GJDH010016192015

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Duration	**DYS**	**MTS**	**YRS**
	20	00	11

सत्यमेव जयते

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN) AT DAHOD

Motor Accident Claim Petition No.226/2015

Exh.32

CLAIMANTS :-	**Age (Years)**	**Occupation**	**Resident**
(Heirs of deceased Babubhai Pidiyabhai Bhabhor)			
1) Kabuben widow of Babubhai Pidiyabhai Bhabhor	35	Household Work	Gundikheda, Tal. Dahod, Dist.Dahod.
2) Minor Sanjay Babubhai Bhabhor	15	Study	” ”
3) Minor Ajay Babubhai Bhabhor	12	Nil	” ”
4) Kanaben Pidiyabhai Bhabhor	67	Household Work	” ”

(Minor Nos.2 & 3 have applied through their guardian and next friend their mother Kabuben, claimant No.1)

VERSUS

OPPONENTS :-

1) Lulabhai Pidiyabhai Bhabhor	Adult	Owner	R/of Gundikheda, Tal. Dahod and Dist.Dahod.
2) National Insurance Co. Ltd., Insurer	-		At Godhra.

APPEARANCES :

Mr. H. S. Mister	:	Ld. Adv. for Claimants
Mr. H. P. Nayak	:	Ld. Adv. for Opponent No.1
Mr. S. S. Parikh	:	Ld. Adv. for Opponent No.2 (National Insurance Co. Ltd.)

Claim for Rs.6,82,700/- Under Section 163A of the M. V. Act

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

(1) Claimant No.1 Kabuben widow of Babubhai Pidiyabhai Bhabhor and 03 others have filed this claim petition u/Sec.163A of the Motor Vehicles Act (hereinafter referred to as 'the M. V. Act' in short) seeking compensation of Rs.6,82,700/- for the death of deceased Babubhai Pidiyabhai Bhabhor in a vehicular accident, which took place on 22.03.2015.

(2) The factual matrix of the claim petition in short are that, on 22.03.2015, the husband of claimant No.1 & father of other claimants named Babubhai Pidiyabhai Bhabhor (deceased) went to village Rachharda by driving vehicle Motorcycle No.GJ-20 M-7285 owned by opponent No.1 to get the household goods as per the instruction of the opponent No.1 and while returning to home, at 20.30 hrs., he was passing the road at village Gundikheda, his motorcycle abruptly slipped on the road whereby he sustained serious injuries. Hence, he was

immediately brought to General Hospital at Dahod where he died excruciating severe pain, shock and suffering.

(3) It is the case of the claimants that, deceased Babubhai died of accidental injuries. He was hale and hearty having no vices. He was aged 40 years and would have lived up-to 80 years of age if he had not died in accident. He was maintaining the claimants and the claimants are the only heirs & legal representatives of the deceased. Deceased Babubhai was working as driver and earning Rs.3300/- per month and would have earned more income in future. The claimants have incurred expenses towards various heads including transportation, funeral rites etc. and are entitled to the compensation as prayed for. It is accordingly urged to award Rs.6,83,700/- as compensation u/Sec.163A of the M. V. Act from the opponents. It is stated that, the claimants have not filed any petition u/Section 140 of the M. V. Act.

(4) The opponents are served with notices. The opponent No.1 has appeared before the Tribunal through learned Advocate Mr. H. P. Nayak but not filed written statement against the claim petition.

(5) Opponent No.2 National Insurance Co. Ltd. has filed its appearance through learned Advocate Mr. S. S. Parikh and filed Written Statement vide Exh.9 and thereby, it has denied the averments and grounds mentioned in the claim petition for obtaining compensation from the opponent No.2 Insurance Company and raised various contentions challenging the liability of Insurance Company. The age, occupation and income of the

deceased as stated in the claim petition are denied with accidental injuries and resultant death of the deceased, involvement of vehicle motorcycle No.GJ-20 M-7285 in the accident. It is contended that the deceased was driving the motorcycle which he had borrowed from its owner. Therefore, the deceased had stepped into the shoes of the owner of the vehicle and he cannot be considered to be a third party. So, the Insurance Company has no liability to pay compensation to the claimants. The opponent No.2 Insurance Company has referred to the judgment of the Honourable Supreme Court in the case of **Ningamma & Another Vs. United India Insurance Co. Ltd.** in **Civil Appeal No.3538 of 2009** and the judgment of the Hon'ble High Court of Gujarat in the case of **National Insurance Co. Ltd. Vs. L/hr. of Hiteshbhai Sureshbhai Patel & Others**. It is contended that the driver of alleged Motorcycle No.GJ-20 M-7285 was not holding valid and effective driving license to drive the alleged vehicle and the Insured had committed breach of terms and condition of the policy. Lastly, it is prayed to dismiss the claim petition with costs against the opponent No.2 Insurance Company.

(6) The learned Advocate for opponent No.2 Insurance Company preferred an application (Exh.16) to contest the claim petition on all grounds available under Sec.170 of the M. V. Act. During the proceedings of this claim petition, both parties have been given sufficient opportunity to produce their ocular and documentary evidence to prove their case. Claimant No.1 Kanaben Pidiyabhai Bhabhor has filed her evidence in the form of affidavit by way of chief-examination vide Exh.19. She has been cross-examined by the learned Advocate for the opponent

Insurance Company. The claimants have further produced following documentary evidence in support of the claim petition :

Sr. No.	Documentary Evidence	Exh./ Mark
1	Certified copy of complaint;	20
2	Certified copy of Panchnama of the spot	21
3	Certified copy of Inquest Panchnama	22
4	Certified copy of Postmortem Note	23
5	Certified copy of Registration Certificate of Motorcycle	24
6	Certified copy of Driving License of Vehicle	25
7	Certified copy of Insurance Policy of Vehicle	26

(7) The opponent No.1 remained absent at the time of recording evidence. The learned Advocate for opponent No.2 Insurance Company has cross-examined the claimant. Thereafter, the learned Advocate for claimants has closed their evidence by filing pursis vide Exh.27. The opponent No.2 Insurance Company has placed on record certified copy of Insurance Policy vide Exh.29, however, the Insurance Company has chosen not to lead any oral evidence in this claim petition and closed its evidence vide closing pursis at Exh.30.

(8) Heard the arguments of learned Advocate Mr. H. S. Mister on behalf of the claimants. Perused the Written Arguments filed by learned Advocate Mr. S. S. Parikh on behalf of the opponent No.2 Insurance Company vide Exh.31.

(9) It appears from the record that following issues are framed by the then M. A. C. Tribunal (Aux), Dahod vide Exh.13.

1. Whether the petitioner proves that the deceased died in a vehicular accident ?
2. Whether the Petitioner prove that they are entitled to get the compensation claimed by them or any part thereof from the respondent ?
3. What order and award ?

(10) According to the opinion of this Tribunal, this claim petition is filed under Sec.163A of the M. V. Act and while deciding the claim petition under Sec.163A of the M. V. Act, negligence is not required to be decided by the Tribunal and the compensation, if any, is required to be decided on the basis of structured formula under Sec.163A of the M. V. Act as held by the Honourable Apex Court in the case of **United India Insurance Co. Ltd. Vs. Sunil Kumar & Anr**. in **Civil Appeal No.9694 of 2013.**

(11) In order to succeed in this claim petition, the claimants require to prove the averments made in claim petition regarding the accident, involvement of vehicle and existence of insurance policy on the day of accident. The claimants have claimed compensation of Rs.6,82,700/- for the accidental injuries and death of deceased Babubhai. In support of the claim petition, claimant Kanaben has filed her affidavit in the form of chief-examination vide Exh.19 and stated that deceased Babubhai was serving with the opponent No.1 and according to his wish and

instruction, Babubhai had gone to village Rachharda to take household goods on motorcycle No.GJ-20 M-7285 of the opponent No.1 and at 16.00 hours, when he was returning to home, his motorcycle slipped at the place of incident, as a result, he was thrown off on the road along-with the motorcycle whereby he sustained serious injuries including head injury, hence, he was immediately admitted in General Hospital and during treatment, he died. For this, complaint was lodged with Katwara Police Station vide C. R. No.24/2015. In cross-examination of the learned Advocate for Insurance Company, she admits that, her son was driving motorcycle No.GJ-20 M-7285 at the time of accident. She relies on the complaint to get compensation and her son was driving in speed whereby motorcycle slipped and he sustained injuries and died.

(12) Looking to the complaint (Exh.20) lodged by one Lobanbhai Jithrabhai Damor, the incident took place when deceased Babubhai Pidiyabhai was returning after taking household goods from Rachharda Bazaar and the motorcycle of complainant’s brother was in over-speed and driven in negligent manner whereby it slipped and he fell down, sustained injuries and succumbed to the injuries in government hospital. As per the Panchnama of the spot (Exh.21), the accident took place near a tree on left side of the North-South road where Motorcycle No.GJ-20 M-7285 was lying with damages. The Inquest Panchnama and Postmortem Note show accidental injuries on the body of the deceased and resultant death of the deceased.

(13) As per the settled principle of law, a claim petition under Section 163A of the M. V. Act is governed by the principle of strict liability and the adjudication of the claim does not require to prove issue of negligence and is independent of any finding of negligence.

(14) Taking into consideration the oral as well as documentary evidence on record, the accidental injuries and resultant death of deceased Babubhai because of accidental injuries reveal on the face of the evidence. The involvement of vehicle Motorcycle No.GJ-20 M-7285 in the alleged accident is established from the oral and documentary evidence discussed herein above. Injuries and resultant death of deceased herein are also clearly substantiated by the above referred documentary evidence.

(15) It is admitted fact that the deceased was driving the motorcycle and due to over-speed, it slipped whereby the deceased fell down on the road, sustained injuries and died. No other vehicle was involved in the accident. Obviously, negligence is not required to be considered while deciding this claim petition being filed u/Sec.163A of the M. V. Act. The claimants have placed on record copy of Driving License of the deceased himself vide Exh.24, which goes to show that he was licensed to drive light motor vehicle (NT). The Registration Certificate of Vehicle Motorcycle (Exh.25) reflects that Lulabhai Pidiyabhai Bhabhor i.e. opponent No.1 was the owner of the vehicle motorcycle No.GJ-20 M-7285. On perusal of certified copy of Insurance Policy produced by the opponent No.2 Insurance Company vide Exh.29, it reveals that vehicle Motorcycle No.GJ-

20 M-7285 in the name of opponent No.1 was insured with opponent No.2 National Insurance Company Limited for the period from 27.01.2015 to 26.01.2016 covering the date of accident i.e. 22.03.2015.

(16) As per forgoing discussion and evidence on record, the necessary ingredients required under Sec.163A of the M. V. Act with regard to involvement of vehicle in the accident, accidental injuries & resultant death of deceased Babubhai and existence of Insurance Policy of the vehicle motorcycle No.GJ-20 M-7285 on the day of accident are clearly established by the claimants.

Quantum of Compensation & Liability

(17) Having considered the facts of the present claim petition together with the rivaled contentions raised on behalf of the parties in the matter and considering the issue involved in the matter, this Tribunal is of the opinion to decide quantum of compensation as well as the liability issue together here-under.

(18) Before reaching to the conclusion for the quantum of compensation, the contentions raised on behalf of the Insurance Company as to the liability require to be adjudicated.

(19) The Insurance Company during the course of arguments has mainly contended that the deceased had borrowed the involved motorcycle from its owner i.e. opponent No.1 and due to driving in over-speed by the deceased himself, this accident occurred. So, the deceased stepped into the shoes of the owner of the motorcycle and therefore, the Insurance Company is not

liable to pay compensation to the claimants for the death of deceased.

(20) For the purpose of deciding this contention, this Tribunal has to consider the evidence on record. It is admitted by the claimant in her cross-examination that the deceased was driving in over-speed and this accident happened but as per the settled principle of law, negligence is not required to be decided while deciding this claim petition u/Sec.163A of the M. V. Act and defence of negligence cannot be raised by the Insurance Company in this claim petition. So, on the ground of negligence of the deceased, the Insurance Company cannot be exonerated from the liability to pay compensation to the claimants u/Section 163A of the M. V. Act.

(21) The opponent Insurance Company has further raised contention that the deceased was holding driving license to drive Light Motor Vehicle but he was driving vehicle motorcycle at the time of accident. So, he was not holding valid driving license and the Insured had intentionally committed breach of terms and conditions of policy.

(22) While deciding this contention raised by the Insurance Company, it requires to be noted that the opponent Insurance Company has neither examined any witness nor placed on record any evidence in defence but as per the copy of Driving License produced by the claimants, the deceased was holding driving license to drive light motor vehicle. There is no such endorsement made on the driving license, which may authorize

the deceased to drive Motorcycle, a two wheeler vehicle. Here it is pertinent to note that, to operate a particular vehicle legally, the person driving it must explicitly holds valid driving license to drive it. As provided under Section 3(1) of the Motor Vehicles Act, 1988 in India, no person is permitted to drive a motor vehicle in a public place without holding an effective driving license specifically authorizing him/her to drive that exact class and category of vehicle. Since the claimants themselves have produced the driving license of the deceased on record, there is reason to believe that the deceased was in-fact holding the said driving license on the day of accident and it was a driving license authorizing him to drive light motor vehicle (NT) only. So, a person authorized to drive light motor vehicle is not automatically permitted to drive a motorcycle unless explicitly endorsed. By holding driving license to drive light motor vehicle as herein this case, the deceased cannot be said to have valid driving license to drive a two wheeler vehicle i.e. motorcycle.

(23) In view of the above discussion and evidence on record, it becomes clear that the deceased was not holding valid driving license to drive the motorcycle on the day of accident. Accordingly, this Tribunal agrees with the contention raised by the opponent Insurance Company that, by plying the motorcycle without holding valid license to drive it, the deceased had violated the terms of the Insurance Policy and even, the insured has also committed breach of terms and condition of the policy.

(24) To decide the another contention raised on behalf of the Insurance Company, the judgment of the Honourable Supreme

Court in the case of **Ningamma Vs. United India Insurance Co. Ltd. (Supra)** referred by the learned Advocate for Insurance Company requires consideration. In this case, it has been held in Para-(19) of the Judgment as under :

> *"19. .... In a case wherein the victim died or where he was permanently disabled due to an accident arising out of the aforesaid motor vehicle in that event the liability to make payment of the compensation is on the insurance company or the owner, as the case may be as provided under Section 163-A. But if it is proved that the driver is the owner of the motor vehicle, in that case the owner could not himself be a recipient of compensation as the liability to pay the same is on him. This proposition is absolutely clear on a reading of Section 163-A of the MVA. Accordingly, the legal representatives of the deceased who have stepped into the shoes of the owner of the motor vehicle could not have claimed compensation under Section 163-A of the MVA.*
>
> *20. When we apply the said principle into the facts of the present case we are of the view that the claimants were not entitled to claim compensation under Section 163-A of the MVA ...."*

(25) Here in this case, it is clear that the deceased was driving the motorcycle of the opponent No.1, with whom, he was working. No other vehicle was involved in the accident. Therefore, according to the opinion of this Tribunal, the deceased had stepped into the shoes of the owner of the motorcycle and

following the principle laid down by the Honourable Supreme Court in the above referred case, this Tribunal holds that the claimants are not entitled to claim compensation u/Section 163A of the M. V. Act against the opponents herein for the death of deceased while he was going on motorcycle without holding valid driving license and the claim u/Section 163A of the M. V. Act filed by the claimants against the owner and insurer of motorcycle is not maintainable.

(26) Further, it is required to be observed here as regards the liability of the Insurance Company that, the Policy of vehicle Motorcycle is a comprehensive package policy wherein the Insurance Company has received Liability Premium Computation (Section II) of Rs.50/- for Compulsory PA Cover (Owner and Driver) and Optional PA Cover (Unnamed Driver). The Policy Particulars further describes limit of liability wherein the Insurance Company has agreed for compensation up-to Rs.1,00,000/- as liability under Section II in respect of any one accident. So, according to the considered opinion of this Tribunal, though the claim petition against the insured & insurer of motorcycle u/Section 163A of the M. V. Act is not maintainable, the Insurance Company cannot be exonerated from its liability to pay compensation of **Rs.1,00,000/-** for the death of deceased herein and accordingly, the Insurance Company is liable to pay compensation of Rs.1,00,000/- to the claimants.

(27) As per the above discussion, the deceased cannot be both i.e. claimants or recipient as held by the Honourable Supreme Court in the case of **Ningamma Vs. United India Insurance Co.**

Ltd. (Supra) therefore, the opponent No.1 is not liable to pay compensation to the claimants. Further, as discussed above, the claimants are entitled to the compensation of **Rs.1,00,000/-** only from the Insurance Company. Therefore, detailed discussion for the amount of compensation under various heads is not made by this Tribunal in this judgment.

(28) As regards the rate of interest, following the principle enunciated by the Honourable Supreme Court in the case of **Abati Bezbaruah Vs. Dy. Director General, Geological Survey of India and Another** reported in **(2003) 3 SCC 148** together with the change of policy adopted by the Reserve Bank of India with regard to rate of interest with effect from 01.04.2021, this Tribunal holds that the claimants are entitled to the interest on compensation amount at the rate of 9% p.a. from the date of filing of claim petition to 31.03.2021 and at the rate of 7% p.a. from 01.04.2021 till the realization of compensation amount.

(29) Accordingly, all the points are answered and following order is passed in the interest of justice.

-: **O R D E R** :-

1. **(A)** The claim petition u/Section 163A of the M. V. Act against the opponent No.1 is hereby dismissed.

   (B) The claim petition u/Section 163A of the M. V. Act against the opponent No.2 Insurance Company is partly allowed. The claimants do recover **Rs.1,00,000/- (Rupees One Lakh Only)** with proportionate costs and with interest thereon **@ 9% p.a.** from the date of filing of claim petition to dt.31.03.2021 and **@ 7% p.a.** from 01.04.2021 till realization of the compensation amount from the opponent No.2 Insurance Company.

3. The Opponent No.2 National Insurance Co. Ltd. is hereby directed to deposit the amount of award as directed herein above in Para-1(B) after deducting the amount of interim compensation, if any paid under the M. V. Act within one month from the date of this order.

4. On depositing of the above amount of award by the respective opponents in this Tribunal, deficit amount of Court Fee Stamp, if any, on the awarded amount be deducted first and thereafter, the remaining amount be disbursed amongst the claimants as per following share.

Claimant No.1	:	50%
Claimant No.2 & 3	:	20% each
Claimant No.4	:	10%

5. Out of the amount of compensation on the part of the claimant Nos.1 and 4, **70%** amount shall be invested in any of the nationalized bank of the choice of the respective claimants in fixed deposit scheme in their respective names for a period of 05 years and remaining **30%** amount shall be paid to them by way of directly crediting in their respective Bank Accounts with nationalized bank through NEFT or RTGS facility after due and proper verification.

6. The entire amount of compensation on the part of the minor claimant Nos.2 and 3 be fully deposited in any

nationalized bank of the choice of claimant No.1 in the name of respective minor claimant with the name of claimant No.1 being their guardian, under fixed deposit schemes for a minimum period of 05 years or the respective minor attains majority, whichever is latter, with liberty to claimant No.1 to withdraw interest monthly or periodically as the case may be on behalf of respective minor claimant.

7. The claimant Nos.1 and 4 shall be entitled to get interest payable periodically from their respective Fixed Deposits, however, no claimant shall be entitled to withdraw any amount from the Fixed Deposit or to raise any loan on the fixed deposits, before maturity, without prior permission of this Tribunal.

8. **(A)** In view of the direction of the Honourable Apex Court in the case of **M. R. Krishna Murthy Vs. The New India Assurance Company Limited & Others** in Civil Appeal Nos. 2476-2477 of 2019, in the case of **Tata A.I.G. General Insurance Co. Ltd. Vs. Union of India & Others** in Writ Petition (Civil) No.534 of 2020 and **in Suo Motu Writ Petition (Civil) No(s).7/2024** and as per the judgment of the Hon'ble High Court of Delhi in the case of **Rajesh Tyagi & Ors. Vs. Jaibir Singh & Ors**. in FAO 842/2003 & CM Appl.32859/2017, 41125-41127/2017, 35516-35517/ 2018, 46426/2018, the claimants are directed to produce their bank account details along with either a certificate of the Banker giving all details of their bank accounts including IFS Code or a copy of a canceled cheque of their bank account with nationalised bank or

first page of their Bank Account Passbook which will compulsorily contain photograph of the claimants/victims duly attested by the Bank concerned, within one week from the date of pronouncement of judgment.

(B) The claimants are directed to keep on updating information regarding their Bank Accounts, email id if provided, in case there is any change, with the office of this Tribunal, till the realization of amount of compensation.

9. The Insurance Company shall deposit the amount as directed in circular dated 19.01.2022 in Account Name : Motor Accident Claim Tribunal, Dahod Account No.40714029534, Ifs Code : SBIN0000368, MICR : 389002021 and on such deposits being made, the Insurance Company shall submit a letter to the Registry of District Court, Dahod enclosing a copy of the said bank advice, in prescribed format as above, as per which the deposit was made to the bank account of the Claims Tribunal, to enable the Claims Tribunal to keep tab on the deposits made and the MACPs for which they were made, which is a fundamental need for a smooth implementation.

The Payment advice for remittance of compensation is as under :

PAYMENT ADVICE FOR REMITTANCE OF COMPENSATION

From : (Name of Bank)

To : (Name of Court)

We confirm remittance of compensation as follows on instructions of opponent Insurance Company.

1.	M.A.C.P.Number
2.	On the file of (Name of Claims Tribunal)
3.	Place
4.	Date of Award
5.	Amount Deposited

(A) The Insurance Company making such deposit, shall also send a copy of the payment advice in the aforesaid Clause to the Claims Tribunal concerned and serve a copy of the same on the claimants or their counsel as the case may be.

10. In view of the judgment delivered by the Division Bench of Hon'ble Gujarat High Court in the case of **Oriental Insurance Co. Ltd. Vs. Chief Commissioner of Income Tax (TDS)** in Special Civil Application No. 4800 of 2021, the interest awarded by the Motor Accident Claims Tribunal U/Sec. 171 of the Motor Vehicle Act, 1988 is not taxable under the Income Tax Act, 1961.

11. Award to be drawn accordingly.

12. PDF Copy of this Judgment and Award be sent to opponent Insurance Company through email.

Signed and pronounced in open Court on this 03rd Day of August, 2026.

Dt.03.08.2026 (Harishchandrasinh Gulabsinh Vaghela)
Place : Dahod M. A. C. Tribunal (Main),
Dahod.
(Code No.GJ00590)

DSS, EA