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IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN), AT BHARUCH
****

MAC Petition No.701 of 2013

Ex. _____

Claimants:

1. Rabiyabanu Munna
2. Kamruddin Tajubali
3. Sabijun Kamruddin
   All are residing at: Patulki,
   At & PO. Laxmanpur, Tal. Lalganj,
   Azara, Dist. Pratapgadh (U.P.).

Versus

Opponents :

1. Hasifkhan Aashiqali Pathan
2. Speed Carrier Bombay Pvt. Ltd.
   Both are R/o. 802, Citi Ratna Building,
   Panchvati Circle, Law Garden,
   Ahmedabad.
3. HDFC Ergo General Insurance Co. Ltd.
   At. 1st Floor, Shan Complex,
   Bs. City Bank, Race Course,
   Gotri Road, Vadodara.

Appearance:
Ld. Advocate Mr. H. S. Kharva, for the claimants.
Opponent Nos.1&2 undefended.
Ld. Advocate Mr. J. S. Patel, for the opponent No.3.

Claim : Rs.20 Lacs U/s.166 of the M. V. Act, 1988.

:: JUDGMENT ::

1. The claimants being legal heirs and legal representatives of deceased Munna Kamruddin Pathan (hereinafter referred to as the 'deceased' for short) who died in a road accident, have preferred the present claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.20 Lacs from the opponents. It is pertinent to note that, the claimants had initially sought compensation to the tune of Rs.5 Lacs which was subsequently enhanced to Rs.20 Lacs, in pursuance of the order passed below Exh.39 on 11/07/2016.

2. The facts of this claim petition in nutshell are that, on 17/08/2013 the deceased was working as cleaner on the Truck bearing registration No.GJ10-X-5474 and the said truck which was loaded with plastic grains was parked by the opponent No.1 - driver at the gate of Krishna Plastic, GIDC, Bharuch where live electric wire was passing over it. At about 15.00 hours, the deceased climbed over the truck to remove tarpaulin, at that time his hand got electrocuted, as a result of which he fell down from the truck and sustained grievous injuries and died on the spot. Thus, the claimants being legal heirs and representatives of deceased have sought compensation from the opponents under different heads.

3. Upon the petition being admitted, notices were issued to the opponents – and they have been duly served. The opponent Nos. 1 and 2, the driver and owner respectively, of the involved truck bearing registration No.GJ-10-X-5474 though served with

the notice, have not appeared before the Tribunal and therefore, the matter was ordered to be proceeded ex-parte against them.

3.2. The opponent No.3 – Insurance Company has appeared through its advocate Mr. J. S. Patel and filed its written statement at **Exh.20** inter alia contending that, all the averments made in the claim petitions are not true and correct, hence denied in toto. It has been further contended that, the facts regarding occurrence of accident, involvement of offending vehicle, causing injuries and resultant death of deceased, age and income of deceased are not true and correct hence denied in toto. It has also been contended that, this accident had occurred because of negligent act of deceased himself. It has also been contended that, the opponent No.1 - truck driver was not holding valid and effective driving licence and has not satisfied the requirements of the Rule 3 of the Central Motor Vehicles Rules, 1989. It has also contended that, the said vehicle was plying without fitness and permit and therefore, the opponent No.3 is not liable to pay any compensation as per terms and conditions of the policy. Thus, the opponent No.3 - insurance company should be exonerated from its liability to pay compensation to the claimants. Hence, the Insurance Company has prayed to dismiss the claim petition against it.

4. I have heard Learned Advocate Mr. H. S. Kharva for the claimants and Learned Advocate Mr. J. S. Patel for the opponent No.3 - Insurance Company on the points of negligence and quantum. I have also gone through the written arguments submitted by the claimants and opponent No.3 vide **Exh.45** and

Exh.46 respectively.

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

Sr. No.	Particulars	Exh./ Mark
	Oral Evidences	
1	Kamruddin Tajubali	**24**
	Documentary Evidences	
1	Copy of police complaint	**25**
2	Copy of Panchnama of scene of occurrence	**26**
3	Copy of Inquest Panchnama of deceased	**27**
4	Copy of Post Mortem Note of the deceased	**28**

5.2 The witness Ashokkumar H. Singh has produced copy of register of driving licence No.H552/RBC/09 issued by Raibareli RTO in the name of Harilal Romswaroop at **Exh.35**.

6. In this matter, Ld. Advocate for the opponent No.3 has examined Mr. Ashokkumar H. Singh (Licence Clerk of Raibareli RTO) vide **Exh.34** with regards to driving licence of opponent No.1. In addition to this, he has produced insurance policy of the truck No.GJ10-X-5474 vide **Exh.42** and R. C. Book of the offending truck vide **Exh.43.** No other evidence is produced on behalf of parties other than aforesaid oral as well as documentary evidence. On completion of evidence, the Ld. Advocates of the applicants and Opponent No.3 have filed their joint closing pursis vide **Exh.44**.

7. The following issues were framed at **Exh.22** by my Learned Predecessor for determination:

1. Whether petitioners 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, if any, the claimants are entitled to by way of compensation and from which of the opponents?
3. What order ?

8. My findings on the aforesaid issues, for the reasons stated below are as under:

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

REASONS :-

Issue No.1

9. So far as the question of negligence is concerned, the claimant No.2 - Kamruddin Tajubali has submitted his affidavit of examination-in-chief at **Exh.24** and has narrated the same facts as mentioned in his claim petition. During the cross-examination, he has stated that, he was not eyewitness of accident and hence, he has no knowledge about the same.

9.2 Upon going through the police complaint vide **Exh.35** which has been lodged by Aswakhan Sahiruddin Khan who is father of the deceased on 17/08/2013, the same day of accident, it clearly transpires that, he had received telephonic message from Kamruddin Pathan that, after unloading plastic grains from the offending truck which was parked at GIDC, Bharuch, his son's i.e. deceased's hand was electrocuted while tying the rope on the truck and had fell down from the truck, as a result of which he sustained grievous injury and was shifted to Civil Hospital, Bharuch where he declared as dead.

9.3 The accident site panchnama produced on record vide **Exh.26** reflects the place of accident as situated on the gate of Krishna Plastic Company, GIDC, Bharuch and live electric wire passing over it, which is 15 ft. above the ground. It is mentioned in the panchnama that, north - south road facing main road of GIDC, Bharuch and the building of Krishna Plastic is situated on Western side. It is also mentioned in the panchnama that, while the deceased was tying the rope on the truck No.GJ10-X-5474, his hand was electrocuted and the incident had taken place.

9.4 Under given facts and circumstances, the Tribunal is of the view that, no person in charge of a motor vehicle shall cause or allow the vehicle or any vehicle to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or to be likely to cause danger, obstruction or undue inconvenience to other users of the road. The opponent No.1 - driver of the truck had not observed the rules of parking and had parked his vehicle to cause danger to the deceased more particularly the place where live electric wire was passing over the vehicle truck because of which this unfortunate incident had happened. Had he taken some reasonable care while parking his vehicle, this incident could have been averted. Failure to do so, demonstrate squarely rests upon opponent No.1 – truck driver. Thus, it can certainly be said that, this is nothing but negligent act on the part of opponent No.1 - truck driver, as a result of which deceased had lost his life. Hence, I answer the issue No.1 in the '**affirmative**'.

Issue No.2 : Quantum of Compensation

Death

10. The death of Munna Kamruddin Pathan had occurred because of shock resulting from electrocution arising out of the use of motor vehicular accident. This fact is also undisputed and it is supported by Post Mortem Report of the deceased produced at **Exh.28**.

Age of deceased

11. According to say of claimants, the deceased was 24 years old at the time of accident, however, the applicant has not produced any evidence with regards to the age of the deceased. But in the Inquest Panchnama **(Exh.27)**, the age of the deceased is shown to be 22 years. Hence, in the absence of proof it may be presumed that, the deceased might be aged about 22 years.

Income including future prospects

12. Now, the question arises that, what would be the income of deceased at the time of accident ? The claimant No.2 - Kamruddin Tajubali has submitted his affidavit of examination-in-chief vide **Exh.24** and stated that, deceased was working as labourer on the truck and used to earn Rs.8,000/- per month.

During his cross-examination he has stated that, his daughter-in-law has not re-married after her husband's death. He has further stated that, his son i.e. deceased was not having any child during the wedlock. He has also stated that, he has not produced any evidence with regards to the age and income of the deceased.

12.2 It is pertinent to note that, there is no documentary evidence on record as regards monthly income of the deceased. Therefore, it is difficult to determine the income of the deceased as it involves good deal of guess work. In 2013, any person / labourer / cleaner doing such type of work or like activities might have earned Rs.7,000/-. Thus, income of the deceased can be presumed Rs.7,000/- p.m. and yearly it would be Rs.84,000/-, would meet the ends of justice.

12.3 Ld. Advocate for the claimants has submitted written arguments vide **Exh.45** and vehemently argued that, the deceased was working as cleaner / labourer on the offending truck, and if he would be alive his income might have increased, but, untimely death of deceased Munna Pathan had caused huge financial loss to his family members. Thus, future prospective income of deceased is requires to be considered. In support of his say, he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Pranay Sethi & Ors.,*** reported in ***2017(3) GLH 536 SC.***

12.4 The Hon'ble Supreme Court in ***Pranay Sethi (supra)*** has held at para-61(iv) that -

> In case of the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

12.5 Thus, in view of **Pranay Sethi (supra)**, considering 21 years age of the deceased, an addition of 40% of the established income as future prospects is required to be considered.

12.6 In case of **Sarla Verma and others v. Delhi Transport Corporation and others** reported in **2009 ACJ 1298 SC,** the Hon'ble The Supreme Court has held to the effect that-

> ... ... Where the annual income is in the taxable range, the word 'actual salary' should be read as 'actual salary less tax'. ... ...

12.7 Thus, deceased's yearly income at the time of accident was Rs.84,000 – Rs.Nil. (income tax as it was applicable in the A.Y. 2014-15 upto Rs.2.00 Lacs is Nil) = Rs.84,000/- p.a. income + Rs.33,600/- (40% of Rs.84,000/- as future prospect) = Rs.1,17,600/-. Thus, the **income of deceased including future prospects can be considered Rs.1,17,600/- p.a.,** would meet the ends of justice.

<u>Deduction of personal living expenses and Multiplier:</u>

13. It is undisputed fact that, the deceased had left behind him three family members i.e. wife, father and mother. In **Sarla Verma's case (supra),** the Hon'ble Supreme Court has held that -

> where deceased was married, the deduction towards personal and living expenses of the deceased should be 1/3rd where the number of dependent family members is 1 to 3.

Thus, deduction of personal living expenses of the deceased should be **1/3rd of income**. Further, multiplier of 18 is prescribed for the age groups of persons between 16-25. Thus, **18**

multiplier is applicable while computing the compensation.

<u>Dependency Loss</u>

14. After deducting the personal living expenses of the deceased, dependency loss would be Rs.1,17,600/- p.a. income - Rs.39,200/- (1/3rd of total income Rs.1,17,600/-) = Rs.78,400/- x 18 multiplier = Rs.14,11,200/-. Therefore, it is just and proper to award a sum of **Rs.14,11,200/- towards dependency loss to the claimants**.

<u>Conventional Amounts:</u>

15. The compensation to be awarded towards consortium and loss of love and affection is not rigidly standardized. Nevertheless, the trend and the indications available from different decisions of the Hon'ble Supreme Court are in favour of increasing such compensation under conventional heads to keep in tune with the reducing purchasing power of the rupee as also bearing in mind the concept of sudden tragic and needless loss of life resulting into trauma and mental agony to the family members of deceased. If it happens to be the wife, she should be deprived of life long love, affection and protection and companionship. The children at tender age would lose parents, without whom their upbringing and parenting would indefinitely be incomplete.

15.2 The Hon'ble Supreme Court in **Pranay Sethi's case (supra)** has held that, quantum of compensation under conventional head should be awarded Rs.15,000/- towards Loss of estate; Rs.40,000/- towards Loss of consortium and Rs.15,000/- towards Funeral Expenses and directed to all the Tribunal that the aforesaid amount should be enhanced @ 10 per cent, in every 3 (three) years.

15.3 In the case on hand, it is also equally true that, the claimants might have incurred expenses towards last rituals of deceased. Thus, in view of ***Pranay Sethi's case (Supra)***, it will be just and proper to award a sum of **Rs.15,000/- towards funeral expenses.** Further, it is also true that, the deceased had left behind him widow, father and mother. Therefore, in view of ***Pranay Sethi's case (Supra)***, it will be just and proper to award a sum of **Rs.15,000/- towards Loss of estate** and **Rs.40,000/- towards Loss of consortium.**

16. Thus, the claimants are entitled to get the following amount of compensation:

1	Dependency Loss	14,11,200/-
2	Funeral Expenses	15,000/-
3	Loss of Estate	15,000/-
4	Loss of Consortium	40,000/-
	Total Compensation	**14,81,200/-**

17. Further, it is required to be observed that in view of oral Judgment of the Hon'ble High Court of Gujarat in the case of **Smt. Hansagauri Prafulchandra Ladhani V/s. Oriental Insurance Company Limited and others** reported in **2007 ACJ 1897**, wherein the question of deduction of income tax by the Insurance Company has been discussed and certain directions have been issued to the Tribunal, is required to be followed by this Tribunal. Hence, those directions are also required to be given to the present Insurance Co. regarding deposit of amount of Income Tax payable to Income Tax Department for the interest.

Liability

18. In view of aforesaid discussion, it can be said that the present accident had occurred because of negligent act of opponent No.1 i.e. truck driver. At the relevant time, opponent No.2 was the owner of the offending Truck bearing registration No.GJ10-X-5474; this fact is clearly derived from the R. C. Book of truck produced at **Exh.43**. Therefore, the owner i.e. opponent No.2 is vicariously liable for the tortuous act of opponent No.1 - truck driver. Further, on perusing insurance policy of the truck bearing registration No.GJ10-X-5474 at **Exh.42**, it transpires that the offending vehicle was insured with the opponent No.3 for the period from 30/12/2012 to 29/12/2013. Thus, the offending truck has covered risk of insurance on 17/08/2013, the date of accident.

Liability of Opponent No.3 - Insurance Company as regards dispute of Driving licence of opponent No.1 - truck driver.

18.2 Ld. Advocate for the opponent No.3 - Insurance Company has submitted written arguments vide **Exh.46** and vehemently argued that, the opponent No.1 - truck driver was holding fake driving licence on a day of accident. In other words, he does not have valid and effective driving licence at the time of accident. In support of his say, he has examined Mr. Ashokkumar Harishchandra Singh vide **Exh.34** and he has deposed that, the licence which is mentioned in the summons was issued to Harilal Ramswaroop by RTO, Raybareli as the licence No.H.552 was not issued by his office to Hasifkhan Ashiqali Pathan. He has further deposed that, he come-up with the licence register and the copy of the same is produced vide Exh.35. He has been cross-examined by Ld. Advocate Mr. Kharva and has admitted that, he cannot say that which RTO should have issued licence to Hasifkhan. Thus, it can be said that, the opponent No.1 does not have valid driving licence on the day of accident and the insured i.e. opponent No.2 had committed breach of terms and conditions of the policy. Hence, opponent No.3 – insurance company is absolved from its liability to pay compensation to the claimants. In support of his say, he has relied upon the following judgments:

(1) ***National Insurance Co. Ltd. v/s. Vidhyadhar Mahariwala*** reported in ***2008(0) GLHEL-SC 42118.***
(2) ***Sardari and Ors. V/s Sushil Kumar & Ors.*** arising out of ***Civil Appeal No.1733 of 2008*** delivered by the Hon'ble Supreme Court on **04/03/2008**.
(3) ***New India Assurance Co. Ltd. v/s. Roshanben Fakir*** reported in ***AIR 2008 SC 2266.***
(4) ***Oriental Insurance Co. Ltd. v/s. Angad Kaul*** reported in ***Manu/SC/0248 2009.***

18.3 Ld. Advocate for the claimants has vehemently submitted in his written arguments vide **Exh.45** that, mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the opposite party. There has to be casual relationship between violation and the accident caused. Thus, insurance company cannot absolve from its liability to pay compensation to the claimants. In support of his say, he has relied upon the citations viz. (1) **2008 ACJ 1498 (AC)**, (2) **2013 AIR 2262 (AC**), (3) **2013(3) GLR 2414**, (4) **2014(4) TAC 676 (AC)**.

18.4 Considering the rival submission made by the parties, question arises that the opponent No.1 - truck driver was not holding driving licence on a day of accident ?

18.5 So far as the dispute as regards driving licence of opponent No.1 is concerned, on perusing the driving licence register produced by witness Askhokumar vide **Exh.35**, it appears that the licence No.H.552/RBC/09 was issued to one Harilal Ramswaroop. It is pertinent to note that, no driving licence had been issued by RTO, Raybareli to the opponent No.1 - Hasifkhan Ashiqali Pathan. Thus, it is undoubtedly clear that, the opponent No.1 was not holding any driving licence on 17/08/2013, the date of accident.

18.6 This court is conversant with the judgment of the Hon'ble Supreme Court in case of ***Kempaiah v/s S. S. Murthy*** *reported in* ***2017 (0) AIJEL-SC 60167***, has held by relying ratio of the Hon'ble Supreme Court delivered in the case of ***National Insurance Co. Ltd. v. Swarna Singh and Ors.,*** reported in ***2004(2) GLR 989 (SC)***, to the effect that, disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defence available to the insurer against either the insured or the third parties. Thus, it was observed that insurance company should be directed to satisfy the award as enhanced by us and thereafter would be at liberty to recover the said amount from the owner of the lorry (transport vehicle).

18.7 On the contrary, it is also equally true that, the victim of accident is a third party, and, in that case, mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, the insurance company are not in themselves defence available to the insurer against either the insured or third parties.

18.8 This Court is also conversant with the judgment of the Hon'ble Supreme Court in the case of ***Kusum Lata and Ors. V. Satbir and Ors.,*** reported in ***2011 ACJ 926,*** wherein, it was held in para-13 that, in respect of the dispute about licence, the Tribunal has held and, in our view rightly, that the insurance company has to pay and then may recover it from the owner of vehicle. This Court is affirming that direction in view of the principles laid down by a three-Judge Bench of this Court in the case of ***Swaran Singh's (supra).***

18.9 This Tribunal is also conversant with the latest judgments of the Hon'ble Supreme Court in the case of (1) ***Pappu and others v/s. Vinod Kumar Lamba and another*** reported in ***2018 TAC 360 SC,*** (2) ***Shamanna and another v/s Divisional Manager, Oriental Insurance Co. Ltd. And Ors.,*** reported in ***2018 ACJ 2163 SC*** and (3) ***Singh Ram v/s Nirmala and others*** reported in ***2018(2) TAC 1 (SC)***, wherein, the Hon'ble Supreme Court has affirmed the direction in view of the principles laid down by a three-Judge Bench of the Hon'ble Apex Court in the case of ***Swaran Singh's case (supra)***.

18.10 Thus, in view of ***Pappu (supra), Shamanna (supra)*** and ***Nirmala (supra)***, it can certainly be said that, if the truck driver does not have any licence on 17/08/2013, the date of accident and breach of policy condition is duly proved by the insurance company then also order of pay and recover should be passed by the Tribunal. Thus, the judgments which have been relied upon by the opponent No.3 - insurance company does not apply to the case on hand.

18.11 Hence, in view of aforesaid discussion and ***in respect of the dispute about no driving licence on 17/08/2013, the date of accident or renewed after the accident by the opponent No.1 - truck driver, the insurance company i.e. opponent No.3 has to pay and then may recover it from the opponent No.2 i.e. owner of vehicle truck.***

18.12 Thus, the opponent No.3 - insurer is liable to compensate the loss caused to the insured. So the opponent Nos.1 to 3 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 with proportionate costs to the claimants and upon making such payment, the opponent No. 3 can recover the said amount from the insured i.e. opponent no.2 by executing this award against him as per Sec. 174 of the M.V. Act and hence, I answer Issue No.2 in the 'affirmative' accordingly and as the claimants succeeds partly 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 :-

:: ORDER ::

1. The claim petition stands partly allowed against the opponent Nos.1&2.

2. The opponent Nos.1 and 2 are jointly and severally ordered to pay a sum of Rs.14,81,200/- (Rupees Fourteen Lacs Eighty-One Thousand and Two hundred only) as compensation to the claimants, together with proportionate costs and interest @ 9% p.a. from the date of claim petition till realization within one month from the date of this order.

3. The claim is dismissed against opponent No.3, Insurance Company however, the opponent No.3 is hereby ordered to deposit the amount of compensation awarded along with interest and proportionate costs etc., in the office of the Tribunal within 1 (one) month from the date of this judgment, and thereafter recover the said amount from the opponent No.2.

4. It is further directed that, upon making payment of the awarded amount of compensation to the claimants and for the purpose of recovering of the said amount from the insured, the opponent No.3 shall not be required to file a suit and the opponent No.3 can recover the amount from the insured by executing this award against the insured as per Section 174 of the M. V. Act.

5. 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.

6. Amount of Court fees, if recoverable; be recovered from the awarded amount of compensation and the same to be taxed as costs of the petition.

7. The amount of compensation shall be disbursed to the claimant Nos.1 to 3 in the ratio of 50:25:25 respectively.

8. On depositing the amount of compensation, 70% amount be Fixed Deposited in the name of claimants in any nationalized bank or in any Government security to their choice for a period of 5 (five) years, keeping the nomination clause, with a condition that no loan or advance or charge would be admissible on this amount without prior permission of this tribunal but the claimants would be entitled to get periodical interest that may accrue to them on the said F.D.R.

9. The remaining **40%** amount be paid to the claimants by Account Payee Cheque, upon proper verification and identification.

10. The opponents are also directed to -

(a) first spread the interest amount over to the relevant financial years for the period from date of filing the claim petition till the date of deposit.

(b) thereafter, if the interest for any particular financial year exceeds Rs.50,000/-, separately deposit before this Tribunal the amount liable to be deducted at source under the provisions of Sec.194.A (3) (ix) of the Income Tax Act, 1961 such amount shall not, however, straight way, be paid over to the Income Tax Department.

(c) produce before this Tribunal a statement of compensation of interest by spreading the amount over the relevant years from the date of claim petition till the date of deposit if the interest for any particular financial year exceeds Rs.50,000/-and also request the Tribunal to treat the amount as a separate deposit.

(d) to deposit the entire amount of interest as aforesaid in the Tribunal which will be dealt with by the Tribunal in view of decision of the Hon'ble High Court of Gujarat which is rendered in Civil Application No.10031/2006 in First Appeal No. 1392 of 2006.

11. Opponents do bear their own costs whatsoever.

12. Award be drawn accordingly.

Signed & Pronounced in the open Court today on **27th February, 2020.**

Date: 27/02/2020
Place: Bharuch

(Utkarsh Thakorbhai Desai)
MAC Tribunal (Main)
Bharuch
Code No.GJ01314

PS/Mayur Patel