



Received On	18/11/2016
Registered On	18/11/2016
Decided On	13/03/2026
Duration	Y. M. D.

EXHIBIT-

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

=====

M.A.C. Petition No. 1057 / 2016

➤ **Legal heirs and representatives of deceased Arvindsinh Shivduttsinh @ Lala Rajput**

1.	Wife	Sanjusinh Wd/o. Arvindsinh Age : 26 Years, Occu. : Household work
2.	Daughter	Minor Sakshisinh D/o. Arvindsinh Age : 7 Years, Occu. : Study
3.	Daughter	Minor Nencysinh D/o. Arvindsinh Age : 5 Years, Occu. : Study
4.	Son	Minor Rudra S/o. Arvindsinh Age : 3 Years, Occu. : Study
5.	Daughter	Minor Supriyasinh D/o. Arvindsinh (Deleted) Age : 2 months, Occu. : --
6.	Father	Shivduttsinh @ Lala Satyanarayansinh (Deleted) Age : 65 Years, Occu. : Retired
7.	Mother	Kamalasingh W/o. Shivduttsinh Age : 55 Years, Occu. : Household work

Residing at : Itkuti village, Post Ajgait, Tal. Hasanganj, Dist. Unnav, Uttar Pradesh.

.....Claimants

VERSUS

Tanker No. GJ-19-U-2549

1.	Driver	Vijaykumar Budhiram Gaud (Deleted) R/o.: 223, Santokram's house, Nr. Palanpur Jakatnaka, Ramnagar, Surat.
2.	Owner	Avdheshkumar P. Yadav R/o. Shop No. C/3, Sarvodaya Apartment, Opp. Nilam Hotel, National Highway No. 8, Kadodara, Tal. Palsana, Dist. Surat.
3.	Insurance co.	The New India Assurance Co. Ltd. Add. Hub, Popular House, Opp. Sales India, Ashram road, Ahmedabad.

.....Opponents

Sub. : Claim under Section 166 of Motor Vehicle Act, 1988 to get the amount of compensation of Rs. 25,00,000/- on account of accidental death of Deceased Arvindsinh Shivduttssinh @ Lala Rajput

➤ **Appearance :**

1.	Ld. Advocate Mr. B.S. Solanki for the Claimant
2.	Ex-parte for the Opponent No.2
3.	Ld. Advocate Mr. P.K. Parmar for the Opponent No.3

: J U D G M E N T :

[1] The claimant who is heir and legal representative of deceased **Arvindsinh Shivduttssinh @ Lala Rajput** has preferred the present claim petition under Section 166 of Motor Vehicle Act, seeking the amount of compensation of **Rs.25,00,000/-** with interest @ **18 % 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 **18/04/2016.**

[2] Brief facts leading to the present Claim Petition are as under;

That on 18/04/2016, deceased was going to Dhobighat from Chandkheda on the motorcycle No. GJ-1-PJ-4756 with his colleague Rajendraprasad. The motorcycle was being driven by Rajendraprasad with proper care and caution. At about 10:15 a.m. when they passing on the road of D-Cabin, Railway Fatak, opponent No.1 driver of Tanker No. GJ-19-U-2549 came with full speed and in rash and negligent manner dashed with the motorcycle of the deceased and in such vehicular accident, he 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 offending vehicle. Pursuant thereto present claim petition has been filed.

[3] The opponents were duly served. Opponent No. 3 has appeared through his learned advocates. Opponent No.3 filed written statement vide **Exh. 13**. The opponent No. 3 has contended and denied the contents of claim petition in **ToTo**. Opponent No. 3 inter alia contended that accident took place due to sole negligent act on the part of the driver of the motorcycle. It is therefore contended that the opponent No. 3 is not responsible to pay compensation. It is inter-alia contended that the tortfeasor being driver of the motorcycle is responsible for the accident and therefore the insurance company cannot be held liable to pay the compensation. It is therefore contended that the claim petition should be dismissed.

[4] On behalf of the claimant the following oral as well as documentary evidence are produced :-

ORAL EVIDENCE :

Sr. No.	Exhibit No.	Particulars of document.
1.	22	Deposition of Sanjusingh wf/o. Arvindsinh

DOCUMENTARY EVIDENCE :

Sr. No.	Exhibit No.	Particulars of document.
1.	25	Copy of Police complaint
2.	26	Copy of charge-sheet
3.	27	Panchnama of place of offence
4.	26	PM Note
5.	29	Closing pursis

4.1 The Ld. Advocate for the Opponent 2 has produced neither oral nor documentary evidence.

[5] I have heard Ld. Advocates for the respective parties and taken into consideration the oral as well as documentary evidence produced on record. Ld. Advocates for the respective parties have filed their written arguments vide Exh. 31 & 32 respectively. I have gone through the written arguments.

[6] 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 the deceased died due to the injuries sustained by him in the vehicular accident arisen out of use of Tanker bearing Registration No. GJ-19-U-2549 ?
2. Whether the petitioners are entitled to get compensation ? If yes, what amount and from whom ?
3. What order and award ?

[7] 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 & 2

[8] 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 Bhembhai 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".

8.1 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.

- [9] So far as the question of negligence is concerned, the claimant has filed affidavit of examination-in chief at **Exh. 22**, in which she has reiterated the facts of the petition. The claimant was cross-examined by learned advocate for the Insurance company, in which she has admitted that she has not seen the alleged accident. Considering the cross-examination nothing contrary has been elicited therefrom.
- [10] The applicant has produced the copy of FIR, panchnama of scene of occurrence. From the above documents, it appears that FIR was lodged by the complainant against the driver of the Tanker No. GJ-19-U-2549. In the panchnama, the surrounding position of the place of incident has been described in great detail. Having considered the aforesaid documents i.e. FIR, panchnama etc., it is proved that the accident between the two vehicles as per the narration of the claim petition has been taken place. Hence, the alleged accident is proved to have taken place.
- [11] Now it is undisputed fact that the FIR was lodged by person namely Rajendraprasad Gambhirprasad. It is transpired that he and the deceased went to their destination with the motorcycle of the complainant and the deceased was riding as a pillion rider. Therefore, it is clear that FIR came to be lodged against the offending vehicle Tanker. In the FIR it is categorically mentioned that the offending vehicle Tanker came from the backside and dashed with the motorcycle being driven by him. In view of the aforesaid evidence and settled proposition of law that the negligency can be solely attributed to the vehicle against which FIR is lodged. In the present case also FIR came to be registered against

opponent No. 1 Vijaykumar and charge-sheet has been filed against him. Considering the evidence on record it is proved that the accident took place due to sole negligent driving of the offending vehicle Tanker No. GJ-19-U-2549 and therefore, he is found to be responsible for the aforesaid accident. Hence, Issue No.1 is decided accordingly.

ISSUE NO.2 :

**QUANTUM OF COMPENSATION:
INCOME OF DECEASED :**

- [12] 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."

- [13] So far as the quantum of compensation is concerned, the Claimant has deposed on oath that; at the time of accident deceased was aged about 29 years and earning Rs.15,000/- per month by doing fabrication work contract. The claimant has not produced any documentary evidence in support of his submissions regarding income of the deceased. At this juncture 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. 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."

[14] In view of the aforesaid dictum of law when there is no proof of income, income of the deceased or injured claimant shall be decided by taking into consideration prevailing minimum wages. Thus, in the present matter looking to the nature of the work of the applicant at the time of accident, to assess the notional income of the applicant, it is just and proper to consider the minimum wages prevailing at the relevant time of accident **in the year of 2016** is required to be produced by the opponent No. 3, Insurance company but the Insurance co. has failed to bring the minimum wages on record. **Hitesh Nagjibhai Patel vs. Bababhai Nagjibhai Rabari, 2025(4) GLH 470** wherein it is inter alia held as under :

"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.**"

[15] Applying the aforesaid ratio, is duty of the Insurance company to furnish before the Tribunal the applicable minimum wages

as duly issued by the concerned Government but the Insurance co. has failed to do so. This Tribunal has tried to find out the minimum wages prevailing in the year of 2016 and it is found that Rs. 313.80/- was daily minimum wages. Therefore, Rs. 9,414/- round of **Rs.9,500/-** is required to be considered as monthly income of the deceased.

AGE :

- [16] The Claimant has stated that, at the time of accident deceased was aged about 29 years. It is borne out from the PM Note para-7, age of the deceased has been shown as 29 years. The claimant has also deposed similar facts in his oral testimony. In the cross-examination the same fact has been narrated. Therefore, it is proved that; on the date of death of the deceased was aged about **29 years**. Hence, on the date of death deceased falls within the age group of **26-30 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 **"17"**

PROSPECTIVE INCOME :

- [17] As discussed in forgoing para of this judgment, on the date of accident and death of the deceased, he was aged about 55 years and fall within the age group of 26-30 years. So, *as 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, **40%** amount is required to be added in a monthly income of deceased which comes to **Rs.**

1,59,600/- (Rs. 9,500/- + 40% i.e. Rs. 3,800/- = Rs. 13,300/- x 12 months).

DEPENDENCY :

[18] It is admitted position that; deceased was married and there are five 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"***, 1/4 amount is required to be deducted for personal expenses of deceased. Hence, after deducting **1/4** amount i.e. **Rs.39,900/-**, the net amount of dependency loss which falls in the share of Claimants comes to **Rs.1,19,700/-** per annum (**Rs.1,59,600/-** minus Rs.39,900/-).

[19] Further, discussed earlier the claimants are entitled to get multiplier of **"17" years**. Hence, claimants are entitled for following amount under the head of future loss of income :
(**Rs.1,19,700/-** x **17 multiplier**) = **Rs. 20,34,900/-**.

[20] 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".

[21] Therefore, the claimants who are dependents of the deceased are also entitled to get consortium of Rs.40,000/- (with 20% increase i.e. Rs. 40,000 + 8,000/-) Total Rs.

48,000/- per claimant is required to awarded which comes to **Rs.2,40,000/-** (Rs. 48,000/- x 5) under the head of consortium and a sum of Rs.18,000/- (With 20% increase) towards loss of estate and Rs.18,000/- (With 20% increase) towards funeral expenses.

[22] 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 income	Rs. 20,34,900/-
Consortium	Rs. 2,40,000/-
Loss of estate	Rs. 18,000/-
Funeral expenses	Rs. 18,000/-
Medical expenses	---
Total	Rs. 23,10,900/-

INTEREST :

[23] In the aforesaid Claim Petitions, the claimants 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 :

[24] As discussed in the Issue No.1 and considering the written statement filed by the Insurance co. opponent NO. 3 Exh. 13 it is categorically admitted that Insurance co. has issued policy No. 23090131150100001677 covering the risk of tanker No. GJ-19-U-2549 for the period from dt.**27.06.2015** to

26.06.2016. Considering the aforesaid admitted fact the vehicle was insured with opponent No. 3. The accident took place on **18/04/2016**. Therefore, on the date of accident the Insurance Policy was in force. Under the circumstances, both the opponents No. 2 & 3 being owner and insurer are held jointly and severally liable to pay the compensation. So far as the indemnity is concerned, the Insurance company i.e. opponent No. 3 is held liable to indemnify the opponent No. 2. In view of the aforesaid discussion and legal and factual aspect of the case, the Issue No. 1 and 2 are answered accordingly.

Issue No. 3 :

[25] 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.

: ORDER :

1. The present claim petition is hereby **partly allowed** and the Claimants are entitled to get the amount of compensation **Rs.23,10,900/- (Rupees Twenty Three Lakhs Ten Thousand Nine Hundred Only)** with the proportionate cost and interest at the rate of **9%** per annum, from the date of the claim petition until its realization from the opponents No. 2 & 3 and they are held jointly and severally liable to pay the said compensation amount to the claimants.
2. The Opponent No. 3 Insurance company 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. The awarded amount would be distributed in equal proportion between the all the applicants. Thereafter, 30% amount is ordered to be paid to the **claimants No. 1 & 7** as directed herein above by way of account payee cheque or RTGS after due verification and remaining 70% amount shall be invested in FDR in the name of applicants No. 1 & 7 in any Nationalized Bank of their choice for a period of 5 years.
5. **It is further directed that the entire amount as awarded to the claimant No.2, 3 & 4 i.e. minor applicants (in proportion) shall be invested in FDR in the name of claimant No.2, 3 & 4 in any Nationalized Bank of their choice for the period until they attain majority or for the period of 5 years whichever is later. The applicant No.1 is hereby appointed as guardian of applicant No. 2,3 & 4 accordingly.**
6. 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 claimants 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.
7. 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.
8. 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.

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

**Pronounced and signed in the Open Court today on this 13th
day of March, 2026.**

Place : Ahmedabad
Date : 13/03/2026.

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