GJBH010032022019	FILED ON / REGISTERED ON	16.11.2019
	DATE OF DECISION	06.06.2026
	DURATION	**06Y-06M-21D**

Before the 2nd Additional District and Sessions Judge cum Motor Accident Claim Tribunal (Auxiliary) at Bharuch.

सत्यमेव जयते

<u>MAC PETITION No.531 of 2019</u>

Exh. ______

<u>Claimants</u>:-

1	**Nitalkumari Rajeshbhai Patel** Age: 46 years, Occupation: House hold work
2	**Nensiben Rajeshbhai Patel** Age: 22 years, Occupation: Study,
3	**Rahulkumar Rajeshbhai Patel** Age : 20 Years, Occupation : Study,
4	**Saraswatiben Maganbhai Patel** Age : 68 Years, Occupation : House hold work,
	All are Residing at : 1, Yogi Township, Behind Nandini park, Link Road, Bharuch.

Versus

<u>Opponents:-</u>

1.	**Rajal Rigneshkumar Patel, Legal heirs of late Rigneshkumar Arvindbhai Patel** Age : Adult, Occupation: Driver / Owner **<u>Residing at:</u>** Patel Faliya, Behind Railway Station, Juna Bazar, At & Po.Ta. Karjan, Dist. Vadodara.
2.	**Reliance General Insurance Co. Ltd.** **<u>Office functional at:</u>** Zodiac Avenue, Third Floor, Opp. Mayour's Bunglows, Law Garden, Ahmedabad.
3.	**Umeshkumar Ramprakash Yadav** Age : Adult, Occu. Driver, R/o. C/o. Kanubhai Ramswaroop Aggarwal, Vinayak Road Carriers, 404, Shri Jalaram Complex, Behind Reliance Colony, Icchapor, Hajira, Surat.
4.	**Kanubhai Ramswaroop Aggrawal** Age : Adult, Occu. Business, R/o. Vinayak Road Carriers, 404, Shri Jalaram Complex, Behind Reliance Colony, Icchapor, Hajira, Surat.
5.	**HDFC Ergo General Insurance Co.** (Insurance Company of the Truck) **<u>Office functional at:</u>** Above HDFC Bank, Link Road, Bharuch.

CLAIM PETITION FILED UNDER SECTION - 166 OF THE MOTOR VEHICLE ACT, 1988, CLAIMING COMPENSATION TO THE TUNE OF Rs.1,00,00,000/- ALONG-WITH INTEREST AT THE RATE OF 18% <u>PER ANNUM.</u>

Appearance:

Learned Advocate Mr. P.A. Sindha, appearing for and on behalf of claimants.
Opponent nos.1, 3 & 4……...
Learned Advocate Mr. P.G.Shah appearing for and on behalf of the opponent no.2 – Insurance Company.
Learned Advocate Mr. C.B. Modi appearing for and on behalf of the opponent no.5 – Insurance Company.

: J U D G E M E N T :

1. The present claim petition has been filed by the legal representatives of Rajeshbhai Maganbhai Patel (in short 'deceased') who is alleged to have died in a motor vehicular accident, occurred near the sim of Mankva village, Vadodara – Ahmedabad Express way, Ta. Mehmadabad, Dist. Kheda.

1a. Claimants, by way of present claim, have averred that on 30/09/2019, the deceased Rajeshbhai Maganbhai Patel was traveling for business work to Palanpur and Khedbrahma along with friends in an Ertiga Car No. GJ 06 HD 4642, owned by opponent no.1. At that time, the said Ertiga Car was being driven at high speed by deceased Rigneshkumar Arvindbhai Patel. When they reached the place of the accident, opponent no. 3 was driving his trailer No. GJ 05 UU 5656 at high speed. At that time, the Ertiga

Car driven by Rigneshkumar Arvindbhai Patel collided from behind with the trailer of opponent no.3. Due to this, the husband of the applicant no.1 sustained serious head & chest injuries and he died on the spot. Regarding the said accident, an offence has been registered at Mehmedabad Police Station vide CR. No. I 106/2019.

1b. The deceased was engaged in civil construction work under the name of Aakar Engineers and was earning approximately Rs.5,00,000/- per annum. He was an income tax payer. He also owned agricultural land at Nand, Ta. & Dist. Bharuch, and was earning approximately Rs.2,00,000/- per annum from agriculture. Thus, the deceased was earning approximately Rs.7,00,000/- per annum. At the time of the accident, he was only 48 years old. Had he not died in the accident, he would have progressed further and earned higher income and would have properly maintained and supported the family. The claimants were completely dependent on the income of the deceased. The claimants have suffered future financial loss. Claimant no.1 has lost the love, care and affection of her husband. Claimant nos. 2 to 4 have also lost the love, affection and care of their father. Claimant no.4 has also lost the love, affection, and care of her son in her old age. Considering all the above circumstances, for present and future financial loss, loss of future prospects, loss of love and affection, funeral expenses, pain, shock and suffering etc., this claim petition has been filed to recover an amount of compensation of Rs.1,00,00,000/- from the opponents.

1c. Considering the circumstances in which the deceased died, the accident occurred due to the negligence and carelessness (rash and negligent driving) of the driver of the Ertiga car and opponent no.3. The said vehicle was being driven at high speed, against traffic rules, and without regard for human life, due to which the accident occurred. At the time of the accident, the driver of the Ertiga Car was driving the vehicle owned, and opponent no.3 was driving the vehicle owned by opponent no.4. Therefore, opponent nos. 1 and 4 are also liable to pay compensation. Further, opponent no. 2 and 5, being the insurance companies of the vehicles involved in the accident, are also liable to pay compensation.

2. Upon the petition being admitted, notices were issued to the opponents and they have been duly served.

2a. Opponent no.2 – **Reliance General Insurance Company has** appeared through its Ld. Advocate and filed written reply at Exh.27, wherein, the opponent no. 2 has denied all the averments of the claim petition except those which are specifically admitted. Opponent no.2 has denied the age & income of the deceased. It is denied that the accident took place on 30.09.2019 on the Express Highway from Vadodara to Mahemdabad near Mankva village involving Maruti Ertica Car No. GJ 06 HD 4642 and Trailer No. GJ 05 UU 5656 & the said Maruti Ertica Car is insured for the period of 07/03/2019 to 06/03/2020. The driver of the said Maruti does not have valid and effective driving license. It is denied that the driver of the Maruti Ertica Car drive his vehicle rashly & negligently and dashed with the Trailer No. GJ 5 UU 5656. It is stated that the driver of the Trailer No. GJ 5 UU 5656 all of a sudden applied brake on the express way and car dashed from behind with the Trailer and therefore driver of the Trailer was negligent. Consequently, prays to dismiss the claim petition with costs.

3. Opponent No.5 – **HDFC Ergo General Insurance Company Ltd.** through Learned Advocate Mr. C.B.Modi who has filed his written reply **at Exh.14**, wherein, the opponent no.5 has denied all the averments of the claim petition except those which are specifically admitted. It has denied the age & income of the deceased. It is submitted that the interest of Shri Kanubhai Ramswarup Agrawal in vehicle No. GJ 05 UU 5656 was covered at the material time under the policy of insurance for the period from 01/06/2019 to 31/05/2020. It is further submitted that the accident took place because of sole negligence on the part of driver of vehicle No. GJ 06 HD 4642 i.e. Opponent no.1 and Umeshkumar Yadav was driving his Trailer No. GJ 05 UU 5656 at a moderate speed and on the correct side of the road and was blowing horn as and when found necessary. But, TP Car driver who was driving his car on the middle of the road, in careless manners with full speed and without control of his own car on road without seeing that any vehicle was coming or not and due to his own fault he himself dashed with the Trailer No. GJ 05 UU 5656 from behind and accident took place and there was no negligence on the part of opponent no.3 driver of Trailer and therefore, the driver of the said Trailer can not be held liable for the accident. It is further submitted that all averments in the petition and police papers are against the driver of the TP Car No. GJ 06 HD 4642 and therefore, abated summary filed against driver of said TPV Car. It is further submitted that the Trailer No. GJ 05 UU 5656 was issued for a period from 01/06/2019 to 31/03/2020 and the policy is a Goods Carrying Vehicle Package Policy. It is further submitted that the opponent nos. 1 & 3 were not holding valid and effective driving license. It is denied that the opponent no.3 was driving the Trailer in rash & negligent manner. It is further submitted that the alleged accident took place due to rash and negligent driving of the Ertiga Car by opponent no.1 without valid & effective driving licence. It is further submitted that the opponent no.3 – driver of the Trailer does not have valid and effective driving license. Consequently, prays to dismiss the claim petition with costs.

4. It is pertinent to note here that Learned Advocate for opponent no.2 has moved an application, seeking permission to contest the claim petition on behalf opponent No.1 under section 170 M.V. Act, 1988, vide Exh.33, wherein Ld. Advocate of the claimants has made an endorsement i.e. “No objection”, which was granted by the Motor Accident Claim Tribunal, (Auxi), on 19/03/2024.

4a. It is pertinent to note here that Learned Advocate for opponent no.6 has moved an application, seeking permission to contest the claim petition on behalf opponent Nos.3 & 4 under section 170 M.V. Act, 1988, vide Exh.36, wherein Ld. Advocate of the claimants has made an endorsement i.e. “No objection”, which was granted by the Motor Accident Claim Tribunal, (Auxi), on 19/03/2024.

5. The claimants have adduced following oral as well as documentary evidences:

Sr.No	Nature of Documents	Exh.
Oral Evidences		
1	Claimant no.1 – Nitalkumari Rajeshbhai Patel	**30**
Documentary Evidences		
1	Copy of Police Complaint (F.I.R).	**37**
2	Copy of Panchnama of place of occurrence	**38**
3	Copy of Inquest Panchnama	**39**
4	Copy of P.M.Report of the deceased	**40**
5	Copy of R.C.Book of offending vehicle i.e. Ertiga Car No. GJ 06 HD 4642.	**41**
6	Copy of Insurance Policy of offending vehicle i.e. Ertiga Car No. GJ 06 HD 4642.	**42**
7	Copy of R.C.Book of offending vehicle i.e. Trailer No. GJ 05 UU 5656	**43**
8	Copy of Insurance Policy of offending vehicle i.e. Ertiga Car No. GJ 05 UU 5656	**44**
9	Copy of Aadhar card of deceased.	**45**

10	Copy of Certificate of completion of Diploma in Civil Engineering of the deceased	**46**
11	Copy of Certificate issued by the District Industries Centre to the deceased	**47**
12	Copy of Certificate issued by the Directorate of Employment and Training to the deceased	**48**
13	Copy of Certificate issued by Miraj architects	**49**
14	Copy of Certificate issued by Industrial Training Institute	**50**
15	Copy of Income Tax Return for the year A.Y. 2016-2017 of the deceased.	**51**
16	Copy of Income Tax Return for the year A.Y. 2017-2018 of the deceased.	**52**
17	Copy of Income Tax Return for the year A.Y. 2019-2020 of the deceased.	**53**
18	Copy of Pan card of deceased.	**54**
19	Copy of Income Tax Return for the year A.Y. 2018-2019 of the deceased.	**61**

5a. The opponent no.5 has adduced following documentary evidences:

Documentary Evidences		
1	Copy of Summary Report filed against Rignesh	**59**

	Arvindbhai Patel	

6. The Ld. Advocate for the claimants has filed closing pursis at **Exh.55** as well as Ld. Advocate for the opponent Nos.2 & 5 has filed closing pursis vide **Exh.56 & 60 respectively.**

7. Heard Learned Advocates for the parties. Perused the written arguments filed by the Ld. Advocate of the claimants **at Exh.62.** He has argued that income of the deceased was Rs.4,50,000/- per anuum & 30% future prospect should be awarded. Therefore, total income of the deceased should be considered as Rs.62,12,500/- along with interest at the rate of 9% p.a.

7a. Ld.Advocate of the opponent no.2 has filed written arguments **at Exh.64.** He has argued as per written reply filed before the Tribunal. Moreover, he has argued that no documents about agriculturist is produced before the Tribunal and no registration certificate of Aakar Engineers are produced by the claimant and no books of accounts are also produced and not produced computation sheet alongwith the income tax documents. Further, he has argued that the claimant has produced the Income Tax return of AY 2016-17 which was filed on 31/03/2017 in the name of Aakar Engineers and therein total income was shown Rs.2,22,170/- and the said income tax return is presumptive business tax return. Therefore, income may not be actual but it presumptive income as per the provision of Income Tax Act. He has further argued that claimant has produced Income Tax Return of AY 2017-18, which was filed on 20/07/2017 in the name of Aakar Engineers and therein total income was shown Rs.2,68,510/- and the said income tax return is presumptive business tax return. Therefore, income may not be actual but it presumptive income as per the provision of Income Tax Act. Claimant has produced Income Tax Return of AY 2019-20 which was filed on 19/11/2020 i.e. after the accident and therein in the name of Aakar Engineers and therein total income was shown Rs.2,24,000/- and the said income tax return is presumptive business tax return. Therefore, income may not be acutal but is presumptive income as per the provision of Income Tax Act. It is submitted that the said income tax return is in the name of Rajesh Patel who hasexpired and there is no name of the claimant who has filed return and therefore bogus return is filed. It is submitted that IT return for 2018-19 is not produced and only computation is produced and therefore the same may not be considered. It is submitted that if no return is filed in the AY 2018-2019 i.e. financial year 2017-18 then the presumptive income will be minimum wage income i.e. Rs.9,000/- x 12 = Rs.1,08,000/- and for the AY 2019-20 i.e. account year 2018-19, bogus return is produced after the death and in the name of the deceased and attempt is made to consider the same as income and therefore no advance tax is also produced and inthe cross-examination, applicant had stated that she has no knowledtge that any professional tax is paid and no document to show agriculture income and she has admitted that personal accident claim is received by her i.e. Rs.1,00,000/- from Consumer Court from the opponent. It is submitted that the said amount is paid by the opponent no.2 for the said accident and therefore required to be deducted from the award. No computation sheet is produced for the AY 2016-17 and 2017-18 and same is presumptive income and therefore cannot be considered. It is further submitted that if the deceased is doing any business in the name of Aakar Engineers and carrried any contractual works the applicant should have produced books of accounts of Aakar Engineers as well as bank statement as well as any other documents show income from business and secondary evidence of income tax return can not be considered. It is further submitted that it is proved on record that there was no income since last two years and therefore there can not be any presumption about the income from earlier income tax returns are filed. In the aid income tax returns no advance tax, TDS, Self Assessment Tax and total tax paid is shown as Zero and therefore the same can not be the basis for assessing the income of the deceased. Therefore, total income of the deceased should be considered as Rs.13,70,000/-.

7b. Ld. Advocate of the opponent no.5 has filed written arguments **at Exh.63.** He has argued that the deceased has filed income tax return for the AY 2016-2017 and 2017-2018 prior to the date of accident. However, the deceased has not filed Income Tax Return for the year 2018-2019, whereas the Income Tax return filed by the legal heirs of the deceased for the year 2019-2020 it has been filed after the date of the accident and hence the later two income tax return should not be considered and the average of the two Income tax return i.e. 2016-2017 and 2017-2018 should be considered for computation of income of the deceased. He has further argued that the deceased was self employed at the time of accident and hence 25% future prospect should be considered as the deceased was about 48 years at the time of accident. He has further argued that the summary has been filed against the driver of the car No. GJ 06 HD 4642 and hence, the entire negligence is of the driver of the car and hence opponent nos. 3 to 5 be exonerated from the said claim petition.

8. On 03/01/2024, considering the rival contentions of the parties to present claim petition, following issues were framed by the tribunal at Exh.29, which are as under:

ISSUES

1. Whether petitioners prove that the deceased died on account of rashness or negligent driving on the part of the driver of the vehicle involved in the accident ?

2. What amount, if any, the claimants are entitled to get by way of compensation and from which of the opponents ?

3. What order?

9. My answers to the above issues are as under:

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

: R E A S O N S :

Issue No.1.

10. It is settled legal position of law that the claim tribunal has to decide the negligence on the touchstone of preponderance of probability. Strict rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal. Further, the Tribunal has to hold an inquiry to determine compensation which must appears to it to be just.

11. So far as the question of negligence is concerned, the claimant no.1 – **Nitalkumari Rajeshbhai Patel**, who is the widow/wife of the deceased filed her affidavit of examination-in-chief at **Exh.30** and has narrated the facts as mentioned in the claim petition. She was cross-examined by Ld. Advocate for the opponent No.2, wherein, she admitted that : “ *she is not the eye witness of the accident. It is true that my husband, Rajeshbhai Maganbhai Patel, died in the accident and that I have not remarried after his death. It is true that I do not know who filed the complaint regarding the accident. It is true that since I did not witness the accident, I cannot say with certainty due to whose negligence the accident occurred. It is true that my deceased husband was doing civil construction work in the name of “Aakar Engineers”, but no documentary proof or registration regarding the same has been produced before the Court. It is true that no computation sheets were produced before the Court along with the income tax assessment years 2016-2017 and 2017-*

2018 submitted. It is true that the return filed for assessment year 2019-2020 was filed on 19-11-2020, i.e., after the accident. I do not know whether my deceased husband used to pay any professional tax or advance tax regarding his business. It is true that no documentary proof has been produced before the Court to show that my deceased husband was doing agricultural work. It is true that after the death of my husband in the accident, we filed a complaint before the Consumer Protection Forum, Bharuch, to obtain a personal accident claim. After its decision, we (the applicants) received a personal accident claim amount of ₹1,00,000 along with interest. It is not true that no documentary proof regarding my husband's income and age has been produced before the Court. It is not true that I am giving false testimony regarding my husband's income. It is not true that we, the applicants, were not dependent on the income of the deceased. It is not true that I am giving false testimony on oath to obtain a higher claim amount".

The claimant no.1 has also been cross-examined by Ld. Advocate of the opponent no.5, wherein she admitted that : " *she is not the eye witness of the accident. It is true that later I came to know that an offence was registered against the driver of the Ertiga car and a summary was also filed against him. It is true that no documentary proof regarding the income of the deceased has been produced. It is not true that I am giving false evidence on oath to obtain higher compensation".*

12. The death of **Rajeshbhai Maganbhai Patel** in the accident is an admitted fact, which also reveals from the FIR at Exh.37, Inquest Panchnama at Exh.39 and P.M. Report at Exh.40.

13. The claimants have produced on record the copy of police complaint at **Exh.37** it is lodged by Umeshkumar Ramprakash Yadav. It is stated by the complainant that I have been working as a driver at Vinayak Road Carrier, Palanpur, for the last 10 years. For the last 5 days, I have been driving Trailer No. GJ 05 UU 5656. On 29/09/2019, at about 11.00 AM, he loded coal (iron roll) in his trailer from S.R.Steel Company, Hajira, Surat to transport it to Kalol. On the next day, while traveling via the Vadodara – Ahmedabad, at around 7.30 AM, he was about 1 km ahead of the Reliance Petrol Pump, towards Nadiad, when he suddenly heard a loud sound behind his trailer. When he checked the side mirror, he saw a four-wheeler had dashed / crashed in to the rear of his trailer. He stopped his trailer on the road side and got down to check, he saw that an Ertiga Car No. GJ 06 HD 4642 had collided on the rear of his trailer. Five persons sitting in that car had sustained serious injuries. Thereafter, the expressway ambulance and other vehicles arrived. The Ertiga Car stuck under his trailer was removed and the persons inside were taken out. All of them found dead. Hence, he had filed the complaint against the driver of Ertiga Car No. GJ 06 HD 4642.

14. The panchnama of place of offence is produced on record at **Exh.38**. From the perusal of the panchnama, it appears that the accident occurred at the Express way towards Vadodara – Ahmedabad in the sim of village Mankva where Car No.GJ 06 HD 4642 was lying in accidental condition. It appears from panchnama that damage was caused on front bonnet and engine of the car & blood stains are found in the Car, whereas, Trailer No.GJ-5-UU-5656 was also lying on the spot of accident and there was damage caused to the rear part of the Trailer. The Police has not recovered any materials / things from the place of accident.

14.1. Further, the claimants have also produced the Inquest Panchnama at **Exh.39**, and copy of P.M. Report vide **Exh.40**. The P.M. Report **Exh.40** clearly reveals that the cause of death of deceased is shock & hemorrhage due to injuries due to vehicular accident.

14.2. Further, it appears from spot panchnama that, back side angle of truck was bend & damage was caused to back portion of the Trailer. Along with the spot panchnama, abated summary filed by the police is also required to be considered. If the final report (abated summary) at **Exh.59** is perused, it is stated in the said report that deceased (opponent no.1 – Rigneshbhai @ Bholo Arvindbhai Patel) dashed with the Trailer from behind by driving his vehicle in excessive speed and died in the accident.

At this juncture, the decision of the Hon'ble Apex Court in the case of **Mathew Alexander v. Mohammed Shafi & Anr.** reported in **2023 LiveLaw (SC) 531 is to be referred,** wherein the Hon'ble Apex Court has held that in a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, the Tribunal has to determine the amount of fair compensation to be granted in the event an accident has taken place by reason of negligence of a driver of a motor vehicle. A holistic view of the evidence has to be taken into consideration by the Tribunal and strict proof of an accident caused by a particular vehicle in a particular manner need not be established by the claimants. The claimants have to establish their case on the touchstone of preponderance of probabilities. The standard of proof beyond reasonable doubt cannot be applied while considering the petition seeking compensation on account of death or injury in a road traffic accident.

14.3 Therefore,looking to the Spot Panchnama at **Exh.38, it appears that the that** driver of the Ertiga Car had dashed with the trailer from behind, that to with great force, the damage was caused on front bonnet and engine of the car & blood stains are found in the Car, & the damage caused to the car as well as the rear part of the trailer speaks volume regarding the speed and the force by which the four wheeler had dashed. Further, the driver of the Ertiga Car had also expired, therefore, abated summary is filed against the driver of the Ertiga Car. Nothing appears from the evidence that the accident occurred due to applying of sudden brakes by the driver of the trailer. Therefore, on the basis of the said report, it can be said that deceased (driver of the Ertiga Car i.e. Opponent no.1) was negligent in causing the accident. Hence, considering the manner in which accident has occurred on the Vadodara – Ahmedabad Express Highway, this Tribunal is of the opinion that the accident has occurred due to the sole negligence of driver of the Ertiga Car i.e. Opponent no.1. Hence, in view of the above, this tribunal held that the opponent No.1 – car driver was negligent for causing the accident. Hence, I answer the Issue No. 1 accordingly in ***"Affirmative"***.

Issue No.2

15. It is settled legal position of law that award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimants to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner.

16. According to the say of the claimants, deceased was 48 years old at the time of accident. On perusing the P.M. Report at **Exh.40**, it appears that age of the deceased is mentioned as 48 years. Moreover, the claimants have produced the copy of Aadhar card of deceased at Exh.45, wherein deceased birth date is mentioned as

23/01/1971. Further, the claimants have produced the copy of Pan card of deceased at Exh.54, wherein deceased birth date is mentioned as 23/01/1971. Therefore, deceased was **49** years old at the time of accident. Thus, considering the decision in the case of **Sarla Varma v/s Delhi Transport Corporation & Ors [2009 ACJ 1298]**, multiplier of **13** is applicable.

17. Claimant no.1 has, in her petition as well as in her oral evidence stated that her deceased husband Rajeshbhai Maganbhai was engaged in civil construction work under the name of Aakar Engineers and was earning approximately Rs.5,00,000/- per annum. He was an income tax payer. He also owned agricultural land at Nand, Ta. & Dist. Bharuch, and was earning approximately Rs.2,00,000/- per annum from agriculture and the deceased was earning approximately Rs.7,00,000/- per annum.

17.1. So far the income from business of transport & trading is concerned, the claimants have produced income-tax returns at **Exh.51** to **Exh.52 & 61**. On perusing the income-tax returns at **Exh.51** to **Exh.52 & 61**, it appears that the gross total income was Rs.3,72,170/- in AY 2016-17, Rs.4,18,509/- in AY 2017-18, Rs. 4,49,660/- in AY 2018-2019 and the said returns were filed prior to the date of accident.

17.2 It is fruitful to refer the decision in the case of **Vijayalaxmi @Roopa v. Shenoy & Anr. v. National Insurance Co. Ltd.& Ors.**

in Civil Appeal No.2320/2025, the Hon’ble Apex Court has held in **para-7** as under:-

> ***7.*** *We have heard the learned counsel for the parties. We are unable to agree with the view taken by the Tribunal and High Court on the income of the deceased. It has been clarified in* ***Malarvizhi & Ors. v. United India Insurance Co. Ltd. & Ors.*** *that the determination of income must proceed on the basis of Income Tax Return when available, being a statutory document. More recently, this Court in* ***New India Assurance Co. Ltd. v. Sonigra Juhi Uttamchand*** *while determining the income of the deceased therein had observed:*
>
> *"8. Monthly income could be fixed taking into account the tax returns only if the details of payment of tax are appropriately brought into evidence so as to enable the Tribunal/Court to calculate the income in accordance with law."*

17.3 Therefore, in view of the aforesaid decision, the income of the deceased can be assessed on the basis of income-tax returns, which are statutory documents. In the present case, the claimants have produced income-tax returns of the deceased at Exh.51 to Exh.52 & 61. These documents are from Income tax department, no evidence is produced for disbelieving the same, its not a case of any opponent that the income tax returns are concocted or forged. Hence, the said income-tax returns deserve due consideration for determining the income of the deceased. On perusal of the income-tax returns at

Exh.51 to Exh.52 & 61, it is evident that the income chargeable under the head “Business and Profession” was Rs.3,72,170/- in Assessment Year 2016-17, Rs.4,18,509/- in Assessment Year 2017-18 and Rs. 4,49,660 in Assessment Year 2018-2019. It appears that the income of the deceased has been increased gradually. Therefore, taking the average income for three years, the annual income of the deceased is considered as Rs.4,13,446/ per annum (Rs.3,72,170 + Rs. 4,18,509/- + Rs. 4,49,660/- = Rs.12,40,339 divided by 3 = Rs.4,13,446/.). Thus, the total annual income of the deceased is assessed at **Rs.4,13,446/- per annum.**

17.4 With regard to income from agricultural. The claimant no.1 has stated that her husband had owned agricultural land at Nand, Ta. & Dist. Bharuch, and was earning approximately Rs.2,00,000/- per annum from agriculture. But, in absence of any evidence, supporting the above submission on behalf of claimant, it cannot be said that the income from agricultural land is proved by the claimant, not a single evidence is on record, indicating any income from agriculture. Therefore, the income from agricultural land is not considered.

17.5 The deceased was **49** years old, and therefore as per the decision reported in the case **National Insurance Co. Vs. Pranay Sethi** reported in ***2017 (16) SCC 680,*** the income of the deceased is required to be increased by **25%** i.e. **Rs.1,03,361/-[** Rs.4,13,446/- p.a. income **x 25% future prospects].** Hence, deceased’s yearly income at the time of accident including future prospect is considered as Rs.4,13,446/- + Rs.1,03,361/- = **Rs.5,16,807/-**. Thus, **income of the deceased including future prospects would be Rs.5,16,807/- p.a.**

18. At the time of filing the claim petition, there were four applicants, therefore, as there are total four dependent family members of the deceased, **1/4th** amount is required to be deducted towards the personal and living expenses of the deceased to arrive at just compensation.

19. After deduction of personal living expenses of the deceased, dependency loss would be Rs.5,16,807/- p.a. income – Rs.129202 /- (1/4th of total income Rs.5,16,807 /-) = Rs.387605/- x 13 multiplier = Rs. 50,38, 865/-. Therefore, it is just and proper to award sum of **Rs. 50,38,865/- under the head of loss of dependency.**

20. As held in ***Para No. 61 (viii) of 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 six years have been passed from the date of pronouncement of the ***Pranay Sethi (supra)***, therefore, this Tribunal deems fit to enhance the amount to be paid under the conventional head at the rate of 10%.The date of judgment of ***Pranay Sethi's case*** is 31.10.2017 and therefore,10% amount under loss of estate would be ***Rs.16,500/-,*** loss of consortium would be ***Rs.44,000/-*** and funeral expenses would be ***Rs.16,500/-*** after 01.11.2020. Now after 01.11.2023, further 10% is required to be enhanced. Therefore, the amount under loss of estate would be ***Rs.18,150/-***, loss of consortium would be ***Rs.48,400/-*** and funeral expenses would be ***Rs.18,150/-***. Therefore, as per the directions of the Hon'ble Supreme Court in ***Pranay Sethi (supra)***, the claimants are entitled to ***Rs.18,150/- towards Loss of Estate*** and ***Rs.18,150/- towards Funeral Expenses***.

20.1 Further, so far as the grant of consortium to the claimants are concerned, the Hon'ble Supreme Court in the case of **New India Insurance Company Ltd. Vs. Somwati 2020 SCC Online SC 720, United Insurance Co. Ltd. Vs. Satinder Kaun 2020 SCC Online SC 410, Joginder Singh Vs. ICICI Lombard General Insurance Company 2019 SCC Online SC 1029,** ***Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram*** *reported in* **2018 (0) AIJEL-SC 62739** has categorically held that in addition to spouse, the children are entitled to parental consortium in the case of death of the parents and parents are entitled to filial consortium in the case of death of their child and the amount to be awarded for Loss of Consortium will be as per the amount fixed in ***Pranay Sethi (supra)***. It is held by the Hon’ble Supreme Court in the case of ***Magma General Insurance Co. Ltd. (supra)*** at **para 8.7** to **para-8.7.8** that,

> **8.7** A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.

8.7.1 In legal parlance, "consortium" is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.

8.7.2 The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. (Rajesh and Ors. vs. Rajbir Singh and Ors.[JT 2013 (8) SC 288].

8.7.3 Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, aid the other in every conjugal relation."

8.7.4 Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."

8.7.5 Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

8.7.6 Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.

8.7.7 The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.

8.7.8 Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.

20.2 Therefore, the claimant No.1 who is the wife/widow of the deceased is entitled to get **Rs.48,400/- towards Spousal**

Consortium, claimant Nos. 2 & 3 are the children of the deceased is entitled to get **Rs.48,400/- each towards Parental Consortium** and claimant No. 4 is the mother of the deceased are also entitled to get **Rs.48,400/- towards Filial Consortium.**

Future loss of income/dependency	Rs. **50,38, 865/-**
Loss of Spousal, Parental & Filial Consortiuam	Rs. 1,93,600/- Rs.(48,400/- x 4)
Loss of estate	Rs. 18,150/-
Funeral expenses	Rs. 18,150/-
Total	**Rs. 52,68,765/-**

21. In view of the above referred discussion, total compensation arrives at **Rs. 52,68,765/- (Rs. Fifty Two Lacs Sixty Eight Thousand Seven Hundred Sixty Five Only).**

Liability

22. In view of above mentioned discussion, the present accident had occurred because of sole negligent act of opponent No.1 – Ertiga Car driver. At the relevant time, opponent No.1 was the owner of the Ertiga Car No. GJ 06 HD 4642 and this fact is clearly established from the R. C. Book of the vehicle in question produced at **Exh.41**. Further, on perusing the insurance policy of Ertiga Car No. GJ 06 HD 4642 at **Exh.42**, it transpires that the offending vehicle was insured with the opponent No.2 for the period from 07/03/2019 to 06/03/2020. Thus, it was valid insurance on 30.09.2019 i.e. the date of accident. However, the Tribunal has not attributed the negligence on part of the opponent Nos. 3 to 5, therefore, the claim against the opponent Nos. 3 to 5 is hereby rejected. Thus, opponent No.1 & 2 are jointly and severally liable to pay the amount of compensation to the claimants, together with proportionate costs and interest @ 9% p.a. from the date of claim petition till realization and hence, I answer Issue No.3 in **'affirmative'** accordingly and for Issue No.4, the following final order is passed:-

:: O R D E R ::

1	The Claim petition stands partly allowed against opponent Nos. 1 & 2, whereas, the claim against the opponent nos. 3 to 5 is hereby rejected.
2.	The claimants are entitled to recover **Rs. 52,68,765/- (Rs. Fifty Two Lacs Sixty Eight Thousand Seven Hundred Sixty Five Only)** as compensation with proportionate cost and interest @ 9% p.a. from the date of the claim petition till realization of the amount from the opponent Nos.1 & 2 jointly and severally.
3.	The opponents are directed to follow the ratio laid down in the judgment of **Hansaguri P. Ladhani Vs. Oriental Insu. Co. Ltd.** reported in **2007(2) GLH 291** as far as the TDS is concerned.

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<tr><td>4.</td><td>The interim amount of compensation, if any, paid or deposited under the principle of No Fault Liability, will be adjusted from the aforesaid amount of compensation awarded in this final adjudication.</td></tr>
<tr><td>5.</td><td>The claimant No.1 shall get 50% shares, claimant Nos.2 & 3 shall get 15% & Claimant No.4 shall get 20% share in the awarded amount.</td></tr>
<tr><td>6.</td><td>As per the award, the opponents are directed to transfer the amount of court fees through RTGS or NEFT mode in the account of Additional District Judge, Bharuch, the details of account are as under:
<table>
<tr><td>A/c. Name</td><td>Additional District Judge, Bharuch</td></tr>
<tr><td>Branch Name</td><td>State Bank of India, Muktinagar Branch, Bharuch</td></tr>
<tr><td>A/c. No.</td><td>40759978524</td></tr>
<tr><td>IFSC Code</td><td>SBIN0008278</td></tr>
<tr><td>MICR</td><td>392002002</td></tr>
</table></td></tr>
<tr><td>7.</td><td>After depositing the amount of court fees in the account of Additional District Judge, Bharuch, the opponent Nos.1 to 3 shall inform with full details, such as, MACP Number, Date of Award, Transfer of Court Fee Amount and Date of Transfer to this Tribunal on e-mail I.D. <u>mactbha@gmail.com</u>.</td></tr>
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8.	The claimants are hereby directed to furnish the details of their bank account along with first page of the Passbook showing Account Number, Name of the Account Holder, IFSC Code and other required details duly supported by an affidavit before this Tribunal. Upon receipt of the aforesaid bank details, as per the decision of the Hon'ble Apex Court in the case **Paraminder Singh v. Honey Goyal & Ors.** in Civil Appeal arising out of SLP (C) No.4484 of 2020, the opponents are directed to transfer the awarded amount into bank account of **concern claimants** as per their share within 30 days. Before transferring the amount in to the bank account of the concerned claimant the concerned opponents shall inform the concerned bank of the claimants well in advance regarding the transfer of awarded amount, so that the concerned bank is able to give effect to the direction of the tribunal regarding, depositing of respective amount in fix deposit.
9.	The opponent Nos.1 & 2 are also directed to intimate this tribunal on e-mail I.D. mactbha@gmail.com with respect to transfer of awarded amount in the bank account of the concerned claimant along with proof of such transfer, such as, MACP Number, Name of Claimant, Amount Transfer, Date of Transfer, Name of Claimant's Bank with Account Number within 7 days from date of transfer.
10	Out of the amount coming to the share of claimants, **70%** amount shall be invested in FDR by the concerned bank in the

	name of claimants for a period of 5 years. The bank of the claimants is directed to intimate the details with respect to the Fixed Deposit/s made as per the present award in the name of claimant/s to this tribunal immediately after depositing the amount in FDR. The concerned Bank is directed not to grant any loan, advances or withdrawal against the said FDRs without obtaining prior permission of this Tribunal. However, the claimant/s will be at liberty to withdraw the periodical interest accrued on the said FDRs.
11	Insofar as tax deduction at source is concerned, Form 16 A of the Income Tax Act should be provided to the claimant/victim on whose behalf the deduction has been made so as to enable them to seek refund of tax deducted.
12	Opponents do bear their own costs.
13	Award be drawn accordingly.

Signed and Pronounced in the open Tribunal today on this 6th day of June, 2026.

Date: 06/06/2026.
Place: Bharuch

(Ejaz Mohsinali Shaikh)
2nd Additional District Judge & MAC
Tribunal (Auxi), Bharuch
Code No.GJ00627

(ZYV)*