

<b>Exhibit</b>	<b>:</b>	<b>49</b>
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**IN THE MOTOR ACCIDENT CLAIM TRIBUNAL (MAIN),**

**AT : JAMNAGAR.**

Motor Accident Claim Petition No.	88 of 2020
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**Petitioners :-**

**Legal Heirs of deceased Dawood Abdulkarim Kash (Memon)**

1. Farida Dawood Kash (Memon),  
Age about 55, Occupation : Homemaker,
2. Sakina Dawood Kash (Memon),  
Age about 19, Occupation : Study,  
Both are residing at Modiwad,  
Saifi Slop, Kalawad Naka,  
Near Darbargadh, Jamnagar.

**V E R S U S**

**Opponents :-**

**Owner and Insurance Company of Bus No.RJ-27-PA-2079**

1. Sampatlal Mithalal Jain,  
Age : Adult, Occupation : Business,

Residing at Tarakunj,  
Adinathnagar, Fatehpura, Udepur,  
Rajasthan.

2. The United India Insurance Co.Ltd.,  
Pandit Nehru Marg,  
Near Ambar Talkies, Jamnagar.

**Subject:** - Petition to claim compensation of Rs.15,00,000/- under section 166 of Motor Vehicle Act, 1988.

**Appearance:-**

Mr. P.V.Anadkat, Learned Advocate for the Petitioners.

Opponent No.1 remained absent.

Mr.B.C.Chotai, Learned Advocate for the Opponent No.2.

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**:: J U D G M E N T ::**  
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1. The Petitioners being heirs and legal representatives of the deceased **Dawood Abdulkarim Kash (Memon)** have preferred present claim under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.15,00,000/- with 12% interest and costs, jointly and/or severally from the opponents on account of death of deceased due to injuries sustained by him in an accident that took place on 22/03/2020 at the time and place specified in Petition involving the vehicle being Bus No.RJ-27-PA-2079.

2. The factual aspects of Claim Petition can be succinctly narrated as under ;

- i. On 029/02/2012, the deceased was traveling as a passenger in a bus bearing registration number RJ-27-PA-2079, enroute from Ajmer to Ahmedabad. Upon reaching the vicinity of Beawar, the said Bus collided with Trailer No.HR-56-M-0011. The accident was a result of rash and negligent driving on the part of Bus driver as he was driving the bus at excessive speed. Consequently, the deceased sustained fatal grievous injuries and expired instantaneously at the site of the accident.
  - ii. At the time of the accident, the deceased was 53 years of age. He was gainfully employed in agricultural pursuits, earning a monthly income of Rs.10,000/-. Additionally, the deceased was engaged in a vegetable vending business, from which he derived a further monthly income of Rs.10,000/-. Consequently, the total monthly earnings of the deceased are reckoned at Rs.20,000/- for the purpose of determining dependency and compensation. Thus, Petitioners have claimed monthly dependency loss of Rs.20,000/- as earning of the deceased. Loss of future income and prospects is also claimed as compensation under other conventional heads. In total, Petitioners have claimed compensation of Rs. 15,00,000/- with costs and interest.
3. After presenting the Claim Petition, summons were issued and duly served on the Opponents.

4. Opponent No.2- United India Insurance Co.Ltd., has filed written statement at Exh.16 and denied all the allegations of Petition. It has contended that the claim petition is suffering from mis-joinder of necessary party. It is also submitted that if the Tribunal comes to the conclusion that the above vehicle was involved in the alleged accident and there was even slight negligence on the part of the driver of the said vehicle alleged to have been insured with this opponent, then the liability should be decided on the principle of contributory negligence and percentage of negligence of each driver driving the vehicle at the time of accident. It is also contended that the accident has taken place due to sole negligent act of the driver of Trailer No.HR-56-M-0011 and in last prayed to exonerate this Opponent.

5. In the background of such rival pleadings, this Tribunal was pleased to frame the following issues vide Exh.34 ;

<b>Issue No.</b>	<b>I S S U E S</b>
1	Whether the Petitioners prove that deceased has died due to injuries sustained by him in vehicular accident due to rash and negligent driving on the part of driver of the vehicle involved in the accident ?
2	Whether the Petitioners prove that they are entitled for compensation, if yes, what amount and from whom ?
3	What is final order ?

6. My findings on each of issues above are as follows :

<b>ISSUE NOS.</b>	<b>FINDINGS</b>
1	In the Affirmative.
2	In the partly Affirmative and as per the amount quantified.
3	As per final order.

7. In support of the claim petition, following oral as well as documentary evidence were produced by the petitioners.

**(A) Oral Evidence :-**

<b>Sr. No.</b>	<b>Name of witness</b>	<b>Exhibit</b>
1	Affidavit of chief -examination of Petitioner No.1 Farida Dawood Kash (Memon)	37

**(B) Documentary Evidence :-**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Exhibit</b>
1	True Copy of FIR	39
2	True Copy of Spot Panchnama	40
3	True Copy of charge-sheet	41
4	True Copy of P.M Note of deceased	42
5	True Copy of Registration Certificate of Bus bearing No.RJ-27-PA-2079	43
6	True Copy of Insurance Policy of Bus	Mark

	bearing No.RJ-27-PA-2079	36/6
7	Copy of revenue record of land bearing survey No.44/1, situated at village Sapda, Ta/Dist. Jamnagar.	44
8	True Copy of Judgment of MACP No.481 of 2012 delivered by MACT (Main), Rajkot	45

8. Learned advocate for Petitioners has not adduced further evidence and filed closing pursis vide Exh.48.

9. Opponent No.2- Insurance Company has not adduced evidence in its defence.

10. Learned Advocate for the petitioners has submitted that accident occurred due to negligent driving on the part of driver of Bus No.RJ-27-PA-2079 and due to his careless driving Bus collided with stationary Trailer bearing No.HR-56-M-0011. Resultant, deceased sustained fatal injuries and accident occurred due to sole negligence on the part of Bus driver.

It is further stated that total monthly income of the deceased was Rs.20,000/- from agricultural activities and doing the business of vegetable. Therefore, Petitioners have claimed compensation to the tune of Rs.15,00,000/- from Opponents jointly and severally alongwith interest and costs.

It is further stated that that the principle of res judicata is applicable to the present claim petition as Hon'ble Motor Accident

Claims Tribunal (Main) Rajkot has decided the issue of negligence in the M.A.C.P. No.481 of 2012, arisen out of the same accident and FIR.

11. Learned advocate for Opponent No.2 has submitted that driver, owner and Insurance Company of Trailer No. HR-56-M-0011 are not joined as party in the present proceedings. Hence, Petition is suffering from non-joining of necessary party as it is a clear cut case of contributory negligence. That driver of Trailer No. HR-56-M-0011 has parked his vehicle on the middle of the road without putting any hurdles on front and rear side of the vehicle and due to his negligence act, accident occurred. Hence, on this count, present opponent is required to be exonerated. It is further submitted that Petitioners have failed to prove the income of deceased, hence notional income of deceased should be fixed to determine the compensation.

It is further submitted that Petitioners have not joined the driver, owner and Insurance Company of Trailer No. HR-56-M-0011 as a party. Considering the judgment passed by Motor Accident Claims Tribunal (Main) Rajkot has decided the issue of negligence in the M.A.C.P. No.481 of 2012, arisen out of the same accident and FIR and Hon'ble Tribunal has hold that both drivers of vehicles were negligent on the principle of 'composite negligence'. But looking to the facts that driver, owner and Insurance Company of Trailer No. HR-56-M-0011 as a party, 50% of the awarded amount is required to be deducted towards the liability of involved Trailer bearing No.HR-56-M-0011.

12. Having, gone through the pleading of respective parties, appreciation and consideration of evidence on record and hearing the submissions of learned counsels of respective parties, following are the reasoning for deciding the issues involved in the matters.

**:-: R E A S O N S :-:**

**Issue No. 1 :-**

13. It is transpires that certified copy of Judgment passed in MACP No.481 of 2012, which is placed on record vide Exh.45 that Claim Petition arisen from same accident and FIR was decided on merits by M.A.C.T. (Main), Rajkot and learned Tribunal therein decided the point of negligence and therefore, the question of negligency does not arise to decide again, but is required to be followed accordingly. In this connection, it is necessary to refer the case of **United India Insurance Co. Ltd. V/s. Laljibhai Hamirbhai & Ors. reported in 2007(1) – 633** decided by our own Honourable High Court of Gujarat, wherein the principle of '*res judicata*' is very lucidly discussed in the above case, and it is necessary to reproduce some of the paras herein below :

*“It would be impermissible to permit any party to raise any issue inter se where such an issue under the very Act has been decided in an early proceeding. Even if res-judicata in its strict sense may not apply, but its principle would be applicable. Parties who are disputing now, if they were parties in an early proceeding under this very Act raising the same issue would be stopped from raising such an issue both on the principle of estoppel and constructive res-judicata. The finding recorded even by the High Court that possession of the landlord could only be by an order under Section 36(2) is also not sustainable as that only conceived of the case where tenant is dispossessed and landlord is seeking to get back possession of the suit land from such tenant. In the present case, there was no such question. For this respondent No.1 has to be at least a tenant and whether he is a tenant stood concluded, as aforesaid earlier, hence initiation of proceeding under Section 49B cannot be sustained law.”*

14. It is pertinent to note that issue of negligence has already been decided in other Claim Petition, arisen out of the said cause of accident, it is not required to be decided in the present matter in view of cited case law of **United India Insurance Co. Ltd. (Supra)**, but follows accordingly.

15. However, on perusal of FIR at Exh.39, it reveals from the that the FIR is also lodged against the driver of the Bus and after investigation, charge-sheet has also been filed against him for negligence driving. It further appears that Bus was collided with stationary Trailer at rear side.

Hence, looking to the facts and circumstances of the case, driver of Bus No.RJ-27-PA-2079 was rash and negligent in driving his vehicle, while the driver of Trailer No.HR-56M-001 was also negligent in parking his Trailer without taking any precautions. Since, it is a case of ‘composite negligence’ of drivers of both the offending vehicles and, therefore, drivers of both the offending vehicles involved were rash and negligent in driving their respective vehicles and caused the accident. Hence, I answer issue No.1 accordingly.

**Issue No. 2 :-**

16. In order to arrive at “Just Compensation” being core of the Motor Vehicles Act the Tribunal under Section 168 of the Motor Vehicles Act has to decide dependency loss, no oral as well as documentary evidences have been produced by the Petitioners with regard to age and income of deceased. Therefore, as per settled

proposition of law, the claim petition is required to decide on the basis of material placed on record and accordingly, this Tribunal has decided following heads.

**(16.1) Age :-** Copy of birth certificate of deceased is placed on record vide Mark 47/1, wherein his BoD is mentioned as 28/02/1956. Hence, **56 years of age** of deceased at the time of accident is considered.

**(16.2) Multiplier :-** The age of the deceased is taken as 56 years, as discussed herein above, which would attract the **multiplier of 9** as per decision of **Sarla Verma vs. Delhi Transport Corporation, reported in 2009 (6) SCC 212.**

**(16.3) Income :-** According to submission of the Petitioner in the claim petition, deceased was earning Rs.10,000/- from agricultural activities and additionally, the deceased was engaged in a vegetable vending business and earnings of Rs.10,000/-. Thus, the total monthly earnings of the deceased are Rs.20,000/-.

The Petitioners have placed on record the revenue entries, specifically Village Form No. 7/12, pertaining to the land bearing Survey Nos. 44/1 to 44/4 situated at Village Sapda, Taluka & District Jamnagar. Save and except for the aforementioned revenue records, no corroborative documentary evidence has been adduced to substantiate the income of the deceased.

It is pertinent to note that mere production of revenue records like land records or 7/12 extracts does not automatically prove the actual income of a deceased person. While such documents may

establish ownership of property, but they do not verify the net income generated from that property, nor do they prove that the deceased was actively managing it or earning a specific amount at the time of the accident.

Therefore, it is required to note that in the absence of any cogent material on record, it is required to assess the income notionally. In the absence of any material produced by the Petitioners to prove income of deceased, it is appropriate to assess the notional income. Therefore, it will be benefited to do some guess work considering age of deceased, nature of work and source of earnings and inflation and price index in year of accident that is year 2012, thus, considering these all, it can safely presume that, in the year 2012, deceased might have earned **Rs.6,000/-** as monthly income from the above mentioned work.

**(16.4) Future Prospectus :-** In view of the decision of the Apex Court in case of **National Insurance Company Ltd. vs. Pranay Sethi & Ors. SLP (Civil) No. 25590/2014, dated 31.01.2017**, deceased being a self employed person and aged below 56 years, **10%** of the monthly income should be added towards future prospectus. Accordingly, 10% of Rs.6,000/- comes to Rs.600/-, adding this amount to the monthly income would come to Rs.6000 + Rs.600 = **Rs.6600/-**.

**(16.5) Deduction towards personal and living expenses :-** Herein the case on hand, there are two dependents being wife and daughter of deceased and therefore, when there are 2 to 3 as dependents, 1/3 is to be deducted towards personal and living expenses of the

deceased. Now, deducting 1/3 amount from the monthly income of Rs.6600/- divided by 1/3 , comes to Rs.2200/- and deducting the 1/3 amount from Rs.6600/- (Rs.6600/- – Rs.2200/-) **Rs.4400/-** comes after deduction of personal and living expense. Deduction towards personal and living expenses.

**(16.6) Loss of Estate and Funeral Expenses :-** As per the decision of Hon'ble Apex Court in case of National Insurance Co. Ltd. vs. Pranay Sethi (Supra), the Petitioners would be entitled for the amount of Rs.15,000/- each for loss of estate and funeral expense. It is pertinent to note that as per the aforementioned judgment, 10% rise is also awarded towards the conventional heads of loss of estate, loss of consortium and funeral expenses, for every 3 years. Therefore, this Tribunal thinks it fit to awards Rs.18,000 towards loss of estate, & Rs.18,000/- towards funeral expense to the Petitioners.

**(16.7) Consortium :-** It is pertaining to note that, as a result of this accident, the Petitioner No.1 has lost her beloved husband and Petitioner No.2 has lost her father in growing age and thus, they have lost their future support. At this juncture, reliance is required to be placed on the ruling of **Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors. (Civil Appeal No. 9581 of 2018, decided on 18<sup>th</sup> September, 2018)**, Hon'ble the **Apex Court** has held that compensation under the head of consortium can be awarded to husband/wife, father, mother and children of deceased.

**(16.8)** In the present case, it is appropriate to award Rs.48,000/- to the Petitioner No.1 being wife and Rs.48,000/- to Petitioner No.2 being daughter of deceased towards parental consortium.

17. The above calculated amount of compensation is shown in below mentioned tabular format ;

Sr No.	Head of compensation	Amounts
1	Monthly Income	Rs.6,000/-
2	10% Monthly Income future prospects	Rs.600/-
3	Addition of 10% amount towards Future Prospect	Rs.6600/-
4	1/3 deduction towards personal expenditure	Rs.2200/-
5	Net monthly income for calculating compensation (6600 - 2200 = 4400)	Rs.4400/-
6	Total compensation (Rs.4400 x 12 x9)	Rs.4,75,200/-
7	Loss of Estate	Rs.18,000/-
8	Funeral Expense	Rs.18,000/-
9	Spouse Consortium to Petitioner No.1	Rs.48,000/-
10	Parents Consortium to Petitioner No.2	Rs.48,000/-
<b>T O T A L :-</b>		<b>Rs.6,07,200/-</b>
<b>LESS : 50% Negligence of driver of Trailer who has not been joined in the proceeding</b>		<b>Rs.3,03,600/-</b>
<b>FINAL = AMOUNT</b>		<b>Rs.3,03,600/-</b>

It is required to note that it is true that there is difference in composite negligence and contributory negligence. When claimant himself is involved then it will be case of contributory negligence and when others are involved, it will be case of composite negligence. And claimant will be free to recover from any party and that party, then, can recover the excess amount from another. However, here another vehicle, that is Trailer bearing No.HR-56-M-0011 is not joined and only the Bus and its owner and Insurance Company are joined by the Petitioners.

It may be noted that here while driver, owner and Insurance Company of Trailer are not joined as a party, and hence Petitioners can not claim composite award from them. Therefore, Petitioners can not ask towards composite contribution. Hence, 50% part of Trailer's fault is deducted in above calculation.

At this juncture, it is required to refer the case of **National Insurance Company Ltd Vs Ratan Devi, decided on 21<sup>st</sup> February, 2024, M.A. No.71 of 2011**, wherein Hon'ble Jharkhand High Court has observed as follows ;

*“ 21. The same analogy can be applied to the instant cases as the liability of the joint tort feason is joint and several. In the instant case, there is determination of inter se liability of composite negligence to the extent of negligence of 2/3rd and 1/3rd of respective drivers. Thus, the vehicle – trailor-truck which was not insured with the insurer, was negligent to the extent of 2/3rd. It would be open to the insurer being insurer of the bus after making payment to claimant to recover from the owner of the trailor-truck*

*the amount to the aforesaid extent in the execution proceedings. Had there been no determination of the inter se liability for want of evidence or other joint tort feisor had not been impleaded, it was not open to settle such a dispute and to recover the amount in execution proceedings but the remedy would be to file another suit or appropriate proceedings in accordance with law.”*

Under these circumstances in view of aforementioned discussion, herein also, Petitioners have not joined the driver, owner and Insurance Company of Trailer bearing No.HR-56-M-0011, therefore, Petitioners herein are not entitled to recover any amount from them. Hence, their part of liability is required to be deducted from the compensation.

**liability to pay the compensation :-**

18. On perusal of Registration Certificate at Exh.43 and Insurance Policy at Mark 36/6, it appears that Opponent No.1 was owner and Opponent No.2 was insurer of said Bus on the date of accident. Therefore, Opponent Nos. 1 and 2 both are jointly and severally liable to pay compensation to the Petitioners.

19. In view of aforesaid discussion, this Tribunal is of considered opinion that petitioner is held entitled for compensation of **Rs.3,03,600/- (Rupees Three Lakh Three Thousand Six Hundred only)** along with proportionate costs and simple interest at the rate of 9% per annum from the date of petition till its realization to be paid by Opponent Nos.1 and 2 jointly and

severally. Hence, issue no.2 is decided in Affirmative in the manner as above discussed.

**Issue no. 3 :-**

20. Having, decided issue no.1 and 2 in affirmative and in favour of petitioner, following final order is hereby passed.

**FINAL = ORDER**

1- Present Claim Petition is hereby **partly allowed**.

2- Petitioners are held entitled for compensation of **Rs.3,03,600/- (Rupees Three Lakh Three Thousand Six Hundred only)** alongwith proportionate costs and simple interest at the rate of 9% per annum from the date of petition till its realization to be paid by Opponent Nos.1 and 2 jointly and severally.

3- It is further directed that compensation amount shall be deposited directly into the bank account maintained by this Tribunal (detail given below) by RTGS or NEFT mode within one month. And copy of payment advice be kept by Nazir, District Court Jamnagar and Insurance Company shall serve a copy of the same on the claimant/s or their Advocate as the case may be.

Name of Bank	Bank of Baroda, Lal Bungalow Branch, Jamnagar.
A/c. Number	58090100006648
Account Name	M/S. MOTOR ACCIDENT CLAIM TRIBUNAL
IFSC Code	BARB0LALJAM (Fifth Character from the beginning is zero)
MICR Code	361012008

4- It is further directed that Insurance Company shall comply the directions given by Hon'ble Supreme Court in Bajaj Alliance General Insurance Co. Vs. 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 11<sup>th</sup> March, 2016 titled as Divisional Manager, The Oriental Insurance Co. Ltd. Vs. Rajesh & Ors.

5- If compensation has been awarded and paid under section 140 of Motor Vehicle Act, than such amount of compensation shall be reduced from the amount of compensation awarded by this order.

6- On depositing the aforesaid amount of compensation, deficit Court fees, if any, be deducted there from and thereafter, from the remaining amount, **40%** shall be paid to the Petitioners by direct transfer to the credit of the bank account of the petitioners by NEFT or RTGS after proper verification and thereafter, remaining **60%** of the compensation amount shall be deposited in the name of petitioners in a Nationalized Bank or in any Government Security of the choice of Petitioners for a period of Five years keeping nomination clause with a condition that no loan or advance would be admissible, but the Petitioners would be entitled to get periodical interest that may accrue on the said F.D.R as per rules.

7- Petitioner No.1 is entitled to get **70%** of the awarded amount, whereas Petitioner No.2 is entitled to get **30%** of the awarded amount accordingly.

8- The Petitioners are directed to furnish their bank particulars i.e. bank account number and branch, IFSC code of concerned Bank and copy of PAN Card before the Registry and thereafter, Registry is directed to make disbursement of the amount of compensation accordingly.

9- The Opponents shall pay costs of the Petitioners and shall bear their own costs.

10- Award is directed to be drawn up accordingly

11- Authenticated copy of award is directed to be sent to the Insurance Company (if any) through e-mail.

This order is pronounced and signed in the open Tribunal on this 30<sup>th</sup> April -2026 under my hand and seal.

Date: -30/04/2026

Place: - Jamnagar.

A J RAVAL/PS

**(Nehalkumar Rajeshbhai Joshi)**

M.A.C.T. [Main] &  
Principal District Judge, Jamnagar  
Code No.: GJ01318