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BEFORE THE 2ND ADDITIONAL DISTRICT AND SESSIONS JUDGE CUM MOTOR ACCIDENT CLAIM TRIBUNAL (AUXILIARY), AT BHARUCH.

MAC PETITION No. 531 of 2021.

Exh. ______

<u>Claimants:</u>

1. Chanchalben babubhai Rohit.
Age: 56 years, Occu.: Housewife

2. Hiteshbhai Babubhai Rohit.
Age: 38 years, Occu: Service.
(both are R/o: At post: Kaddhara,
Taluka: Dabhoi, Dist: Vadodara.)

Versus

<u>Opponents :</u>

1. Jatinkumar Hasmukhbhai Patel.
Age: Adult, Occu: Driver/Owner,
R/o: at post: Bhadam, Utarajiyu faliyu,

near Swaminarayan temple
Taluka: Nandod, District: Narmada.

2. Cholamandalam MS General Insurance Co. Ltd.,
   At: Aditya Complex, Kasak, Bharuch.

Appearance:-

Ld. Advocate for the claimants: Mr.P.K.Parmar.

Ld. Advocate for the opponents: Mr.R.S.Patanwadiya.

Claim : Rs.20,00,000/- U/s.166 of the M. V. Act, 1988.

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

(1) The claimants are the legal heirs and legal representative of the deceased- Babubhai Kuberbhai Rohit (hereinafter referred to as the 'deceased' for short) who died in a road accident, has preferred the present claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- from the opponents. The claimant no.1 is the wife and the claimant no.2 is the son of the deceased.

(2) Facts of the claim petition:

The brief facts of this claim petition in nutshell are such that, on On 01/09/2021, the deceased was standing on the side of Dabhoi-Vadodara road after completing his work at Palaswada crossing, at that time, the opponent No.1 drove his Eeco Car bearing Registration No.GJ-06-JQ-2246 in a rash and negligent manner, dashed with the deceased and threw him ten feet away, and thus, the deceased suffered serious injuries and died on the spot. It is stated that the accident has occurred on account of rash and negligent driving of offending Eeco car driver, Thus, the claimant being legal heirs and legal representatives of deceased-Babubhai had sought compensation from the opponents under different heads.

(2.1) According to the claimant i.e., wife of the deceased, at the time of accident the deceased was aged about 53 year, hale & healthy. It is stated that the deceased was engaged in the work at Gram Rakshak Dal and earning monthly Rs.10,000/- and additionally from agricultural work earning yearly Rs.1,00,000/-. It is further stated that claimants were depended on the income of the deceased and had the deceased not died in the accident, he would have continued to earn a substantial income, thereby providing financial security and support for the well-being of his dependents. It is further stated that due to sad demise of the deceased, claimants have suffered economic loss and claimed Rs.20,00,000/- as a compensation under different heads.

(3) Upon the petition being admitted, notices were issued to the opponents and they have been duly served. However, none has appeared on behalf of opponents and therefore this petition is ordered to be proceeded Ex-parte against the opponent no.1 and the right to submit the written statement of opponent no.2 was closed by passing order dated. 11/10/2023 by the then MACT(Auxiliary), Bharuch. Thereafter, the opponent no.2 had appeared through his Ld. Advocate and has filed an application to open the right to submit written statement vide Exh.29, which was granted on 30/03/2026.

(3.1) Thereafter, the opponent No.2 – Insurance Company had appeared through its advocate Mr.R.S.Patanwadiya and filed written statement vide **Exh.30** inter alia contending that, all the averments made in the claim petition 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 the deceased, age and income of the deceased are not true and correct. It is submitted that the driver of the vehicle- Eeco car bearing Registration No.GJ-06-JQ-2246 was driving without any valid driving license and therefore, the driver of the said vehicle did not possess a valid and effective driving license at the time of the accident and the accident been occurred due to the rash driving of the opponent No.1 – driver of Eeco car. The opponent no.2 has denied all the allegations made in the claim petition and put the claimants to strict proof thereof, and submitted that the claim petition is not maintainable due to non-joinder/mis-joinder of parties and non-payment of proper court fees. The opponent no.2 has submitted that its liability, if any, is subject to the terms and conditions of the policy, validity of driving license, and compliance of statutory provisions under the Motor Vehicles Act and Insurance Act. Negligence, income of deceased/applicant and the compensation claimed are specifically denied. Thus, the opponent No.2 - insurance company is exonerated from its liability to pay compensation to the claimants. Hence, the opponent No.2 - Insurance Company has prayed to dismiss the claim petition against it.

(4) The claimants have adduced and produced following oral as well as documentary evidences:

Sr. No.	Oral Evidence	Exh.
1	Chanchalben babubhai Rohit	16

Sr. No.	Documentary Evidence	Exhs.
1	Copy of FIR	19
2	Panchnama of site of offence	20
3	Inquest panchnama	21
4	Copy of post-mortem report	22
5	Copy of RC book of Eeco car No.GJ-06-JQ-2246	23
6	Copy of insurance policy of Eeco car No.GJ-06-JQ-2246	24
7	Copy of driving license of opponent no.1	25
8	Copy of charge-sheet done by police against the opponent no.1	26
9	Copy of Adhar card of the deceased-Babubhai Kuberbhai Rohit	27
10	Income certificate from Gram Rakshak Dal Unit has been produced by claimant which was marked vide Mark.15/2.	Mark. 15/2

(5) On completion of evidence, the Ld. Advocate for the claimants has filed closing pursis at Exh.25, whereas, the Ld. Advocate for the opponent no.2 has filed closing pursis at Exh.31.

(6) Heard the Ld. Advocates for the parties, perused the evidence and written arguments filed by the Ld. Advocate of the claimants at Exh.32 as well as the written arguments filed by the Ld. Advocate of the opponent insurance company at Exh.33.

(7) The following issues were framed at **Exh.13** by my predecessor for determination:

1. Whether the petitioners prove that the deceased died on account of rashness and negligent in driving on the part of the driver of the vehicles 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) 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.

(10) Ld. advocate for the claimant Mr.P.K.Parmar has submitted written arguments vide **Exh. 32** and has narrated the same facts as mentioned in the petition and for that FIR has been registered against the opponent no.1 at Dabhoi Police Station vide Exh. 19, and as per her say the accident took place due to rash and negligent driving of opponent no.1 and he was solely responsible for the same. Further, it is submitted that, the untimely death of the deceased had caused huge financial loss to her family and produced the Adhar card of the deceased vide Exh. 27, to prove his age and as per the Adhar card the deceased was 53 years old at the time of accident. The deceased was serving in GRD Unit from which he was earning monthly Rs.10,000/- as an income and besides this from agricultural works he was earning Rs. 1,00,000/- per year. As per her say has the deceased not died he could have earn more from his service, therefore, 15% future prospective income of the deceased should be considered. In support of her say, she has relied upon the judgments 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*** as well as ***Sarla Verma and others v. Delhi Transport Corporation and others*** reported in ***2009 ACJ 1298 SC.***

(11) Ld. advocate Mr.R.S.Patanwadiya for the opponent no.2 has submitted his written arguments vide Exh.33 and submitted that 50% negligence should also be considered on the part of the deceased. He has also submitted that to prove the income of the deceased the claimants had not produced any kind of documentary evidence as well as oral evidence, and hence, prayed to consider the notional income Rs.6000/- and give compensation as per that consideration.

(12) So far as the question of negligence is concerned, the claimant- Chanchalben babubhai Rohit who lost her husband, has submitted her affidavit of examination-in-chief at **Exh.16** and has narrated the same facts as mentioned in his claim petition. During her cross-examination by the Ld. Advocate for the opponent no.2, she has admitted that she was not the eye-witness of the accident. She has further admitted that documents regarding the income of the deceased were submitted and she had denied that false deposition has been given just to get compensation.

(13) The claimants have produced on record the copy of the FIR at Exh.19 and the Panchnama of site of offence at Exh.20, the description of Eeco Car bearing Registration No.GJ-06-JQ-2246 has been mentioned and thus, involvement of the Eeco car is established. If the FIR of the Eeco car driver is perused it was filed by the Claimant no.2- Hiteshbhai Babubhai Rohit, wherein

he has stated that at around 08:30 pm. he was at his residence and he was informed through a phone call by the Sarpanch of his village that the Eeco car being driven at a high speed in a rash and negligence manner dashed with his father who was standing opposite of Mahi hotel on Dabhoi-Vadodara Highway Road and upon reaching the place of occurrence, he found his father lying dead by the side of the road.

(14) Further, the claimants have produced the Inquest Panchnama at Exh.21 and P.M. report at Exh.22 which clearly reveals that the deceased died due to severe head injuries. The cause of death of Babubhai Kuberbhai Rohit is due to acute shock, haemorrhage, carnio cerebral injuries and multiple injuries sustained over body in a road accident. This fact is also undisputed and it is supported by Post-Mortem Report of the deceased produced at **Exh.22**.

(15) Therefore, considering the facts and circumstances of the present case and material on record, it appears from the FIR that the accident involved the vehicle- Eeco car and the FIR was registered against the driver and owner of the Eeco car bearing Registration No.GJ-06-JQ-2246, hence, there is no material evidence on record which establishes that the driver of the Eeco car was not negligent and was not involved in the accident.

(16) Under given facts & circumstances, this tribunal is of the opinion that the opponent No.1 –the driver had an opportunity to avert this type of accident, but, he has not made any attempt to avert the collision with the deceased who was standing by the side of the road, if some reasonable care had been taken while driving by the opponent No.1– Eeco car driver, this accident could have been averted. Therefore, it can certainly be said that, this accident had occurred because of negligence on the part of driver of the vehicle involved in the accident, and hence, the opponent No.1- Eeco car driver was negligent to the extent of 100% for occurrence of this accident. Hence, my answer to the issue No.1 is in the '**affirmative**'.

Issue No.2 : **Quantum of Compensation**

(17) 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 wrong done as far as money can do so, in a fair, reasonable and equitable manner.

Age of Deceased

(18) On perusing the Adhar card of the deceased the date of birth is shown as 01/01/1968, an accident occurred on 01/09/2021. hence, the deceased was 53 years old at the time of accident. Thus, considering the decision in the case of Sarla Varma Vs. Delhi Transport Corporation & Ors [2009 ACJ 1298], multiplier of **11** is applicable.

(19) The claimant no. 1 i.e., the wife of the deceased has submitted in her affidavit at Exh.16 that deceased was working at

Gram Rakshak Dal- Dabhoi and earning Rs.10,000/- per month and additionally earning Rs.1,00,000/- per year through agricultural work and both the claimants were depended on the income of the deceased as most of his income was spent to run the house.

(19.1) On perusing the record which were produced by the claimants, i.e., Income certificate vide Mark.15/2 given by the Gram Rakshak Dal, in which the salary of the deceased was shown as Rs.230/- per day, and they have not produced any documentary evidence to prove the income in agricultural works. Thus, in order to determine the quantum of compensation, the monthly income of the deceased has to be ascertained from the income certificate. Hence, this tribunal is of considered view that the deceased was getting Rs.6,900/- monthly income at the time of accident.

(19.2) So far, the question of agriculture income is concerned, in the case of Smt. Rajashree & Ors. Vs. Sri Mahaveer Kakaso Patil & Anr., in Civil Appeal No. 6813 of 2022 (arising out of SLP© No. 20455/2018) of the Hon'ble Supreme Court has held that…

> *While rejecting the claim, reckon the income for compensation also on the ground that deceased was an agriculturist, the MACT had reasoned that the agricultural properties, on which the deceased was growing crops and was earning livelihood, are now available to his family members and therefore, no compensation is payable in that regard as there is no loss of income.*

However, on that aspect, what is to be noted is that even if the property is available, the effort of supervising the agricultural operations by the deceased as the head of family in rural set up is a loss to the family and as such, a marginal loss in any event would occur to the family.

(19.3) Therefore, keeping in view these aspects, it would be appropriate to reckon the monthly income of the deceased from agricultural works as **Rs.3,000/-(Rupees Three Thousand Only)**. Hence, the income of the deceased is considered as Rs.6,900/- (Rs.230/- per day income * 30 days) + Rs.3,000/- = **Rs.9,900/- per month** and yearly it would be **Rs.1,18,800/-(Rs.9,900/- * 12 months).**

(19.4) 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.

Thus, in view of **Pranay Sethi (supra)**, considering 53 years age of the deceased, an addition of 10% of the established income as future prospects of the deceased is required to be considered.

Rs.1,18,800/- per annum income + Rs.11,880/-(10% of Rs.1,18,800/- as future prospect) = Rs.1,30,680/-, thus, the income of the deceased including future prospects can be considered Rs.1,30,680/- per annum.

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

(19.6) After deduction of personal living expenses of the deceased, dependency loss would be Rs.1,30,680/- p.a. income – Rs.43,560/- (1/3rd of total income Rs.1,30,680/-)= Rs.87,120/- * 11 multiplier = **Rs.9,58,320/-.** Therefore, it is just and proper to award sum of **Rs.9,58,320/- under the head of loss of dependency.**

(19.7) 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,** loss of consortium would be **Rs.48,400/-** and funeral expenses would be **Rs.18,150/-**.

(19.8) 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.

(19.9) Therefore, the claimant no.1 who is the widow/wife of the deceased is entitled to get **Rs.48,400/-** towards spousal consortium, the claimant No.2 is the son of the deceased is entitled to get **Rs.48,400/-** towards Parental Consortium.

(19.10) Thus, the claimants are entitled to get following amount of compensation.

Future loss of income/dependency	Rs.9,58,320/-
Loss of Spousal Consortium.	Rs.48,400/-
Loss of Parental Consortium	Rs.48,400/-
Loss of estate	Rs.18,150/-
Funeral expenses	Rs.18,150/-
Total	**Rs.10,91,420/-**

In view of the above referred discussion, total compensation arrives at **Rs.10,91,420/-<u>(Rupees Ten Lac Ninety-One Thousand Four Hundred-Twenty Only).</u>**

<u>Liability</u>

(20) So far, the liability is concerned, the evidence on record reveals that the offending Eeco car involved in the accident was being driven by opponent no.1, who is also the owner of the said vehicle. The copy of the driving license produced on record at Exh.25 establishes that opponent no.1 was holding a valid and effective driving license on the date of accident. The insurance policy produced at Exh.24 shows that the vehicle was insured with opponent no.2 i.e., Insurance Company for the period from 19/08/2021 to 18/08/2022, and, therefore, the policy was valid and subsisting on the date of accident i.e., 01/09/2021. The Panchnama of site of offence and other documentary evidences sufficiently establish the involvement of the offending Eeco car in the accident. No breach of policy conditions has been proved by the Insurance Company.

Hence, the opponent no.1 being the driver cum owner of the offending vehicle is primarily liable, whereas the opponent no.2 Insurance Company is liable to indemnify the insured. Therefore, opponent Nos.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. Hence, I answer the Issue No.2 in '**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.
2. The opponent Nos.1 to 2 are jointly & severally ordered to pay a sum of **Rs.10,91,420/-(Rupees Ten Lac Ninety-**

<u>One Thousand Four Hundred-Twenty Only)</u> as compensation to the claimants, together with proportionate costs and interest @ 9% p.a. from the date of claim petition till its realization.

3. 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.

4. 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

5. After depositing the amount of court fees in the account of Additional District Judge, Bharuch, the opponents 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>

6. The claimants are hereby directed to furnish the details of

her bank account maintained with Nationalized Bank 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 within reasonable time before this Tribunal, if not submitted. It is further directed to the claimants to submit the certificate of the banker certifying that the account is of the concerned claimant/s. Upon receipt of the aforesaid bank details, as per the decision of the Hon'ble Apex Court in the case of Paraminder Singh V. Honey Goyal & Ors. in Civil Appeal arising out of SLP © No.4484 of 2020, the concerned opponents are directed to transfer the awarded amount into bank account of the claimants as per their share within 30 days. Before transferring the amount into the bank account of the claimants, the concealed opponents shall inform the concerned bank of the claimants well in the advance regarding the transfer of the awarded amount, so that the concerned bank is able to give effect to the direction of this tribunal regarding depositing of respective amount in fixed deposit.

7. The opponents 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 claimants along with proof of such transfer, such as, MACP Number, Name of the Claimants, Amount Transfer, Date of Transfer, Name of Claimant's Bank with Account Number, within 7 days from the date of transfer.

8. Out of the amount coming to the share of the 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 claimant/s are 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. Nazir of the District Court as well as MACP Branch, District Court to ensure the compliance of this award.

9. The cost of the proceedings incurred by the claimants as well as the opponents shall be born by the opponents.

10. MACT Branch is directed to forward the copy of this judgment through E-mail to the insurance company as well as concerned bank of the claimants.

11. Award be drawn accordingly.

Signed & Pronounced in the open Tribunal today on 19th June 2026.

Date: 19/06/2026 Place: Bharuch (KKC)	**Ejaz Mohsinali Shaikh** 2nd Additional District & Sessions Judge/MAC Tribunal**(Auxi)** Bharuch(GJ00627)