GJBH010018232018	Filing No. : MACP/269/2018 Filed On : 31/07/2018 Decided On: 03/06/2026 Duration : 7Y-10M-03D

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

सत्यमेव जयते

MAC PETITION No.269 of 2018

Exh. _____

Claimants:-	
1	**Narsinhbhai Ranchhodbhai Rathod** Age: 58 years, Occupation: Labouring,
2	**Khodabhai Ranchhodbhai Rathod** Age: 38 years, Occupation: Labouring,
	All are Residing at : At & Po. Zafarpura, Ta. Jambusar, Dist. Bharuch.

Versus

Opponents:-

1.	**Ruhul Amin Daud Alli Malek** Age : 30 Years, Occupation: Driver Residing at: Tavkkal Society, Near Dabha Chokdi, At & Po. Jambusar, Ta. Jambusar, Dist. Bharuch.
2.	**Sakil Ismailbhai Sakhidas** Age : Adult, Occu : Owner, Residing at: At & Po. Kavi, Bandar road, Inside of Navi Vasahat, Ta. Jambusar, Dist. Bharuch.
3.	**United India Insurance Company Limited,** Office functional at: Shalimar Complex, Station Road, Bharuch.
4.	**Shailesh Vallabhbhai Patel** Age : Adult Occu : Driver cum owner Residing at: At & Po. Zafarpura, Ta. Jambusar, Dist. Bharuch.
5.	**Cholamandalam MS General Insurance Company Ltd.** Office Functional at : 2nd Floor, Optionz, C.G.Road, Ahmedabad.

CLAIM PETITION FILED UNDER SECTION - 166 OF THE MOTOR VEHICLE ACT, 1988, CLAIMING COMPENSATION TO THE TUNE OF Rs.7,00,000/- ALONG-WITH INTEREST AT THE RATE OF 12% PER ANNUM.

Appearance:

Learned Advocate Mr. J.R.Rohit appearing for and on behalf of claimants.
Learned Advocate Mr. J.G. Patel appearing for and on behalf of the opponent nos. 1 & 2.
Learned Advocate Mr. M.N.Gohil appearing for and on behalf of the opponent no.3 – Insurance Company.
Opponent no. 4 – Exparte by passing order below Exh.1 dated 20/03/2019.
Learned Advocate Mr. P.G.Shah, appearing for and on behalf of the opponent no.5 – Insurance Company.

: JUDGMENT :

1. The present claim petition has been filed by the legal representatives of **Lakhiben Narsinhbhai Rathod (in** short **'deceased'**) who is alleged to have died in a motor vehicular accident, occurred near Ankhi Village.

1a. Claimants, by way of present claim, have averred that on 21/02/2018, claimant no.1 along with his wife - deceased **Lakhiben Narsinhbhai Rathod** were going for shopping at Jambusar and after shopping, they were traveling in Chhakdo Rickshaw No. GJ 16 AP 1775, which is owned by opponent no.4 from Jambusar to Jafarpura, when they reached at the place of accident, the opponent no.1 came by driving Motor Cycle No. GJ 16

CE 1631 which is owned by opponent no.2 in rash & negligent manner & dashed with the Rickshaw, as a result of which, the said Rickshaw turned turtled. Due to the said accident, the Wife of the claimant no.1 sustained severe injuries and she was immediately taken to Government Hospital at Jambusar and thereafter preferred at SSG Hospital, Vadodara for further treatment & she died during the treatment.

Amount of Compensation and its Basis:

1b. Due to the death of **Lakhiben Narsinhbhai Rathod** in the said accident, the present claim petition has been filed to claim compensation. Claimant No. 1 is the husband of the deceased and Claimant Nos. 2 & 3 are the children of the deceased. Therefore, the claimants, being the legal heirs and dependents of the deceased, have filed this claim petition.

1c. At the time of the accident, the deceased **Lakhiben Narsinhbhai Rathod** was 52 years of age. She was physically fit and strong and was not suffering from any illness. At the relevant time, the deceased was earning Rs.5,000/- per month from labour work & animal husbandry. Had she not died prematurely, she would have further earned more income, and would had, better supported her family in all respects. Claimants have spent huge amount about funeral expenses of deceased.

1d. Considering the circumstances, in which the deceased sustained injuries resulting in death, the said accident occurred due to the negligence, carelessness and fault of opponent nos. 1 and 4. At the time of the accident, opponent no.1 was driving the vehicle owned by opponent no.2 and opponent no.4 himself was the owner of the vehicle. The accident occurred during the course of their duties and use of the said vehicles.

1e. The Motor Cycle of opponent no.2 was insured with the insurance company of opponent no.3, and the vehicle of opponent no.4 was insured with the insurance company of opponent no.5. Under such circumstances, all the opponents are jointly and severally liable to pay the compensation amount.

1f. For all these reasons, the claimants have filed the present claim petition and are claiming compensation of Rs.7,00,000/- along with interest at the rate of 12% per annum along with cost, from all the opponents, jointly and severally.

2. Notices of present claim petition was issued to all the opponents & all the opponents were served with notices.

3. Opponent Nos. 1 & 2 appeared through their Ld. Advocate **Mr. J.G.Patel** & has filed written statement **at Exh.24,** wherein, the

opponent nos.1 & 2 have denied all the averments of the claim petition except those which are specifically admitted. He has denied the age & income of the deceased. It is submitted that opponent no.1 was drove the vehicle on the left side rode & in moderate speed. It is further submitted that said vehicle was insured with the Opponent no.3 – which is in existence from 10/05/2017 to 09/05/2018. Consequently, prays to dismiss the claim petition with costs.

4. Opponent No.3 - **United India Insurance Co. Ltd.** secured its presence **through Learned Advocate Mr. M.N.Gohil** who has filed his written statement at Exh.33, wherein, the opponent no.3 has denied all the averments of the claim petition except those which are specifically admitted. Further, the occurrence of the accident; rash and negligent driving by the opponent driver; accidental injuries and resultant death of the deceased; cost of the claim, age & income of the deceased etc., were denied by way of written statement of opponent no.03. It is further submitted that the driver of Vehicle No. GJ 16 CE 1631 was not holding valid & effective driving license at the time of accident. It is further submitted that looking to the evidence on record i.e. spot panchnama, it is clear that the said accident was happened due to total negligence of the opponent no.4. Consequently, prays to dismiss the claim petition with costs.

5. Opponent No.4 has not preferred to appear before the Tribunal, and therefore, the matter was ordered to be proceeded ex-

parte against him by passing an order below Exh.1 by M.A.C.T. (MAIN), Bharuch dated 20/03/2019.

6. Opponent No.5 - **Cholamandalam MS General Ins. Co. Ltd.** secured its presence through **Learned Advocate Mr. P.G.Shah who has filed written statement at Exh.36**, wherein, the opponent no.5 has denied all the averments of the claim petition except those which are specifically admitted. Further, the occurrence of the accident; rash and negligent driving by the opponent driver; accidental injuries and resultant death of the deceased; cost of the claim, age, income & occupation of the deceased etc., were also denied by way of written statement of opponent no.5. It is submitted that the opponent nos.1 & 4 does not have valid & effective driving license at the time of accident. It is submitted that the Chhakado Rickshaw No. GJ 16 AP 1775 is insured with the opponent no.6 and the insurance policy is in existence from 22.03.2017 to 21.03.2018. It is further submitted that the driver of the Motor Cycle No. GJ 16 CE 1631 drove his vehicle in rash & negligent manner and dashed with Chhakado Rickshaw bearing No. GJ 16 AP 1775 and thereafter lost control and turned turtle resulting into injuries and death of the deceased. Consequently, prays to dismiss the claim petition against the opponent no.5.

7. It is pertinent to note here that Learned Advocate for opponent no.3 has moved an application, seeking permission to contest the claim petition on behalf opponent Nos. 1 & 2 under section 170 M.V. Act, 1988, vide Exh.46, wherein Ld. Advocate of

the claimants has made an endorsement i.e. “no objection” which was granted by the Motor Accident Claims Tribunal, (Auxi), on 19/10/2022.

7a. The Learned Advocate for opponent no.5 had also moved an application, seeking permission to contest the claim petition on behalf opponent No. 4 under section 170 M.V. Act, 1988, vide Exh.47, wherein Ld. Advocate of the claimants has made an endorsement i.e. “no objection” which was granted by the Motor Accident Claims Tribunal, (Auxi), on 19/10/2022.

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

Sr. No.	Nature of Documents	Exh.
Oral Evidences		
1	Claimant no.1 – Narsinhbhai Ranchhodbhai Rathod.	44
Documentary Evidences		
1	Copy of Police Complaint (F.I.R)	53
2	Copy of Panchnama of place of occurrence	54
3	Copy of Arrest Panchnama	55
4	Copy of Inquest Panchnama of deceased	56
5	Copy of P.M. Report of the deceased	57
6	Copy of charge-sheet	58
7	Cast Certificate of claimant no. 1	59
8	Copy of R.C. Book of offending vehicle i.e.	60

	Motor Cycle No. GJ 16 CE 1681.	
9	Copy of Insurance Policy of offending vehicle i.e. Motor Cycle No. GJ 16 CE 1681.	61
10	Copy of R.C. Book of Chhakdo Rickshaw No. GJ 16 AT 1775.	62
11	Copy of Insurance Policy of Chhakdo Rickshaw No. GJ 16 AT 1775.	63

8a. The opponent no. 3 has adduced following oral as well as documentary evidences:

Sr. No.	**Nature of Documents**	**Exh.**
	Oral Evidences	
1	Deposition of Ruhul Amin Daudbhai Malek	67
Documentary Evidences.		
1	Copy of Judgment of Criminal Case No.974/18 pronounced by Ld. Addl. CJM, Jambusar.	74

8b. The opponent no. 5 has adduced following oral evidence:

Sr. No.	**Nature of Documents**	**Exh.**
	Oral Evidences	
1	Deposition of Shaileshbhai Vallabhbhai Patel	75

9. The Ld. Advocate for the claimants has filed closing pursis at **Exh.64** as well as Ld. Advocate for the opponent Nos.3 & 5 have filed closing pursis vide **Exhs.68,76 &77 respectively.**

10. Heard the Learned Advocates for the parties. Perused the written arguments filed by the Ld. Advocate of the claimants at **Exh.78.** As well as also perused the written arguments filed by the Ld. Advocates of the opponent nos.3 & 5 at **Exh.79 & 80** respectively.

11. On 21.12.2019, considering the rival contentions of the parties to present claim petition, following issues were framed by the tribunal at Exh.30, which are as under:

ISSUES

1. Whether petitioner proves that, the deceased died on account of rashness and negligence in driving on the part of the driver of the vehicle involved in the accident ?

2. What amount, the claimant/s is/are entitled to by way of compensation and from which of the opponents?

3. What order?

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

1. In affirmative,
2. Partly in affirmative.
3. As per final order.

: R E A S O N S :

Issue No.1

13. 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.

14. So far as the question of negligence is concerned, the claimant no.1 **- Narsinhbhai Ranchhodbhai Rathod**, who is the husband of the deceased had filed his affidavit of examination-in-chief at **Exh.44** and has narrated the facts as mentioned in the claim petition. He was cross-examined by Ld. Advocate for the opponent No.3, wherein, he stated that :

> "It is true that at the time of the accident, I was travelling in the rickshaw with my wife. It is true that the accident occurred near Anakhigam at a turning. It is true that the rickshaw and the motorcycle collided head-on in the accident. It is true that after the collision, I came to know that an accident had occurred. It is true that I cannot say due to whose fault the accident occurred. It is true that I have not produced any proof

regarding my wife's age and income. It is not true that my wife was earning less than Rs. 3,000/- per month. It is not true that since my wife was above 55 years of age, I did not produce any proof regarding her age. It is not true that false facts have been stated in order to obtain higher compensation".

The said claimant no.1 is also cross-examined by Ld. Advocate Mr. P.G.Shah on behalf of the opponent no.5, wherein he stated that :

"It is true that at the time of the accident, I was sitting in the rickshaw, and when the motorcycle collided with the rickshaw, the motorcycle rider was driving at a high speed. It is true that in this case, as mentioned in Serial No. 1 of Paragraph No. 5 of the claimant's affidavit, we have produced a copy of the FIR before the Hon'ble Court at Exhibit 6/1. As per the said complaint/FIR, the complaint was lodged against Opponent No. 1. In the criminal case arising out of the said complaint, we, the claimants, had gone to give evidence, and at that time we identified Opponent No. 1 of the present case, who was also the accused motorcycle rider in the criminal case. My wife has passed away, and no documentary proof regarding her income and age has been produced. It is not true that at the time of the accident my wife was earning less than Rs.5,000 per month".

15. Moreover, the opponent no.1 – Ruhul Amin Daudbhai Malek, driver of the motor cycle is examined by Ld. Advocate Mr. M.N.Gohil at Exh.67, on behalf of the opponent no.3, wherein he stated that :

> " On 21.02.2018, I was going from Jambusar to Ankhi village on motorcycle No. GJ-16-CE-1631. At that time, near Ankhi village, at a turning, I was driving on my own side of the road when a Chhagdā rickshaw coming from the opposite side lost control and collided with my motorcycle, causing my motorcycle to skid, and I sustained injuries to my leg. My motorcycle was moving at a speed of about 30 to 40 km per hour. The rickshaw driver came onto my side. I tried to save myself, but the Chhagdā rickshaw collided with my motorcycle. This accident occurred due to the negligence of the Chhakdā rickshaw driver, and there was no negligence on my part. I have produced my driving licence before the Court. In this criminal case, a charge-sheet was filed against me, but the Hon'ble Court acquitted me and declared me innocent".

16. The said witness is cross-examined by Ld. Advocate Mr. J.R. Rohit for the Claimants, wherein he stated that :

> "It is true that a complaint in this criminal case was filed against me and a charge-sheet was also filed

against me. It is not true that the accident occurred because I drove my motorcycle into the middle portion of the rickshaw, causing the rickshaw to overturn. It is not true that the accident occurred due to my negligence".

The said witness is cross-examined by Ld. Advocate Mr. P.G.Shah on behalf of opponent no.5, wherein, he stated that :

"It is true that the Chhakdā rickshaw was coming from the opposite direction of my motorcycle. It is true that this accident occurred on a curve of the Dandi road near Ankhi village. It is not true that my collision took place in the middle portion of the right-side chassis of the rickshaw. There were passengers in the rickshaw. It is not true that the speed of my motorcycle was very high. It is true that the rickshaw overturned in the opposite direction along with passengers. It is true that the accident occurred on the left side of the road on which the rickshaw was traveling. It is not true that I came at excessive speed and caused the accident with the rickshaw. It is not true that Opponent No. 4 had no negligence in this accident".

17. The opponent no.4 – Shaileshbhai Vallabhbhai Patel is cross-examined by Ld. Advocate Mr. P.G.Shah on behalf of opponent no.5 at Exh.75, wherein he stated that :

> "I am Opponent No. 4 in this matter and at the time of the incident I was driving my owned rickshaw bearing No. GJ-16-AD-1775. On the day of the incident, I had left from Jambusar to go to Bojadra carrying passengers in my rickshaw. There were three passengers in my rickshaw. At the time of the accident, I was driving on my side, i.e., the left side, at a normal speed near a turning. There was a curve at the place of the incident. The motorcyclist came driving at a very high speed. At the time of the incident, while the motorcyclist was driving, there were thorny babul bushes on his left side, because of which he got confused and came towards the right side and fell. The steering of the motorcycle collided with our rickshaw and since he was at high speed, our rickshaw overturned. When the motorcyclist fell, his motorcycle moved from the left side to the right side. The accident was not a head-on collision. I had lodged the complaint regarding this accident and the police case was filed against the motorcycle rider. The accident had occurred on my side. The accident did not occur due to my negligence. I possess a driving licence, which has been produced before the Court".

The said witness is cross-examined by Ld. Advocate Shri J.R. Rohit for the Claimants, wherein he stated that :

"It is true that passenger Laxmiben Rathod died due to the injuries sustained in the accident".

The said witness is also cross-examined by Ld. Advocate Mr. M.N.Gohil on behalf of the opponent no.3, wherein he stated that :

"It is true that the accident occurred on an unpaved pathway-type road. It is true that the accident occurred at a turning. It is true that due to the sudden arrival of the motorcycle, the rickshaw overturned. It is suggested that there was a head-on collision. Now, Opponent No. 1's vehicle was a motorcycle, therefore it is not possible that the motorcycle of Opponent No. 1 colliding with the three-wheeler rickshaw would cause the rickshaw to overturn. The witness states that the rickshaw overturned after colliding with the motorcycle.

Question: Did the motorcycle rider sustain injuries?
Answer: He had suffered abrasions/scratches.

It is not true that I myself was driving the rickshaw at high speed and that the accident occurred due to me because the motorcycle suddenly came from the opposite side at the turning. It is not true that I am giving false evidence to avoid my liability. I do not

know whether the motorcycle rider has been acquitted in the criminal case or not. It is not true that I am giving false evidence on oath".

18. This court has considered the record and it transpires that, complainant – Shaileshbhai Vallabhbhai Patel has lodged the FIR which is at Exh.53. FIR on record, clearly establishes the act of road accident. Further, as narrated in the FIR (Exh.53.) that, when he was going by driving his Chhakdo Rickshaw No. GJ 16 AT 1775 to carry passengers from village Bojada and thereafter going to carry passengers from Bojadara to Jambusar, from where Narsinhbhai & his wife Lakhiben sat as a passenger in his Rickshaw, his Rickshaw was passing on its correct side, at that time, the driver of the Motor Cycle No. GJ 16 CE 1631 came in full speed and dashed with the Chhakdo Rickshaw, as a result of which said, Chhakdo Rickshaw turned turtle & sustained injuries to the passengers, who were traveling in the Chhakdo Rickshaw GJ 16 AT 1775 and Lakhiben also sustained serious injuries and she died during treatment.

19. The Panchnama of place of occurrence is produced on record at Exh.54. From the perusal of the said Panchnama, the place of accident and the four corners of the place of accident are stated. It is mentioned in the Panchnama that, the deceased was traveling in the Chhakdo Rickshaw No. GJ 16 AT 1775 and when the Chhakdo Rickshaw reached at the place of accident, one driver of the Motor Cycle No. GJ 16 CE 1631 came in full speed and dashed with the Chhakdo Rickshaw, as a result, Chhakdo Rickshaw turned turtle and

passengers who were traveling in the said Rickshaw, sustained severe injuries. Moreover, it appears from the Panchnama that one Chhakdo Rickshaw No. GJ 16 AT 1775 and also one Motor Cycle No. GJ 16 CE 1631 lying on the spot of accident and damages caused to both the vehicles. The Police has not recovered any materials from the place of accident.

19a. It appears that at the turning it was the duty of both the drivers to observe the traffic safety rules while driving at N.H.No.48, in which both have failed and had driven their vehicles rashly and negligently and dashed due to which the claimant no.1's wife had sustained severe bodily injuries & died during the treatment. The driver of both the vehicles were supposed to take care and caution, slow down the speed on the turning of nala of Ambawadi waga, they could have avoided the accident. Considering the evidence on record, it is established that accident has occurred due to the rash and negligent driving of both the vehicles. Thus, looking to the facts and material on record, the negligence on part of driver of both the vehicles can be considered as 50-50%. Hence, I answer the Issue No. 1 in "Affirmative".

19b. The oral, documentary evidence as well as the Spot panchnama are sufficient to appreciate that, out of this road accident, the claimant no.1's wife Lakhiben had received injuries & she died during the treatment. In view of the judgment delivered by the Hon'ble Supreme Court in the case of ***Pawan Kumar & Anr. Vs.***

M/s. Harkishan Dass Mohan Lal & Ors. [2014 ACJ 704 (SC)] as well as in case of *Khenyei Vs. New India Assurance Company Limited, 2015 ACJ 1441 (SC),* as she was traveling in the rickshaw, she does not fall in the category of tort-feasor, therefore the issue of negligence will be governed by the principle of **composite negligence.** The claimants are not required to prove exact negligence of vehicles involved in the road accident.

Issue No.2

20. 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.

21. According to the say of the claimants, deceased was **52** years old at the time of accident. On perusing the P.M. Report at **Exh.57**, it appears that age of the deceased is mentioned as 45 years, hence, the P.M. Report is considered as reliable evidence for deciding the age of the deceased. Therefore, age of the deceased can be considered as **45** years for awarding just compensation. Thus, considering the decision in the case of **Sarla Varma v/s Delhi Transport Corporation & Ors. [2009 ACJ 1298]**, multiplier of **14** is applicable.

22. The claimant No.1 who is the husband of the deceased has submitted in his affidavit at **Exh.54** that, deceased was doing labour work & animal husbandry and earning Rs.5,000/- per month. The claimant No.1 has not led any evidence to prove the income of the deceased and this fact is also admitted by his in cross-examination at **Exh.44.** However, considering the age, nature of work performed by the deceased and considering the minimum wages prevailing at the time of accident, it would be just and proper to consider the income of the deceased as **Rs.4,500/- per month** and **Rs.54,000/-p.a.**

23. The deceased was **45** years old and not having permanent job, 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 40**%** i.e. **Rs.21,600/- [Rs.54,000/- p.a. income x 40% future prospects].** Hence, deceased's yearly income at the time of accident including future prospect is considered as **Rs.54,000/- + Rs.21,600/-= Rs.75,600/-.**

24. As there are three dependent family members of the deceased, therefore, ***1/3rd*** amount is required to be deducted towards the personal and living expenses of the deceased to arrive at just compensation.

25. After deduction of personal living expenses of the deceased, dependency loss would be **Rs.75,600/-** p.a. income – **Rs.25,200/-**

(1/3rd of total income) = **Rs.50,400/- x 14** multiplier = **Rs.7,05,600/-.** Therefore, it is just and proper to award sum of **Rs.7,05,600/- under the head of loss of dependency.**

26. 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***.

26.1 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.

26.2. Therefore, the **claimant no.1 who is the husband of the deceased is entitled to get spousal consortium, the** claimant Nos.2 & 3 are the children (son) of the deceased are entitled to get **Rs.48,400/- each towards Parental Consortium.**

Future loss of income/dependency**Rs.1**	**Rs. 7,05,600=00**
Loss of Spousal Consortium & Parental Consortium	Rs. (48,400 x 3) = **Rs. 1,45,200=00**
Loss of estate	**Rs. 18,150=00**
Funeral expenses	**Rs. 18,150=00**
Total	**Rs. 8,87,100=00**

27. Hence, the claimants are entitled to get **Rs. 8,87,100/- (Rupees Eight Lacs Eighty Seven Thousand One Hundred Only)** as compensation .

28. The claimants have filed the present claim petition seeking compensation of Rs.7,00,000/- but this tribunal has awarded amount of Rs.8,87,100/-. For that the Hon'ble Supreme Court of India in case of Nagappa vs. Gurdayal Singh and others (2003) 2 SCC 274, it was observed that under the MV Act, there is no restriction that

the Tribunal/Court cannot award compensation exceeding the amount so claimed. The Tribunal/Court ought to award 'just' compensation which is reasonable in the facts relying upon the evidence produced on record. Therefore, less valuation, if any, made in the Claim Petition would not be impediment to award just compensation exceeding the claimed amount.

Liability

29. So far as composite negligence of drivers is concerned, this Tribunal is conversant with the judgment of the Hon'ble Gujarat High court in the case of ***Reliance General Insurance Co. Ltd. V/s Riyajbhai Sirajbhai Vora*** reported in ***2018(0) AIJEL-HC 239680***, wherein, the Hon'ble Gujarat High Court by relying upon the ratio of the full bench of the Hon'ble Supreme Court in ***Khneyei v/s New India Assurance Co. Ltd.*** *reported in* ***2015(0) AIJEL-SC 56606*** has observed and held that the claimant to recover whole damages from any of tortfeasor is though permissible in case of such composite negligence when Court / Tribunal can have determined inter-se liability with the extent of composite negligence of their drivers, determination of the extent of negligence between joint tortfeasor may be only for the purpose of their inter-se liability but it is also for the purpose that one may recover the sum from other after making the whole of payment to claimant/plaintiff to extent it has satisfied liability of other. Therefore, the right of the claimant to receive compensation from either of the tortfeasors is different than the inter-se liability of both tortfeasors which certainly arises when

the main judgment or award is confirming inter-se negligence amongst two tortfeasors and, therefore, as soon as competent authority fix inter se liability between two tortfeasors, both of them have got inherent right to recover the amount if they have to pay the excess to their liability which is fixed by the Tribunal by the same judgment. For recovery of such amount, the permission of the Court or Tribunal is not required. Since there is more than one tortfeasor and since their negligence is composite, the claimant can recover a full set of compensation from any of them without fixing inter-se liability amongst different tortfeasors. Fixing such inter-se liability in percentage is mainly for the purpose of confirming the right of all such tort feasor to recover the amount which they are supposed to pay beyond their liability from another tortfeasor.

29a. This Tribunal is also conversant with the judgment in the case of **Amar Singh Jugabhai & Others v. Vijayaben Hemantlal Bhulia and others,** reported in **1996 (1) GLH 1007,** wherein, the Hon'ble Gujarat High Court has observed thus -

> … where a person is injured in a motor accident that occurs not on account of his negligence but because the drivers of the colliding vehicles were negligent, the claimants are entitled to damage jointly and severally from the negligent respondents. Every wrongdoer is liable for the whole damage and it does not matter whether they acted between themselves as equals. A decree passed against two or more tortfeasors can be executed against

> any one of the defendants and such defendants can be compelled to pay the entire amount of damages decreed. It is further clear that the defendant who is compelled to pay the entire amount of damages decreed has a right to contribute from the other wrongdoer. The liability in case of composite negligence, unless must normally be apportioned because the claimant is liable to recover a whole amount of compensation in normal circumstances should not be apportioned, as both wrongdoers are jointly and severally liable for the whole loss. Rule of apportionment of liabilities in case of contributory negligence i.e. where the injured himself is also guilty of negligence.

Further, in **Para-26**, it was observed thus -

> … it is a settled legal position that even if the liability of joint tort-feasor is to the extent of 1 percent the entire amount i.e. 100% amount of compensation awarded can be recovered from the tort-feasor whose liability is adjudged to the extent of 1% only and omission to use one of the joint tortfeasors will not disentitle the claimants from claiming full relief against one who is sued.

30. In view of the above discussion, the present accident had occurred because of **negligence on the part of driver of the both the vehicles.**.

30a. Opponent No.4 is driver cum owner of Chhakdo Rickshaw No. GJ 16 AT 1775, insured with opponent No.5 - Insurance company, Motor Cycle No. GJ 16 CE 1631, owned by opponent No.2 and the said Motor Cycle being insured with the opponent No.3 for the period from 10/05/2017 to 09/05/2018. Thus, it was valid insurance contract on 21/02/2018.

31. Thus, all the opponents 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. Hence, I answer Issue No.2 in the 'affirmative' accordingly and as the claimants succeeds in the matter, they are entitled to get following reliefs and award, and therefore, in the result, in reply to Issue No.3, I propose to pass the final order as follows :-

:: O R D E R ::

1	The Claim petition stands partly allowed against all the opponents, jointly and severally.
2.	The claimants are entitled to recover **Rs. 8,87,100/- (Rupees Eight Lacs Eighty Seven Thousand One Hundred Only)** as compensation with proportionate cost and interest @ 9% p.a. from the date of the claim petition till realization of the amount from all the opponents, jointly and severally.

4.	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.
5.	Claimant No.1 shall get **70% &** claimant Nos. 2 & 3 shall get **15% : 15%** in the awarded amount.
6.	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:

A/c. Name	Additional District Judge, Bharuch
Branch Name	State Bank of India, Muktinagar Branch, Bharuch
A/c. No.	40759978524
IFSC Code	SBIN0008278
MICR	392002002

7	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.

8.	The opponents are also directed to intimate this tribunal on email id 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 of transfer , date of transfer , name of the claimants bank with account number within 7 days form date of transfer.
9.	Opponents are entitled for adjustment of the amount of interim compensation, if any paid, at the final settlement of the awarded compensation.
10.	It is further directed that after above deduction, out of the remaining amount, deposited by the opponents, **70%** of the amount be invested in any Nationalized Bank in the Fixed Deposit in the name of the **claimants** for a period of 5 years by NEFT or RTGS only with a condition that the claimants shall be neither allowed to encash the FDR before the date of its maturity nor to raise any loan against the FDR without prior permission of the Tribunal. However, the **claimants** shall be entitled to receive periodical interest from the concerned Bank on this FDR regularly.
11.	Claimants are not entitled to withdraw the amount invested in FDR and to create any charge or encumbrance of loan on the FDR without prior permission of the Tribunal. The petitioners would be entitled to get the periodical interest that may accrue to them on the said fixed deposit.
12.	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.

13.	Opponents shall pay cost of the petition and shall bear own cost.
14	Registry is directed to forward the authenticated copy of this order to the Insurance Co. by e_mail.
15.	Award be drawn accordingly.

Signed and Pronounced in the open Tribunal today on this 03st day of June, 2026.

Date: 03/06/2026.
Place: Bharuch

(ZYV)

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