


GJBK010038972021 	DATE OF INSTITUTION	02/11/2021		
	DATE OF REGISTRATION	02/11/2021		
	DATE OF JUDGMENT	17/03/2026		
	DURATION	DAYS	MONTHS	YEARS
		15	04	04

IN THE TRIBUNAL OF MOTOR ACCIDENT CLAIMS
(3rd AUX.), AT:-PALANPUR. DIST.B.K.

M.A.C.P.No.288/2021

Ex.: _____

<u>Claimant.</u>
Legal Heir of deceased-Meghnaben Mehulkumar Joshi, Mehulkumar Kantilal Joshi, Age: 42 years, Occ.Service, R/o.Mansarovar Road, Brahmanvas, Palanpur, Tal.Palanpur, Dist.Banaskantha.

Versus

<u>Opponents.</u>
1. Manojkumar, S/o.Satyanarayan Agrawal, C/o. Balaji Motor, Sarup Ganj, Kacholi Chauraha, Dist.Sirohi (Rajasthan). (Owner of the truck No.RJ-24-GA-1404)
2. Shriram Gen. Ins. Com. Ltd., Add. 33, Fourth Floor, Sanniddh Complex, Ashram Road, Ahmedabad. (Ins. Com. of truck No.RJ-24-GA-1404)

Subject : Claim petition filed U/s.166 of the Motor Vehicles Act, 1988, to get compensation of Rs.91,69,720/-.

Appearance:-	
Ld. Adv. for the applicant.	Mr. T.M.Joshi
Ld. Adv. for the Opponent No.1	None.
Ld. Adv. for the Opponent No.2	Mr. D.K.Thakor

-: J U D G M E N T :-

- (1) The present claim petition is filed by the applicant under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.91,69,720/-, from opponents on account of accidental death of deceased-Meghnaben Mehulkumar Joshi in the accident occurred on 10/02/2020.

- (2) The brief facts of the present claim petition are that on 10/02/2020, the deceased was traveling in alto car no. GJ - 08 - F - 9565 from Aburoad to Palanpur by sitting in the said car. At that time, the said car was being driven by Nitinkumar. As and when, the said car was passing through the bridge of Iqbalgadh, at that time, a truck no.RJ-24-GA-1404, driven rashly and negligently, came into the wrong side, dashed the car of the deceased. As a result, the car came in between the truck and luxury bus no.GJ-19-V-7400, passing through the side of the car. Hence, the accident had occurred and due to this, the deceased has sustained severe fatal injuries all over her body and succumbed to the accidental injuries. This gave rise to the filing of present claim petition by the applicants.

- (3) It appears from the record that opponents have been duly served with the notices.

Despite being served with notice, opponent no.1 has chosen not to appear in this proceeding to contest the claim petition.

Learned Adv. Mr. D.K.Thakor for the opponent no.2 has appeared and filed his written statement vide Exh.29, wherein, he has denied each and every averments of the claim petition.

- (4) In view of the pleadings of the parties, this tribunal has framed the following issues for the determination of the present claim petition at Exh.11, which are as under;

- (1) Whether the applicant proves that the deceased died due to rash and/or negligent driving by driver of the vehicle involved in the accident?
- (2) Whether the applicant is entitled for compensation ? If yes, than who is responsible to pay compensation and up to what extent ?
- (3) What award ?

- (5) My findings for the above noted issues are as under:-

- (1) In the affirmative.
- (2) As per final order.
- (3) As per final order.

REASONS

- (6) The parties have led the following evidence to prove and disprove the contents of claim petition;

<u>Sr. No.</u>	<u>Oral Evidence</u>	<u>Exh.</u>
1.	Affidavit cum chief examination of applicant.	25

<u>Sr. No.</u>	<u>Documents</u>	<u>Exh.</u>
1.	Certified copy of panchanama of place of offence.	33
2.	Certified copy of inquest panchanama.	34
3.	Certified copy of appointment letter of deceased.	35
4.	Certified copy of Form No.16 & ITR of the deceased.	36
5.	Copies of educational testimonials of deceased.	37 & 38
6.	Copy of School Leaving Certificate of deceased.	39
7.	Copy of Pan Card of the deceased.	40
8.	Copy of Salary Certificate of deceased.	41
9.	Copy of Bank Account Statement of deceased.	42
10.	Copy of charge-sheet.	43
11.	Copy of DL of driver of truck.	44
12.	Certified copy of FIR.	46
13.	Certified copy of panchanama of place of offence.	47
14.	Certified copy of PM Note.	48

(7) **Issue No.1 :-**

Heard, learned Advocate for the parties and perused the record. Perused the FIR, panchnama of place of offence, chargesheet etc, facts such as date, time, place, involvement of vehicles etc. are not disputed. Inquest Panchanama and Post Mortem Report of the deceased are also suggesting the accidental death of the deceased-Meghnaben.

Now, so far as the negligence which led to the fateful accident is concerned. Applicant has filed his affidavit-cum-examination-in-chief vide Exh.25, wherein he has reiterated the facts of the claim petition. Learned Advocate Mr. D.K.Thakor for the opponent no.2 has also cross-examined him, wherein, he has admitted that the accident had occurred on Palanpur - Aburoad Highway. The fateful road of accident is North-South. He has further admitted that at the time of accident, he was traveling with other persons. He has further admitted that he was sitting beside the driver of the car. He has further admitted that at the time of accident, the said car was being driven by the deceased-Nitinkumar. He has further admitted that in total seven persons were traveling in the car. Out of seven, three persons have died due to the accidental injuries. He has admitted that at the time of accident, the car was traveling from North to South. He has further admitted that at the time of accident, truck came into the east side of the road. He has denied the

suggestion that the accident had occurred due to the sole negligent driving of driver of the luxury bus involved in the accident. He has further admitted that truck dashed the left side of the car. He has further denied the suggestion that the accident had occurred due to the sole negligent driving of driver of the car involved in the accident. He has further admitted that the luxury bus dashed the rear end of the car during the accident.

At this stage, it is worthwhile to note here that while deciding the point of negligence, it has to be borne in mind that the negligence is required to be proved in claim petition under Section 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. This tribunal has taken aid of the judgment in **Bimla Devi v/s HRTC, reported in AIR 2009 SC 2819 and Parmeshwari Devi v/s. Amir Chand, reported in 2011(11) SCC 635.**

Perused the FIR, it reveals that complaint is lodged against the driver of the truck involved in the accident. As per the FIR, when the car was passing through the bridge of Iqbalgadh, at that time, the fateful truck, driven rashly and negligently, came into the wrong side and dashed the car from the front side. As a result, the car drifted towards the luxury bus and luxury bus, which was passing through the side of the car, dashed the car. Hence, the accident had occurred. Looking to the

panchnama of the place of offence, it reveals that all the three vehicles involved in the accident are lying on the spot of accident in damaged conditions. It further reveals the car suffered damaged on bumper, bonnet and other parts and the truck as well as luxury bus suffered damages on their front portions. Both luxury bus and truck have suffered damages on their driver cabin. As per the panchnama, the truck came into the wrong side dashed the car of the deceased. Looking to the charge-sheet, it reveals that the police after investigation has filed the charge-sheet against the driver of the truck involved in the accident. The charge-sheet filed by the police remains unchallenged before any Authority. In case of **New India Assurance Co. Ltd. vs. Pazhaniammal (2012 ACJ 1370)**, it has been held that the filing of a charge-sheet by the police is prima facie evidence of negligence of the driver of the offending vehicle. Despite being granted with ample opportunities, the opponents have not examined the driver of truck to negate the manner of accident as suggested by the applicant. The documentary evidence available on record are supporting the manner of accident as suggested by the applicant. Deceased was traveling as passenger of the car and there is no evidence pointing towards her negligence, hence, this is case of composite negligence vis a vis deceased. It was the duty of the driver of the truck to drive in safe and non-hazardous manner, however, the driver of the truck failed to observe his duty

of care and accident had occurred. It is also apt to mention here that in other claim petitions which have arisen from the same accident, the insurance company has arrived at amicable settlement in MACP Nos. 284/2021, 285/2021, 286/2021, and 287/2021. Therefore, considering the overall facts and circumstances, and keeping in mind the principle of res judicata, this tribunal has all reason to hold that the driver of the truck was sole responsible for causing the accident. Thus, this tribunal decides Issue No.1 in "**AFFIRMATIVE**".

(8) **Issue No.2 :**

Learned Advocate for the applicant has stated that deceased was working as government servant i.e. teacher at the time of accident and she was drawing a salary of Rs.50,554/- per month. He has also produced the appointment letter, salary slip, Form 16 and ITR of the deceased to prove the income of the deceased.

Looking to the office order of District Education and Training Office, Patan, it is proved that the deceased was appointed as Government Teacher. Now, looking to the salary slip of the deceased which shows that the deceased was drawing a salary of Rs.50,554/- including professional tax. Form 16 of the Income Tax Act, shows that the deceased was earning Rs.4,53,835/- per annum. Hence, the monthly salary of the deceased after

deduction towards the professional tax is considered at Rs.50,000/- in round figure, which is also proved by the documentary evidence.

The applicant has stated in his claim petition that deceased was aged about 38 years old at the time of accident. The applicant has also produced the birth certificate of the deceased, which shows that the date of birth of the deceased is 03/05/1982. The accident had occurred on 10/02/2020. Hence, on comparison of both these dates, this tribunal concludes that the deceased was aged about 38 years old. Thus, it can be believed that the deceased was 38 years old approx at the time of accident. So, by applying the legal principles laid down in the case of **Sarla Verma v. Delhi Transport Corporation** reported in **AIR 2009 SC 3104**, the **multiplier of 15** is adopted by this tribunal for this age group.

It reveals that deceased was married and present applicant is the husband of the deceased. Hence, 1/3 shall be deducted towards personal and living expenses from the income of the deceased as per the judgment of **Sarla Verma(Supra)**.

- (9) As the deceased was 38 years old i.e. below 40 years at the time of accident hence, as per the reported judgment of Hon'ble Apex Court in the case of **National Ins. Co. Ltd. Vs. Pranay Sethi and Ors. reported in AIR 2017**

SC 5157, 50% prospective income is required to be added in the income of the deceased.

- (10) Therefore, the **Loss of dependency** would become Rs.90,00,000/- [Rs.50,000/- (monthly income) + Rs.25000/-(Prospective Income) – Rs.25000/- {1/3(Personal expense)}] X 12 X Multiplier = Rs.50000 X 12 X 15 (Multiplier)].

Now so far as the conventional heads are concerned, the applicant is entitled to get Rs.18,000/- towards funeral expenses and Rs.18,000/- towards loss of estate as per the decision of Hon'ble Supreme Court in Pranay Sethi(Supra) including 20% increment on completion of six years as suggested by the Hon'ble Supreme Court in its above decision. Further, applicant is also entitled to get Rs.48,000/- towards spousal consortium as per the judgment of Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram & Ors. And United India Insurance Co. Ltd. Vs. Satinder Kaur @ Satwinder Kaur and Ors.** reported in (2020) SCC Online 410.

- (11) Now, it is well-settled principle of law that just compensation should be awarded to the victim. Hence, considering the above noted facts and foregoing reasons and keeping in mind the concept of 'just compensation', this Tribunal is inclined to grant the following quantum:-

Loss of dependency	Rs.90,00,000/-
Loss of Estate	Rs. 18,000/-
Funeral Expenses	Rs. 18,000/-
Loss of spousal consortium	Rs. 48,000/-
Total (Rupees Ninty Lakhs Eighty Four Thousand Only)	Rs.90,84,000/-

INTEREST

- (12) The claimants have prayed for interest at the rate of 12% per annum. Therefore, I have sought guidance from the judgment of Hon'ble Supreme Court in National Insurance Com. vs. Pranay Sethi (supra), wherein the Hon'ble Supreme Court has allowed the interest at the rate of 9% and hence, I hold that claimants are entitled to get 9% and accordingly, I answer Issue No.2.

LIABILITY

- (13) Learned Advocate Mr.D.K.Thakor for the opponent no.2 insurance company while relying on the investigation report of the insurance company has argued that the truck was not having valid permit at the time of accident. This is a clear breach of terms and conditions of the insurance policy. Hence, this opponent is not liable to pay any compensation to the applicant.

In this regard, it is relevant to observe that the insurance company has not examined any witness. It has even not examined the investigator who has investigated the

accident case and prepared the report for the insurance company. Moreover, the insurance company has also compromised the cognate claim petitions i.e. MACP No.284/2021, MACP No.285/2021, MACP No.286/2021 and MACP No.287/2021. The insurance company has also not examined any authority from the RTO. Hence, the defence of insurance company regarding the permit of the truck is not sustainable as it has already arrived at compromise in cognate claim petitions and has also not brought on record any evidence which is going to support its defence.

- (14) As discussed above, the accident had occurred due to the sole negligent driving of driver of the truck involved in the accident. Looking to the record, it reveals that the opponent no.1 and 2 are the owner and insurer of the offending truck. It further reveals that the insurance policy of the truck was also in force at the time of accident. Therefore, opponents no.1 and 2 are jointly and severally liable to pay compensation to the applicants.
- (15) Based on the above discussion and observations, I accordingly give my findings for the Issue no.2 & Issue no.3 as per the following final order as under;

-:O R D E R:-

1. The present claim petition is partly allowed against opponent Nos.1 and 2.

2. Opponents no.1 and 2 are directed to pay compensation amount of **Rs.90,84,000/- (Rupees Ninty Lakhs Eighty Four Thousand Only) jointly and severally** to the applicant together with costs and interest at the rate of 9% p.a., from the date of filling the claim petition till actual realization.
3. Opponents no.1 and 2 are hereby directed to deposit the above amount within 30 days from the date of award of this Tribunal.
4. The aforesaid opponents no.1 and 2 are directed to deposit the amount of compensation through **RTGS / NEFT in Bank account details of Motor Accident Claims Tribunal, Banaskantha at Palanpur, as under:**

Name of Bank	STATE BANK OF INDIA
Name of Account	MACT, DISTRICT COURT, PALANPUR
Bank Branch Name	OPP. OLD GANJ BAZAR, MAIN BRANCH, PALANPUR
Bank Account No.	40902081331
IFSC No.	SBIN0000443
Email Address	mact-palanpur@gujarat.gov.in

5. The applicant is directed to furnish his bank particulars i.e. bank account number along with branch name, IFS Code, Copy of Pan Card before the Registry and thereafter, Registry is directed to make disbursement of the amount of compensation

accordingly.

6. After the amount is deposited, requisite court fees, if any, and/or interim compensation received earlier, is ordered to be deducted first from the awarded amount.
7. After above deduction, 30% share of applicant be paid by account payee cheque/NEFT/RTGS after due verification and the remaining 70% share of applicant be deposited as FDR in his name in any Nationalized Bank as per choice for a period of Five Years.
8. The opponents shall also bear costs of its petition as well as the petition of applicant.
9. The investment of Fixed Deposit shall carry the following terms and conditions:-
 - (A) Applicant is entitled to get interest on the Fixed Deposit receipt quarterly if he desires without permission of this Tribunal.
 - (B) No loan, overdraft or advance, known by any name or nomenclature shall be made available on the said FDR and the Bank shall not allow any encumbrance on the said Fixed Deposit.
 - (C) At the end of stipulated period of F.D., as aforesaid the Bank shall pay the total amount of F.D. with interest accrued thereon, if any by A/c Payee Cheque to be drawn in the name of the applicant without permission of the Tribunal.

10. Yadi incorporating this order to accompany the cheque shall be furnished to the Bank and a copy thereof also be furnished to the applicant.
11. Opponents have to follow direction given by the Hon'ble High Court of Gujarat in case of Hansa Gauri Prafulchandra Ladhani reported in 2007 ACJ 1897 regarding income tax liability.
12. Award is to be drawn accordingly.

Signed & pronounced today, **on this 17th day of March, 2026.**

Place : Palanpur
Date : **17/03/2026**

(Piyushkumar A. Patel)
Chairman
M.A.C. Tribunal(Auxi.)
Palanpur, Dist.Banaskantha.
Code-GJ00803