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Received On: 24-12-2024

Registered On: 24-12-2024

Decided On: 30-03-2026

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

MACP No.329/2024

Legal heirs of deceased Dinaben Ajmalji
Parmar (Thakor):

1. Ajmalji Hamirji Parmar (Thakor),
Age - 54 years, Occu. Nothing,
2. Kanuji Ajmalji Parmar (Thakor),
Age - 27 years, Occu. Labour work,
3. Ramjiji Ajmalji Parmar (Thakor),
Age - 25 years, Occu. Labour work,
4. Shamalji Ajmalji Parmar (Thakor),
Age - 27 years, Occu. Labour work,
5. Hamirji Hathiji Parmar (Thakor),
Age - 76 years, Occu. Nothing,
6. Bhikhiben Hamirji Parmar (Thakor),
Age - 74 years, Occu. Household work,

All are R/o Odhava, Tal. Deesa,
Dist. Banaskantha.

.... Claimants

Versus

- 1) Alpeshbhai Kishorbhai Chauhan,
Age - Adult, R/o Near Ramji Mandir,

Sabalpur, Tal. Junagadh, Dist.Junagadh,
(Owner of Truck No.GJ-01-BY-6218)

- 2) ICICI Lombard General Ins.Co.Ltd.
Pataleshwar Complex, Kirti Stambh,
Palanpur, Tal. Palanpur, Dist.Banaskantha. ... **Opponents**

Claim for Rs.25,00,000 u/s.166 of M.V.Act.

Appearances:

Learned Advocate, Mr. S.M.Chauhan for the claimants.
Learned Advocate, Mr. A.M.Desai for the opponent No.1
Learned Advocate, Mr. R.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.25,00,000 from the opponents on account of death of Dinaben Ajmalji Parmar (Thakor), due to the injuries sustained by her in an accident that took place on 30.11.2024 at the time and place specified in para 6 of the petition involving the Truck No.GJ-1-BY-6218 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 the opponents No.1 and 2 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 30.11.2024 deceased Dinaben Ajmalji Parmar (Thakor) was returning with her son

from village Dera and they both stood near Agthala Bus Stand on side of the road. It is also case of the petitioners that at that time the driver of one Truck No.GJ-1-BY-6218 came driving the said truck at a very high and excessive speed, in rash and negligent manner and dashed with the deceased who stood on the side of the road. It is also case of the petitioners that after the accident the driver of the truck fled away from the place of accident leaving behind the said truck. As a result of which deceased Dinaben had suffered serious injuries and she succumbed to the injuries. It is also stated that the accident occurred due to the sole negligence on part of driver of the Truck No.GJ-1-BY-6218 involved in the accident.

[3] It is also the case of the petitioners that the deceased was aged about 45 years at the relevant point of time and was earning Rs.25,000/- per month by doing agriculture and animal husbandry work. On account of her untimely death the petitioners are deprived of her income and have suffered great mental shock. Therefore, the petitioners have claimed Rs.25,00,000/- from the opponent as compensation for the loss of dependency, loss of expectation of life, funeral expenses etc.

[4] The opponents are duly served.

[5] The opponent No.1, is the owner of the Truck No.GJ-1-BY-6218, 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-11. The opponent No.1 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 not negligence on the part of the

Truck driver and the accident occurred due to sole negligence of the deceased herself. Hence, It is submitted that the opponent is not liable to pay compensation. The age and income of the deceased is also denied by the opponent No.1. It is also contended that at the time of accident the said truck was duly insured with the opponent No.2 and hence, the opponent No.2 is liable to pay compensation to the petitioners. The opponent No.1 has, generally speaking, sought for a dismissal and rejection of the present application.

[6] The opponent No.2, is the insurance company of Truck No.GJ-1-BY-6218, 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-17. 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 submitted that the driver of the vehicle was not holding valid driving licence. It is submitted that the complaint of the accident is lately filed. It is also denied that accident occurred due to the negligence on part of driver of the Truck No.GJ-1-BY-6218 as alleged. It is specifically stated that there was no negligence on the part of the driver of truck and the accident occurred due to sole negligence on part of deceased herself. The opponent No.2 has, generally speaking, sought for a dismissal and rejection of the present application.

[7] It is in the background of such rival pleadings that this Tribunal was pleased to frame the issues as follows at Ex.19.

- (i) Whether the claimants prove that deceased died because of rash and negligent driving of driver of

the driver of the vehicle involved in this accident?

- (ii) Whether the claimants are entitled to get compensation? If yes, from whom and what amount?
- (iii) What order and award?

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

- (i) In the affirmative. Driver of Truck No.GJ-1-BY-6218 was solely negligent for causing the accident.
- (ii) In the affirmative and as per the amount quantified.
- (iii) As per final judgment and award.

[9] 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	Copy of FIR	27
2	Panchnama of scene of accident	28
3	Inquest Panchnama	29
4	Postmortem Note	30
5	Statements of Odhava Milk Mandali	24,25,26

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

Sr. No.	Description	Exh.
1	PW1, Kanuji Ajmalji Parmar (Thakor), Petitioner No.2	20
2	PW2, Parbatbhai Govabhai Makwana, Secretary of Milk Mandali	23

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

REASONS

Issues No.1 and 2:

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

[13] I have heard counsels for the parties, perused the record and considered arguments of both the parties. The issue-wise findings of this Tribunal are as under:

[14] Learned advocate for the opponent No.2 has specifically contended that the accident took place due to sole negligence of the deceased herself who suddenly came on the road and dashed with the Truck and in this accident the Truck driver was not at all liable. Alternatively, it is submitted that contributory negligence of the deceased should be considered.

[15] Whereas, learned advocate for applicants has contended that considering the pleadings and contents of FIR, panchnamaa and charge-sheet it is clearly established that there was no negligence of fault on the part of the deceased and that driver of Truck No.GJ-1-BY-6218 was solely responsible for the accident.

[16] I have considered the rival submissions. The petitioners have pleaded negligence on the part of driver of the Truck No.GJ-1-BY-6218. Petitioner No.2 has deposed before this Tribunal same as his pleadings. Nothing adverse has come out from his cross-examination. He has admitted that he has not seen the accident. In this case the opponents have not examined the driver and owner of the Truck No.GJ-1-BY-6218.

[17] Now, looking to the complaint which is lodged by petitioner No.2 in which it is clearly mentioned that when deceased was trying to cross road and at that time the driver of one Eicher Truck No.GJ-1-BY-6218 came driving his truck at a very high and excessive speed, in rash and negligent driving and dashed with his mother and after the accident he stopped his truck at some distance and then he fled away from the place of accident leaving behind the truck. It is also mentioned in the complaint that in the accident his mother died on the spot. Thus, it is very clear that accident taken place due to the sole negligence on part of driver of the Truck No.GJ-1-BY-6218. Moreover, on perusal of the panchnama of place of accident in which it is mentioned that at the place of accident there is about 15 Fts. long stain found on the road and at the place of accident the truck was not found. Further, after the investigation the charge-sheet is filed against the driver of the Truck No.GJ-1-BY-6218 by the police. Moreover, it is settled law that negligence of a pedestrian cannot be considered unless it is established on the record by leading cogent and convincing evidence. An adverse inference is, therefore, required to be drawn, and the opponent insurance company cannot be heard on this aspect at all. Complaint also shows that on the date of accident deceased was

crossing the road and at that time the driver of the Truck No.GJ-1-BY-6218 had driven the truck at a very high and excessive speed, in rash and negligent manner and dashed with the deceased. Hence, deceased had suffered serious head injuries and she died on the spot. Thus, the complaint is also supported the say of the petition. 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 on the spot and the accident occurred due to the sole negligence on part of driver of the Truck No.GJ-1-BY-6218. Accordingly, I answer the Issue No.1 in the affirmative.

[18] 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.

[19] Age of the deceased at the time of accident is pleaded as 45 years. But no proof of age is produced on record by the applicants. In the Postmortem note at Ex.30 age of deceased is mentioned as 45 years. Therefore, on the date of accident, age of the deceased was about 45 years.

[20] Income of the deceased is claimed to be Rs.25,000/- per month by doing Agriculture work and animal husbandry work. The claimants have produced statements of the Odhava Milk Mandali at Exh.24, 25 and 26 on record and also examined one Parbatbhai Govabhai Makwana, Chairman of the Milk Mandali and he has stated in his deposition at Ex.23 that deceased Dinaben was member of the said Milk Mandali and during the year from 1.4.2023 to 31.3.2024 she had deposited total milk of Rs.1,16,459 and Rs.1,06,550/- and from 1.4.2024 to November 2024 for 8 months total milk was deposited of Rs.1,74,012/-. In his cross-examination he has admitted that there is about 30% of expenditure towards the animal husbandry business. He has denied that presently Ajmalji who is husband of deceased was depositing milk in the Mandali. It appears that so far as the milk income is concerned, it can be said that appropriate annual income from the Milk business may be Rs.2,00,000/-. 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 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.13,000/- per month, i.e. Rs.1,56,000/- per annum.

[21] 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.”*

[22] Thus, in the light of the aforesaid judgment of the Hon'ble Apex Court, since the deceased was between the age group of 40 to 50 years at the time of the accident, 25% is required to be added to income of deceased 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.16,250/-, i.e. Rs.1,95,000/- p.a., for the calculation of the loss of dependency.

[23] The dependents being between 1-6 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.1,95,000/- it would come to Rs.48,750/- and yearly dependency would come to Rs.1,46,250/-. 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 41 years to 45 years, multiplier 14 is provided. Therefore, we may adopt multiplier 14 for capitalizing the loss of dependency.

On multiplying Rs.1,46,250/- by multiplier 14, the loss of dependency would come to Rs.20,47,500/-. Therefore, the petitioners are entitled to get Rs.20,47,500/- as compensation under the head of loss of dependency.

[24] 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.”

[25] 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.

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

Rs.	
27,30,000	Loss of Future Income (Rs.16,250 x 12 x 14)
6,82,500	Less: 1/4 th Personal Expenses

20,47,500	3/4 th Loss of Dependency
18,000	Loss of Estate
18,000	Funeral Expenses
48,000	Loss of Consortium

21,31,500	Total Amount
=====	

[27] The petitioners have claimed an amount of Rs.25,00,000. However, in view of the above, the claimants are entitled to get compensation of Rs.21,31,500/- only.

Liability

[28] Insurance Policy at Ex.31 has been issued by the opponent No.2 insurance company on the name of opponent No.1 in respect of the vehicle Truck No.GJ-01-BY-6218 for the period from 13.04.2024 to 12.04.2025, covering the date of accident 30.11.2024. In any case, the respondent insurance has not raised any objection with regard to coverage of the vehicle. Hence, the insurance policy was in force and effective on the date of accident. Hence, in this case the opponents No.1 and 2 being owner and insurer of Truck No.GJ-01-BY-6218 are jointly and severally liable to pay compensation to the claimants.

Rate of Interest

[29] 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

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.”

[30] 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

[31] 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.

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

FINAL ORDER

- (i) The petition is hereby partly allowed.
- (ii) The opponents Nos.1 and 2 are hereby ordered to pay jointly and severally a sum of Rs.21,31,500/- (Rupees Twenty one Lacs Thirty one Thousand Five hundred 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 all the claimants No.2 to 6 equally, i.e.12% 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 of their share shall be paid in cash by RTGS or NEFT mode to the petitioners No.1 to 6, while remaining **70%** amount be deposited in their names 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) Award be drawn accordingly.

Pronounced in the open Court today this **30th day of March, 2026.**

PALANPUR.

Date:30/03/2026

(Shubhada Krishnakant Baxi)

Chairman

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

SNJ