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**BEFORE THE MOTOR ACCIDENT**  
**CLAIMS TRIBUNAL (MAIN)**  
**AT : GANDHINAGAR**

**MOTOR ACCIDENT CLAIM PETITION No. 209/2016**

***Exh. : \_\_\_\_***

**Applicants/Petitioners:**

1. Asuba Jaswantsinh Zala  
Age : Approx. 52 years,  
Occupation : Household work
  2. Induvijaysinh Jaswantsinh Zala  
Age : Approx. 29 years,  
Occupation : Labour work
  3. Chandansinh Jaswantsinh Zala  
Age : Approx. 27 years,  
Occupation : Labour work
- All residents of : Village : Badodara, Tal. ; Talod,  
Dist. : SabarKantha

***versus***

**Opponents/Respondents:**

1. Dr. Medhavilal Narayanlal Sharma  
Age : Adult, Occupation : Business,  
Address : 5-Haridas Ni Magri,  
Udepur, Rajasthan.
2. Janakkumar Gokuldas Patel  
Age : Adult, Occupation : Business,  
Address : 19-20, Campus Corner, 1, N.R.Auda Garden,  
Anand Nagar road, Satellite, Ahmedabad.
3. The New India Assurance Co. Ltd.  
3<sup>rd</sup> Floor, Popular House, Opp. Sales India,  
Aashram Road, Ahmedabad.  
Policy No. : 21260031150100004497  
valid from date : 01.08.2015 to 31.07.2016

**Appearance:**

Mr.B.D.Shah : Learned advocate for applicants.  
Mr.A.A.Brahmbhatt: Learned advocate for opponent No.1.  
Mr.D.A.Raval : Learned advocate for opponent No.2.  
Mr.H.N.Shah : Learned advocate for opponent No.3.

**Sub : Petition under Section 166 of Motor Vehicles Act for  
getting compensation of Rs.15,00,000/-.**

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**:: JUDGEMENT ::**

- 1) Deceased Jsvantsinh Zala, aged about 52 years, sustained fatal injuries and died in a vehicular accident, arised on 21.10.2015, on account of arising of alleged accident, between tractor No.GJ-18-H-2962 and car No. RJ-27-CD-4506. At the time of accident, deceased was sitting beside the driver seat of the tractor. The deceased and driver of the tractor Pratapsinh was on the way towards Village : Lavarpur. The tractor was

driven by Pratapsinh and while passing on Lavarpur-Palaj road, the car in question, bearing No.RJ-27-CD-4506 came from opposite direction, been driven by its driver in a careless manner, and while overtaking the on going vehicle, the car in question, was dashed against the tractor, as a result, deceased Jasvantsinh Zala fell from the tractor and sustained fatal head injuries. The criminal complaint before Dabhoda Police Station came to be lodged by the driver Pratapsinh Udesinh, alleging that the driver of the car was negligent, while overtaking the other vehicle, as a result, it was dashed against the tractor.

- 2) It is the case of the claimants that deceased was rushed to Gandhinagar Civil Hospital, and was further treated by Civil Hospital, Ahmedabad and during the treatment, he died on 25.10.2015 and accordingly proceedings of the postmortem etc. being done by the Investigation Officer. It is the case of the applicants that the applicants are legal heirs and representatives of the deceased and they are widow and major sons. The present claim petition has been filed against the owner of both the vehicles and insurance company of the tractor, joining as opponent No. 1, 2 and 3, claiming amount of compensation Rs.15 lacs, under the provision of Motor Vehicles Act. It is the case of the applicants that family was totally dependent on the income of the deceased as deceased was earning Rs.5000-6000/- per month and was working as Roller Operator with Tejendra Infrastructure Pvt. Ltd. It is

further case of the claimants that deceased was hale and hearty and if the accident had it not been arised, then there were all chances in increasing the income in future. They have also lost love and affection and also suffered mental shock and agony, on account of this accidental death.

- 3) Opponent No. 1 being owner of the car has contested the claim, denying the averments made in the petition, by filing written statement at Ex.10. It is further stated *inter alia* that the alleged car was sold and handed over to one Mohammed Saied Nattekha Sheikh, resident of 87-Musiedangara Savina Udaipur, Rajasthan. As a result, no responsibility can be fastened upon him, as he is not the owner of the car. Opponent No. 2 being owner of the tractor, has not contested the claim. Whereas Opponent No. 3 – New India Assurance Co. have contested the claim, filing written statement at Ex.23, contending specific defence that the deceased Jasvantsinh was travelling in a tractor-cum-trailer as an illegal passenger. It is further contended that the risk of the deceased is not covered by paying extra premium, as a result, either contractually or statutorily, the insurance company cannot be held liable to pay the amount of compensation, on behalf of the insured, as the risk of the deceased is not covered. The insurance company have further denied the reasons for compensation and other facts, as averred in the petition.
- 4) Following issues have been framed at Ex.26 for determination of this claim petition:

**Issues**

1. Whether the petitioner/s proves/prove that the accident occurred due to rash and negligence of driver/s as alleged?
2. What the respondent/s is/are liable to pay compensation to the petitioner/s? If yes, what amount?
3. What order and award?

**Findings**

5) My findings on the above issues are as under:

- Issue No. 1 : In affirmative, Opponent No.1 is held responsible.
- Issue No. 2 : Partly in affirmative, as per final order.
- Issue No. 3 : As per final order.

**# REASONS #****Issue No. 1 & 2****# Negligence:**

- 6) Claimant Asuba Jasvantsinh Zala Ex.29 is being examined to prove the fact of the accident and other facts, by producing the necessary case papers like telephone vardhi Ex.34 & Ex.35, FIR – Ex.36, inquest panchnama at Ex.39, *postmortem* note at Ex.40 and charge-sheet at Ex.42. The other side opponents have not denied the primary facts of the accident and involvement of the vehicles. After considering the pleadings as well as FIR – Ex.36, disclosed before Dabhoda Police Station, on the very next day of the accident, by driver

Pratapsinh Chauhan, stating *inter alia* that the tractor was on the way towards village Lavarpur and while passing on Lavarpur-Palaj road, the car in question, RJ-27-CD-4506 came from opposite direction, being driven by its driver in high-speed and while overtaking the other vehicle, the driver lost control over the vehicle, as a result, it was dashed against the tractor. It is further stated in the FIR by the driver that the impact of the alleged accident was so high that the tractor was literally dragged towards reverse side and trolley was broken down and detached from the tractor. The claimants have also pleaded the same facts, as reflected in Para-10 of the petition.

- 7) There is no single allegation against the alleged negligent act of the tractor driver. The charge-sheet has been filed against the car driver. In this background, this tribunal is of the view that the owner and insurance company of the tractor having been joined with some purpose, as the car was uninsured.
- 8) At this juncture it is apt to refer the case of Pankaj Chandulal – 97(1) GLR 403, wherein it was observed that if the claimant comes forward with a particular case in his petition, he cannot be allowed to build up a new case in the evidence and have departure from the case initially advanced.
- 9) In this view of the matter, this tribunal is of the view that no negligence can be fixed on the part of the tractor driver. Looking to the width of the road and damaged condition of the

tractor trolley and allegations alleged against the driver of the car, alleged to have been made in the FIR Ex.36, reasonable inference would arise against the driver of the car that he did not notice the tractor, while overtaking the other vehicle, as a result, he missed judgement and lost control over steering of the car, resulting into arising of the alleged accident.

- 10) In view of the above discussions, made herein above, the alleged accident was arised on account of sole negligence of the car driver and he has been held negligent for causing the accident, as a result, deceased died during the course of treatment. Hence, I hold issue No. 1 accordingly in affirmative.

# **Quantum:**

- 11) It is admitted facts that the claimants are widow and major sons of the deceased and at the age of 52 years, deceased died after 4 days of the incident of the accident. Therefore, claimants are entitled for amount of dependency loss. As stated by the applicant Asuba Jasvantsinh, widow of the deceased, that the deceased was working with Tejendra Infrastructure as a Roller Operator and his monthly salary was Rs.5000/-. There is no evidence, in support of the income, as stated by the applicants. Copy of the FIR Ex.36 shows that driver Pratapsinh Udesinh has disclosed in his FIR that “*he along with Roller Operator of the plant - Jasvantsinh Zala*”

were on the way towards village lavarpur.....” This shows that deceased was working as Roller Operator with Tejendra Infrastructure Pvt. Ltd. owned by Janakbhai Gokaldas Patel and the plant was producing the road materials like tar etc. Considering the year of accident and rate of minimum wages etc. Rs.4000/- monthly income might be given by the company. Hence, for the purpose of computing the amount of dependency loss, the monthly income Rs.4000/- has been fixed.

- 12) Looking to the age of the deceased there were all chances in increasing the income in future, if accident had it not been arised. Therefore, prospective rise in the income of the deceased should have considered, while assessing the amount of the dependency loss. In view of this evidence 15% amount is required to be added in the monthly income Rs.4000/-. As a result, the prospective monthly income would comes to  $Rs.4000 + 600 (15\%) = Rs.4600/-$  and after deducing  $\frac{1}{3}$ <sup>rd</sup> towards personal expenses of the deceased, the net dependency loss would come to Rs.3067/- (Rs.4600/- less Rs.1533/-), yearly it would be Rs. 36,804/- and as the age of the deceased was 52 years, after applying multiplier of 11 years the amount would come to Rs. 4,04,844/-
- 13) In addition to this, the applicants are also entitled to get, Rs.15,000/- towards loss of estate and Rs.15,000/- towards

funeral expenses, and applicant No. 1 (wife) is entitled to get Rs.40,000/- towards loss of consortium, as a result the amount of compensation would come to Rs.4,74,844/-, which is just and reasonable and I award the same.

# **Liability**

- 14) Admittedly, Opponent No.1 is owner of the vehicle and the vehicle was uninsured. As discussed in the issue of negligence, the accident in question, was occurred on account of rash and negligent driving of the car owned by Opponent No. 1. The alleged accident was arised on 21.10.2015. The copy of Form No. 23, certificate of registration Ex.46 shows that Dr.Medhavilal Sharma was registered owner of the vehicle on 11.11.2013. The opponent No. 1 has not stepped into the witness box, to prove his defence that the at relevant time, he was not the owner of the vehicle and the vehicle was sold off to the person named in the written statement. Therefore, relying on the registration certificate Ex.46, opponent No. 1 is held responsible for amount of compensation, as he is the registered owner of the vehicle. No any other documents for transferring the vehicle etc. having been produced and proved by the opponent No. 1. In view of this matter, opponent No. 1 is legally liable to indemnify the amount of compensation along with interest, to the applicant, and accordingly, I hold the same. Thus, the opponent No. 1 is held liable accordingly.

- 15) As discussed above, the driver of the tractor Opponent No.2 is not held negligent and therefore, claim against opponent No.2 and 3 is hereby dismissed.
- 16) In view of the aforesaid discussion, and considering the reasons thereof, I partly allow this claim petition by passing following final order:

**ORDER**

1. The present petition is hereby partly allowed.
2. The opponent No. 1 is held, liable to pay the compensation of Rs..4,74,844/- (Rupees Four Lacs Seventy Four Thousand Eight Hundred Fourty Four only) to the applicants.
3. The claim against opponent No. 2 and 3 is hereby dismissed.
4. The applicants are hereby held entitled to recover the above compensation amount from the opponent No.1 with proportionate cost and with simple interest there on @ 8% per annum from the date application till realization, along with cost of litigation.
5. It is specifically ordered that after depositing the amount disbursement order will be passed.
6. Award to be drawn accordingly.

Signed and Pronounced in open Court on **19<sup>th</sup>** day of **December, 2019**.

Date : 19.12.2019  
Place: Gandhinagar

**[Ilesh J. Vora]**  
**GJ00136**  
**Motor Accident Claims**  
**Tribunal (Main)**  
**Gandhinagar**