to the conclusion that the accident took place due to sole negligence driving on the part of the opponent No. 1 i.e. driver cum owner of the Car No.GJ-27-CM-2794. Hence, the opponent No. 1 has been held guilty for the accident. Hence, Issue No.1 is answered accordingly.

ISSUE NO.2 :

QUANTUM OF COMPENSATION:
INCOME OF DECEASED :

15. Now it is the duty of the Tribunal to award just, equitable and fair compensation to petitioner. The expression ‘compensation’ is comprehensive term which includes a claim for the damages. Hon’ble Apex Court in **"Sarla Verma and Others Vs. Delhi Transport Corporation and Another"** reported in **AIR 2009 (SC) 3014** has discussed as under:-

> *“......just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.*”

16. So far as the quantum of compensation is concerned, the Claimant has deposed on oath that; at the time of accident deceased was earning Rs.12,000/- per month. The claimant has not produced any evidence to prove income of the deceased. It is transpired that the claimant has failed to produce any kind of documentary evidence to prove income of the deceased. But only because the applicant has failed to produce any evidence in support of income of the deceased it cannot be presumed that he was not earning and the Tribunal is empowered to presume the monthly income of the applicant. It is also cardinal principle of law that when there is no proof of income of victim of the motor accident, his/her monthly income can be assessed on the basis of the prevailing minimum wages or notional income. In the case of ***Govind Yadav v/s N.I.I.Com.,*** reported in ***2012 ACJ 28 (SC)***, para No.17 it is inter alia held as under,

> " Unfortunately both the tribunal and High Court overlooked that at the relevant time minimum wages payable to a worker were Rs.3,000/- p.m. Therefore, in the absence of other cogent evidence, the tribunal and the High Court should have determined the amount of compensation in lieu of loss of earning by taking the appellant's notional annual income as Rs.36,000/- and the loss of earning on account of 70% disability as Rs.25,200/-p.a."

17. Ld. Advocate for the opponent has argued that as the deceased was minor at the time of accident, there is no income being considered. In this regard this Tribunal thinks it fit to refer Judgment of the Hon’ble Supreme Court in the case of **Hitesh Nagjibhai Patel vs. Bababhai Nagjibhai Rabari, 2025(4) GLH 470** wherein it is inter alia held as under :

> “15 : For the purpose of emphasis, it is again clarified here that when a Tribunal or the High Court in appeal, is

> concerned with the case involving a child having suffered injury or having passed away, the calculation of loss of income necessarily has to be made on the matric of minimum wages payable to a skilled worker in the respective State at the relevant point of time. It is our hope that this restatement helps avoiding such errors and thereby obviates the necessity of this Courts interference, applying well established principles of law.
>
> 16. We may also observe that, in general, i.e. accidents involving adults, we are often confronted with situations where the Minimum Wage Data is not readily available and every so often, the question that has been made up to this court hinges only on the calculation of income. In that view of the matter and in the hope of reducing the claimants need to file appeals to this court or even the High Court, we deem it appropriate to direct that in cases where the claimant has failed to furnish appropriate details of income or adequate proof thereof, it shall be the responsibility and obligation of the contesting party, more particularly the Insurance company to furnish before the Tribunal the applicable minimum wage as duly issued by the concerned government.

18. In view of the aforesaid dictum of law when there is no proof of income, income of the deceased or injured shall be decided by taking into consideration prevailing minimum wages but, the rates of minimum wages has not been produced on record. This tribunal has made a search of the minimum wages prevailing in the year of 2020 for Ahmedabad City Gujarat and it is found that the minimum wages for the aforesaid period has been described as Rs. 9,087/- per month. Thus, in the present matter looking to the nature of the work of the deceased, it is just and proper to consider the notional income of Rs. 9,100/- (round of) per month at the relevant time of accident**.** Hence, considering the same, it is just and proper to consider notional income of **Rs. 9,100/-** as monthly income of the applicant for calculating loss of income and same would not be exaggerated in view of this Tribunal for assessment of the just compensation.

AGE :

19. The Claimant has stated that, at the time of accident deceased was aged about 49 years. It is categorically mentioned by the claimant in his oral testimony wherein he has stated such facts and in the charge-sheet the age of the deceased is mentioned as 49 years. Hence, at the time of accident the deceased was 49 years old hence, it falls within the age group of **46-50 years**. Hence, ***as per the ratio laid down by the Hon'ble Apex Court in "Sarla Verma & Ors. V/s. Delhi Transport Corporation & Anr." reported in "2009 A.C.J. 1298",*** the claimants are entitled to get multiplier of **"13".**

PROSPECTIVE INCOME :

20. As discussed in forgoing para of this judgment, a*s per ratio laid down* ***by the Hon'ble Supreme Court of India, in case of National Insurance Company Ltd. Vs. Pranay Sethi and Ors. SLP(Civil) No.25590/2014, dtd. 31.10.2017****, in* ***Para-61***, treating that deceased was a self employee. Hence, it can be said that deceased was having **self employment** and therefore, **25%** amount is required to be added in a monthly income of deceased which comes to **Rs. 1,36,500/-** (Rs. 9,100/- + 25% i.e. Rs. 2,275/- = Rs. 11,375/- x 12 months).

DEPENDENCY :

21. It is admitted position that; deceased was married having two dependents. Hence, in view of the ratio laid down by Hon'ble Apex Court in case of ***"Sarla Verma & Ors. V/s. Delhi Transport Corporation & Anr." reported in "2009 A.C.J. 1298",*** 1/3 amount is required to be deducted for personal expenses of deceased. Hence, after deducting **1/3** amount of

Rs. 1,36,500/- i.e. Rs. 45,500/- is required to be deducted from the income of the deceased. The net amount of dependency loss which falls in the share of Claimants comes to **Rs.91,000/-** per annum (Rs.1,36,500/- minus Rs.45,500/-).

22. Further, discussed earlier the claimants are entitled to get multiplier of **"13" years.** Hence, claimants are entitled for following amount under the head of future loss of income : (**Rs.91,000/-** x **13 multiplier**) = **Rs.11,83,000/-.**

23. As regards consortium, in view of the judgment of **Hon'ble supreme Court of India in C.A. Nos. 2410-2412/2013 in case of Shri Ram General Ins. Co. Ltd. V/s. Bhagat Singh Rawat & Ors,** relying upon the judgment of ***the Hon'ble Supreme Court of India, in case of National Insurance Company Ltd. Vs. Pranay Sethi and Ors. SLP(Civil) No.25590/2014, dtd. 31.10.2017*** **Magma Gen. Ins. Co. V/s. Nanu Ram 2018 ACJ, 2782, the Hon'ble Apex Court has observed as under :**

> *"61(viii) 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".*

24. Therefore, the claimants who are dependents of the deceased are also granted Rs.40,000/- (with 30% increase i.e. Rs. 40,000 + 12,000/-) Total Rs. 52,000/- under the head of consortium to each of the claimants that is **52,000/- X 2 = 1,04,000/-** and a sum of Rs.19,500/- (With 30% increase) towards loss of estate and Rs.19,500/- (With 30% increase) towards funeral expenses.

25. Thus, in view of the above referred discussions, claimants are entitled for the following amount as just and fair

compensation, which would serve substantial justice to the parties:-

Future loss of dependency	Rs.11,83,000/-
Consortium	Rs. 1,04,000/-
Loss of estate	Rs. 19,500/-
Funeral expenses	Rs. 19,500/-
Medical expenses	--
Total	**Rs. 13,26,000/-**

INTEREST :

26. In the aforesaid Claim Petitions, the claimants side have claimed interest at the rate of **18% per annum.** But, considering the case of ***Jyotiben Bharatbhai Shah v.Mansingh Padamsingh Rajput, reported ACJ 2019 page No:1107*** the Hon'ble High Court has allowed **9%** interest, and considering fact & circumstances of this case, I award simple interest at the rate of **9%** per annum from the date of the application till realization.

LIABILITY :

27. As discussed in the Issue No.1, the driver of Car No. GJ-27-CM-2794 was the sole negligent for occurrence of accident. In the case on hand, the R. C. Book & Ins. Policy of aforesaid vehicle are produced. From the perusal of the said documents, particularly the copy of insurance policy, it appears that; on the date of accident, the Opponent No.1 was registered owner of aforesaid vehicle and the said vehicle was insured with Opponent No.2 - Ins. Co. for the period from **01/05/2019 to 30/04/2020**. The accident took place on **31/01/2020**. Therefore, on the date of accident the Ins. Policy was in force. Hence, as discussed herein above, Insurance Company opponent No. 2 is liable to indemnify the amount of compensation to the owner i.e. opponent No. 1 of the alleged

vehicle. In view of the aforesaid discussion and legal and factual aspect of the case, all the opponents are held jointly and severally liable to pay the compensation to the claimants. Hence, the Issue No. 1 & 2 are answered accordingly.

<u>Issue No. 3 :</u>

28. In view of the above discussions and factual and legal position of the case, this Tribunal deems it fit to pass the following final order.

: <u>ORDER :</u>

1. The present claim petition is hereby **partly allowed** and the Claimants are entitled to get the amount of compensation **Rs.13,26,000/- (Rupees Thirteen Lakhs Twenty Six Thousand Only)** with the proportionate cost and interest at the rate of **9%** per annum, from the date of the claim petition till its realization from the opponents No. 1 & 2 and all the opponents are held jointly and severally responsible to pay the aforesaid compensation to the claimants.
2. The Opponent No. 2, Bajaj Alliance General Insurance Co. Ltd. is hereby directed to deposit in the Office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any, paid u/s.140 of Motor Vehicle Act, within 30 days from the date of this order.
3. Deficit Court Fees stamp, if any, be recovered from the awarded amount.
4. Thereafter, the remaining amount is ordered to be paid to the claimants from the compensation. Thereafter, 30% amount is ordered to be paid to the claimants in equal proportion by way of account payee cheque after due verification and remaining 70% amount shall be invested in FDR in the name of the

claimants in any Nationalized Bank of their choice for a period of 5 years.

5. The concerned Bank is directed not to grant any loan, advances or withdrawal against the aforesaid all FDRs without obtaining prior permission of this Tribunal. However, the claimant will be at liberty to withdraw the periodical interest accrued on the said FDRs. Further, on completion of the aforesaid F.D. period, the bank is directed to release the F.D. amount without any order of this Tribunal.
6. The opponents shall follow the guidelines of Hon'ble Gujarat High Court given in R/Special Civil Application No. 4800 of 2021 in case of The Oriental Insurance Co. Ltd., V/s. Chief Commissioner of Income Tax (TDS), decided on 05/04/2022, with regard to the Income Tax Liability.
7. The amount shall be deposited through NEFT or RTGS in the Bank Account with below mentioned details :

Bank Account Name	:	“PRINCIPAL DIST JUDGE ABAD RURAL MACP"
Account No.	:	00000040722625356.
IFSC Code	:	SBIN0000301.

8. Award be drawn accordingly.
9. If any application/s is/are pending for disposal is/are hereby disposed off in terms of the above observations accordingly.

Signed and pronounced in the Open Court today on this 18th day of March, 2026.

Digitally signed by
SANJAYKUMAR CHHAGANBHAI MAKVANA
on 18/03/2026 17:43:22 IST.

Place : Ahmedabad
Date : 18/03/2026.

(Sanjaykumar Chhaganbhai Makvana)
M.A.C.T. (Aux) &
9TH ADDL. DISTRICT JUDGE,
AHMEDABAD (RURAL).
[Code No :GJ00920]