

GJBK010042482024



Ex-

Received On: 07-10-2024

Registered On: 07-10-2024

Decided On: 27-04-2026

**D- M- Y-**

**BEFORE THE MOTOR ACCIDENTS CLAIMS TRIBUNAL  
[MAIN], BANASKANTHA DISTRICT, AT PALANPUR.**

**MACP No.248/2024**

Heirs of deceased Devabhai Ravtaji Bhil:

1. Radhaben Devabhai Kalma,  
Age: 38 years, Occu: Household work,
2. Prakashbhai Devabhai Kalma,  
Age: 24 years, Occu: - Labour work,
3. Hareshbhai Devabhai Bhil,  
Age: 19 years, Occu: - Labour work,
4. Varshaben Devabhai Bhil,  
Age: 18 years, Occu: - Household work,
5. Ashwinbhai Devabhai Bhil,  
Age: 18 years, Occu: - Study,

Petitioner No.5 being minor through  
his natural guardian and next friend  
petitioner No.1.

All are Resi. at Bhilvas, Hariyawada,  
Odhava, Tal. Dantiwada, Dist.Banaskantha ... **Petitioners**

Versus

1. Jagshiram Godaram Koli,  
R/o Methipura Padar, Revdar,

Shirohi,Rajasthan - 307514.  
(Owner of M.V. No.RJ-24-SN-7764)

2. The TATA AIG General Insurance Co. Ltd.  
Block No.65, 66, 67, 2nd Floor,  
Shri Arcade, B/s Income Tax Office,  
Abu Highway, Tal. Palanpur, Dist.B.K.  
(Insurer of M.V. No.RJ-24-SN-7764) ... **Opponents**

Claim for Rs.1,00,00,000/-

---

Appearances:

Learned Advocate, Mr. J.S. Patel for the Petitioners

Ex-parte order passed against Opponent No.1.

Learned Advocate, Mr. B.A. Raval for the opponent No.2.

---

**JUDGMENT**

[1] The petitioners, who are heirs and legal representatives of the deceased, have filed the present claim seeking compensation to the tune of Rs.1 Crore from the opponents on account of death of Devabhai Ravtaji Bhil due to the injuries sustained by him in an accident that took place on 19.08.2024 at the time and place specified in para 10 of the petition involving the M.V. No.RJ-24-SN-7764 which was being driven in a rash and negligent manner by driver of opponent No.1, which was also of the ownership of the opponent No.1, and which according to claim petition was duly insured by the opponent No.2, insurance company, and therefore, it is urged that both the opponents be held jointly and severally liable to pay the amount of compensation so required to be awarded herein.

[2] It is the case of the petitioners that on 19.08.2024 deceased Devabhai was plying his Motorcycle No.GJ-08-DE-3756 and at that time from opposite direction the driver of another motorcycle No.RJ-24-SN-7764 came driving the said motorcycle at a very high and excessive speed, in rash and negligent manner and dashed with the motorcycle of deceased. In this accident, deceased sustained grievous injuries and succumbed to the injuries. It is also stated that the accident taken place due to the sole negligence on part of driver of the motorcycle No.RJ-24-SN-7764.

[3] It is also the case of the petitioners that the deceased was aged about 44 years at the relevant point of time and was earning Rs.8,50,000/- per annum by doing agriculture and animal husbandry work. On account of his untimely death the petitioners are deprived of his income and have suffered great mental shock. Therefore, the petitioners have claimed Rs.1 Crore from both the opponents as compensation for the loss of dependency, loss of expectation of life, funeral expenses etc.

[4] The opponent No.1 is duly served but he remained absent. Hence, the petition has proceeded exparte against the opponent No.1.

[5] The opponent No.2, is the insurance company of motorcycle No.RJ-24-SN-7764, and is duly served and has, in fact, appeared on the record of the proceedings and has contested the petition by filing written statement which is on the record of the proceedings at Ex-15. The opponent insurance company has taken up all available defences and has, generally speaking, denied any liability to pay any amount much less the amount of compensation claimed. It is specifically stated that there was no

negligence on the part of the driver of M.V. No.RJ-24-SN-7764 and the accident occurred due to sole negligence of the deceased himself. It is also contended that the driver of the motorcycle was not holding valid driving licence and hence, there is breach of policy condition. It is also stated that the deceased was also contributory liable for the accident. The opponent has, generally speaking, sought for a dismissal and rejection of the present application.

[6] It is in the background of such rival pleadings that this Tribunal was pleased to frame the issues as follows at Ex.10:

- (i) Whether the applicants prove that the deceased died due to rash and/or negligent driving by driver of the vehicle involved in the accident?
- (ii) Whether the applicants are entitled for compensation? If yes, than who is responsible to pay compensation and up to what extent?
- (iii) What award?

[7] My findings on each of the issues are as hereinafter follows:

- (i) In the affirmative. Driver of motorcycle M.V. No.RJ-24-SN-7764 was solely negligent for causing the accident.
- (ii) In the affirmative and as per the amount quantified.
- (iii) As per final judgment and award.

[8] The petitioners have relied both on oral and documentary evidence in an effort to establish their entitlement to the claim. It would be necessary, at the outset, and before ascribing my

reasons for arriving at the findings above, to refer to the documentary evidence which are in the shape of :-

Sr. No.	Description	Exh.
1	Complaint	22
2	Panchnama of scene of accident	23
3	Inquest Panchnama	24
4	Postmortem note	25
5	R.C.Book of M.V. No.RJ-24-SN-7764	26
6	Bill of Saikrupa Trading	31
7	Bills of Patel Hasmukhbhai Dilipbhai	34,35
8	Abstracts of Milk Mandali	20
9	Revenue Record	36

[9] The oral evidence on the record of the proceedings are as under:

Sr. No.	Description	Exh.
1	PW1, Radhaben Devabhai Kalma, Petitioner No.1	12
2	PW2, Becharbhai Vajabhai Verana Secretary of Milk Mandali	19
3	PW3, Sureshbhai Hathibhai Patel Proprietor of Saikrupa Trading Co.	30
4	PW4, Patel Hasmukhbhai Gandalal, Proprietor of Hasmukhbhai Dilipbhai Firm	33

[10] This set of evidence is required to be considered to decide fate of the present petition.

## **REASONS**

### *Issues No.1 and 2:*

[11] Since the evidence, both documentary and oral, is germane and common to both issues, both are dealt with together for the sake of convenience.

[12] I have heard counsels for the parties, perused the record and considered written arguments placed on record on behalf of the petitioners. The issue-wise findings of this Tribunal are as under:

[13] Learned advocate for the opponent insurance company has specifically contended that the accident took place due to the involvement of both the motorcycles. It is also contended that there is head on collision between both the motorcycles. It is further contended that the accident occurred due to the sole negligence of the deceased himself. Alternatively, it is submitted that contributory negligence of the deceased should be considered at 50%.

[14] Whereas, learned advocate for applicants has contended that considering the pleadings and contents of FIR it is clearly established that there was no negligence of fault on the part of the deceased and that driver of motorcycle No.RJ-24-SN-7764 was solely responsible for the accident. It is also argued that the charge sheet of the accident was also filed against the driver of the motorcycle No.RJ-24-SN-7764. It is also contended that the driver of the motorcycle No.RJ-24-SN-7764 came driving the said motorcycle at a very high and excessive speed and dashed with the motorcycle of deceased from wrong side. It is also contended that deceased was doing agriculture and animal

husbandry work and was earning Rs.8,50,000 p.a. and for which all the documentary evidence such as Bills of the agriculture produce, Statement of Milk Mandali and revenue record produced on record. Therefore, it is submission of the L.A. for the opponent that the petition is required to be allowed accordingly.

[15] I have considered the rival submissions. The petitioners have pleaded negligence on the part of driver of the Motorcycle No.RJ-24-SN-7764. Petitioner No.1 has deposed before this Tribunal same as her pleadings. Nothing adverse has come out from her cross-examination. Driver or owner of the Motorcycle No.RJ-24-SN-7764 has not stepped into the witness box to deny the allegations of negligence made against the driver of motorcycle. Further charge sheet is also filed against the driver of the Motorcycle No.RJ-24-SN-7764 which is also not challenged. Further the opponent insurance company have also not able to prove by leading cogent and convincing evidence on record that the accident was not occurred due to the negligence on part of driver of the Motorcycle No.RJ-24-SN-7764. An adverse inference is, therefore, required to be drawn, and the opponent insurance company cannot be heard on this aspect at all.

[16] At the same time complaint of the accident clearly established that the accident taken place due to the sole negligence on part of driver of the Motorcycle No.RJ-24-SN-7764 when deceased was going on his motorcycle No.GJ-08-DE-3756 and at that time the driver of the another Motorcycle No.RJ-24-SN-7764 came driving the said motorcycle at a very high and excessive speed and dashed with the motorcycle of

deceased and in this accident the deceased died on the spot. Further perusal of the panchnama of place of accident in which it is mentioned that both the motorcycle lying at the place of accident and both the motorcycle lying in damaged position. It is mentioned that both the motorcycles lying on the road side and motorcycle No.GJ-08-DE-3756 is damaged from front side and another Motorcycle No.RJ-24-SN-7764 is also damaged on front side. Thus, it can be said that the driver of the Motorcycle No.RJ-24-SN-7764 came on wrong side and dashed with the motorcycle of the deceased. Hence, it can be said that the accident took place due to the sole negligence on part of driver of the Motorcycle No.RJ-24-SN-7764. In any case, the documentary evidence in the shape of certified copies of the FIR, Panchnama of place of accident and the PM Report, clearly establish that the deceased sustained injuries in an accident that took place at the time and place, and in a manner specified in the petition and succumbed to it in the course of treatment. Accordingly, I answer the Issue No.1 in the affirmative.

[17] As a natural consequence, and since having found issue No.1 in favour of the petitioners and in the affirmative, it necessarily follows that the petitioners are entitled to the compensation as claimed. The only question that now remains is computing and assessing the quantum of compensation which is required to be awarded herein. Each of the learned advocates for the contesting parties have made submissions under separate heads, which I propose to deal with as hereinafter follows, and after considering the rival submissions, I propose to make a specific award under each head as hereinafter follows.

[18] Age of the deceased at the time of accident is pleaded as 44 years. But the petitioners have not produced any proof regarding age of the deceased. But in postmortem note of deceased at Ex.25 his age is mentioned as approximately 45 to 50 years. Therefore, on the date of accident, age of the deceased was between the age group of 45 to 50 years.

[19] Income of the deceased is claimed to be Rs.8,50,000/- per annum by doing agriculture and animal husbandry work. To prove this fact the petitioners have produced statement of Milk Mandali and also examined one Becharbhai Vajabhai Verana at Ex.19 who is Secretary of the Hariyawada Milk Mandali. This witness has stated that deceased was member of the said Milk Mandali and was depositing milk in the Mandali and for which he has produced certificate at Ex.20 and Exh.21 is a statement for the difference of profit paid to the deceased. This witness has denied that there is total 60 to 70% costs towards the animal husbandry business. This witness has admitted that Milk was deposited by deceased Devabhai and his wife Radhaben by different names and in Ex.20 which is statement of Devabhai in which it is mentioned that total Milk of Rs.59,337/- was deposited and on the name of Radhaben Milk of Rs.2,09,015/- was deposited. This witness has also admitted that milk of deceased Devabhai is still depositing in the Milk Mandali after his death.

[20] Now the petitioners have also produced Payment voucher of Saikrupa Trading Co. at Ex.31 which shows that on 25.6.2024 total crop of groundnuts of Rs.1,85,937/- was sold out by the deceased. At the same time another two Payment Vouchers of Patel Hasmukhbhai Dilipbhai & Co. are produced on record at

Ex.34 and 35 which show that on 2.9.2024 total crop of Cumin seeds of Rs.1,97,730/- and on 6.9.2024 total crop of Fennel seeds Rs.1,94,030/- sold out by the deceased. Petitioners have also examined one Sureshbhai Hathibhai Patel, proprietor of Saikrupa Trading Co. at Ex.30. This witness has admitted that on 25.6.2024 he had purchased the crop of groundnuts of Rs.1,85,937/- from deceased Devabhai and its payment voucher is produced at Ex.31. He has admitted that there Kantibhai Revabhai was also one of the account holders in the agriculture land. He has also admitted that there is total 60 to 70% costs towards the groundnut crop.

[21] The petitioners have also examined one Patel Hasmukhbhai Gandlal who is also proprietor of Patel Hasmukh Dilipbhai Firm at Unjha. He has also stated that he had purchased Cumin seeds of Rs.1,97,730/- and crop of Fennel seeds of Rs.1,94,030/- from the deceased. This witness did not have knowledge as to whether the land is running on the name of Devabhai Ravtabhai Bhil and his brother Kantibhai Ravtabhai Bhil or not. He has also admitted that presently the legal heirs of deceased Devabhai was also cultivating the agricultural land and taking yield. Thus, it is an admitted position that the Milk income and agricultural income is still continued. Further so far as the agricultural income is concerned, no income proof of deceased is produced on record. The Hon'ble Supreme Court in the case of **Ponnumany Krishnan & another Vs. V.A. Mohanan & others, reported in AIR 2008 S.C. 2014** has held that it cannot be said that there is a total loss of income in respect of agricultural land. The land remains and the heirs of the deceased can also cultivate it and can always make earning by cultivating

it. Therefore, in absence of any solid proof of income and also in the circumstances, considering the year of accident and age of the deceased, I find it just and appropriate to consider notional income of the deceased at Rs.25,000/- per month, i.e. Rs.3,00,000/- per annum.

[22] The Hon'ble Supreme Court in the case of National Insurance Co. Ltd. v. Pranay Sethi, 2017(4) TAC 673 (SC), held that; "Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life etc., an addition of 40% of the established income of the deceased towards future prospects where the deceased was below 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."

[23] Thus, in the light of the aforesaid judgment of the Hon'ble Apex Court, since the deceased was between 40-50 years at the time of the accident, 25% is required to be added to his income in order to arrive at future prospective income of the deceased. Thus, the monthly income of the deceased after considering the future prospects is assessed as Rs.31,250/-, i.e. Rs.3,75,000/- p.a., for the calculation of the loss of dependency.

[24] The dependents being between 4-6 at the time of accident, one-fourth of the income is required to be deducted which the deceased would have spent for his own maintenance and personal expenses. Therefore, taking one-fourth of the

annual income of Rs.3,75,000/- it would come to Rs.93,750/- and yearly dependency would come to Rs.2,81,250/-.

[25] In order to capitalize the loss of dependency, appropriate multiplier is required to be adopted. In Sarla Verma's case, for the age group of 45 years to 50 years, multiplier 13 is provided. Therefore, we may adopt multiplier 13 for capitalizing the loss of dependency. On multiplying Rs.2,81,250/- by multiplier 13, the loss of dependency would come to Rs.36,56,250/-. Therefore, the petitioners are entitled to get Rs.36,56,250/- as compensation under the head of loss of dependency.

[26] In the judgment of Pranay Sethi, Hon'ble Supreme Court has held in para 54 as under:

“It seems to us 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 principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. We are disposed to hold so because that will bring in consistency in respect of those heads.”

[27] The above referred judgment was delivered in the year 2017, and it is already more than six years. Therefore, in view of the ratio laid down by the Hon'ble Supreme Court, the petitioners are awarded Rs.18,000/- towards loss of estate, Rs.18,000/-

towards funeral expenses and Rs.48,000/- towards loss of consortium.

[28] Under the circumstances, the claimants are entitled to the following amount of compensation:

Rs.	
48,75,000	Loss of Future Income (Rs.31250 x 12 x 13)
12,18,750	Less: 1/4 <sup>th</sup> Personal Expenses
-----	
36,56,250	3/4 <sup>th</sup> Loss of Dependency
18,000	Loss of Estate
18,000	Funeral Expenses
48,000	Loss of Consortium
-----	
37,40,250	Total Amount
=====	

[29] The petitioners have claimed an amount of Rs.1 Crore. However, in view of the above discussion, the claimants are entitled to the compensation of Rs.37,40,250/- only.

***Liability:***

[30] The insurance policy mark 5/6 issued by the opponent No.2 shows that it is issued in the name of the opponent No.1 for the Motorcycle No.RJ-24-SN-7764 for the period from 12.10.2021 to 11.10.2026, covering the date of accident 19.08.2024. Therefore, opponents No.1 and 2, who are respectively owner and insurer of motorcycle No.RJ-24-SN-7764, are held jointly and severally liable to pay compensation to the claimants.

**Rate of Interest**

[31] Learned Counsel for the Petitioners submitted that petitioners be awarded interest at the rate of 12% on the awarded amount. On the other hand Learned Counsel for the opponent No.2 submitted that the petitioners may be awarded the interest at the rate of 6% on the awarded amount. I have considered the rival contentions and perused the records. It shows that the accident took place in the year 2024. In the year 2024, the rate of interest in FDR was on a higher side. In *Abati Bezbaruah v. Dy. Director General, Geological Survey of India and Another* [(2003) 3 SCC 148], the Hon'ble Supreme Court has held that -

“The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering loss of future income, loss of enjoyment of life etc., into consideration.”

[32] Thus, having regard to the facts and circumstances of the case, in the light of the judgment of *Abati Bezbaruah (supra)*, it would be just and proper to award the simple interest at the rate of 9% p.a. Accordingly, the petitioner shall be entitled to get simple interest at the rate of 9% p.a. on the awarded amount of claim from the date of filing of claim petition till payment of awarded amount.

**Tax to be Deducted at Source**

[33] In Hansaguri Prafulchandra Ladhani v. Oriental Insurance Company Limited, reported as 2007 ACJ 1897, the Division Bench of Hon'ble Gujarat High Court has laid down the guidelines regarding the Tax Deducted at Source. In this judgment, the Hon'ble High Court directed that if amount of interest calculated on the awarded amount does not exceeds Rs.50,000 per year per petitioner, then no TDS shall be deducted by the Insurance Company/ Respondents at the time of depositing the awarded amount along with interest in the Tribunal, therefore, in view of this Judgment, the Respondents/ Insurance company is hereby directed not to deduct the TDS if the amount of interest does not exceeds Rs.50,000/- per year per petitioner.

[34] In the event, and in light of my findings above, I deliver the following final order:

**FINAL ORDER**

- (i) The petition is partly allowed.
- (ii) Both the opponents are hereby ordered to pay jointly and severally a sum of Rs.37,40,250/- (Rupees Thirty Seven Lacs Forty Thousand Two hundred fifty Only), less principal amount awarded u/s 140 of the MV Act, if any paid, within 30 days with interest at the rate of 9% per annum from the date of petition till the date of payment to the petitioners.
- (iii) The opponents do pay costs of the claimants and also bear that of their own.

- (iv) Out of the above said amount, after deducting deficit Court fees if any, claimant No. 1 would be entitled to the 40%, and remaining amount be apportioned equally amongst the claimants No.2 to 5 equally, i.e. 15% each.
- (v) Total amount of interest accrued on the principal amount of compensation is to be apportioned on financial year to financial year basis, and if the interest payable to the respective petitioner for any financial year exceeds Rs.50,000/-, insurance company/ owner is/are entitled to deduct appropriate amount under the head of 'Tax Deducted at Source' as provided u/s 194A(3)(ix) of the Income Tax Act, 1961. If the amount of interest does not exceed Rs.50,000/- in any financial year, Registry of this Tribunal is directed to allow the respective petitioner to withdraw the amount, as directed hereinafter, without producing the Certificate from the concerned Income Tax Authority.
- (vi) It is further directed that compensation amount shall be deposited directly into the bank account maintained by this Tribunal by RTGS or NEFT mode within 30 days in compliance with the directions given by Hon'ble Supreme Court in Bajaj Alliance General Insurance Co. v. Union of India, Writ Petition (s) (Civil) No. 534 of 2020 as well as directions given by Hon'ble High Court of Madras in Civil Misc. Appeal No.428 of 2016 decided on 11th

March, 2016 titled as Divisional Manager, The Oriental Insurance Co. Ltd. v. Rajesh & Ors.

- (vii) The aforesaid opponent/s is/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 GANZ BAZAR, MAIN BRANCH, PALANPUR**  
Bank Account No.: **40902081331**  
Bank IFSC Code No.: **SBIN0000443**  
Email address: **mact-palanpur@gujarat.gov.in.**

- (viii) On such realization of the above said amount, after deducting deficit Court fees if any, **30%** amount shall be paid in cash by RTGS or NEFT mode to the petitioners No.1 to 4, while their remaining **70%** amount, be deposited in their respective name in Fixed Deposit Receipt for a period of 5 years in any nationalized bank with liberty to withdraw interest periodically by the applicant. The bank shall not allow any loan or advances against the above said Fixed Deposit Receipt without previous permission of this Tribunal.
- (ix) Entire amount falling to share of petitioner No.5 be fixed deposited in his name in any nationalized bank initially for a period of five years with usual terms and conditions against withdrawal or loan, and to be renewed periodically till the minors attain age of

majority, with liberty to withdraw periodical interest.

(x) Award be drawn accordingly.

Pronounced in the open Court today this 27<sup>th</sup> day of April, 2026.

**PALANPUR.**

***(Shubhada Krishnakant Baxi)***

Chairman

**Date:27/04/2026**

M.A.C. TRIBUNAL (MAIN)  
B.K.DISTRICT, PALANPUR.  
**(Code : GJ00377)**

*SNJ*