Exhibit	:	**35**
Received On	:	06/09/2021
Registered On	:	24/09/2021
Decided On	:	27/03/2026
Duration	:	Y-04:M-06:D -21

IN THE MOTOR ACCIDENT CLAIM TRIBUNAL (MAIN),AT : JAMNAGAR.

Motor Accident Claim Petition No.	191/2021

Petitioner :-

Legal Heir of deceased Lakhmanbhai Arjanbhai

1. Mansukhbhai Lakhmanbhai,
   Age about 44 years, Occupation : Labour,
   Resident of Junavankarvas, Arambhda,
   Ta/Dist. Dwarka.

V E R S U S

Opponents :-

Owner and Insurance Company of Crane No.GJ-12-AN-0571

1. Taufik Jusabbhai Panjwani,
   Age : Adult, Occupation : Contractor,
   Resident of Navinagari,
   Vyomani Road, Okha,
   Ta/Dist. Dwarka.

2. The New India Assurance Company,
Office at Manek Centre, Jamnagar.

Subject: - Petition to claim compensation of Rs.6,00,000/- under section 166 of Motor Vehicle Act, 1988.

Appearance:-

Mr.H.P.Ganatra, Learned Advocate for the Petitioners

Opponent No.1 remained absent.

Mr.R.P.Tanna, 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 Petitioner who is heir and legal representative of the deceased Lakhmanbhai Arjanbhai has filed present claim under Section 166 of the Motor Vehicles Act seeking compensation to the tune of Rs.6,00,000/- with 12% interest and costs, from the opponents on account of death of deceased due to injuries sustained by him in an accident that took place on 01/08/2021 at the time and place specified in Petition involving the vehicle being Crane No.GJ-12-AN-0571.

It is further case of Petitioner that deceased had suffered fatal injuries in the said accident which was allegedly caused by vehicle being Crane No.GJ-12-AN-0571.The said vehicle was being owned by Opponent No.1 and insured with Opponent No.2.

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

It is the case of the Petitioner that, on 01/08/2021 at about 04 :00 PM, deceased was going as pedestrian downside the road and when he reached near Arambhda Bus-stand, at that time driver of Crane No.GJ-12-AN-0571 came by driving his vehicle in negligent and rash manner from back-side and hit the deceased. Resultant, deceased had sustained severe multiple injuries, resultant into his death instantaneously. Accident occurred due to negligence of Crane driver only.

It is further case of Petitioner stated that deceased was 75 years old at the time of accident, however he was enthusiastic and hardworking person. He was experienced weaver and earning Rs.5,000/- per month. Thus, he was maintaining and supporting the entire family. Loss of future income and prospects is also claimed as compensation under other conventional heads. In total, Petitioner has claimed compensation of Rs.6,00,000/- with costs and interest.

2. After presenting the Claim Petition, summons were issued and duly served on both the Opponents. The Opponent No.1 has not contested Petition in any manner.

3. Opponent No.2 that is Insurance Company has contested the Petition by filing a written statement which is on the record of proceedings at Exh.14. Opponent No.2- Insurance Company has taken up defences in written statement and denied the factual aspects of the case as narrated in the claim-petition.

It is further contended that vehicle being Crane No.GJ-12-AN-0571 was not holding valid permit. Therefore, owner of said vehicle has violated the provisions of Motor Vehicles Act and Rules as also breach of terms and conditions of Policy.

It is further contended that driver of Crane No.GJ-12-AN-0571 was not holding valid and effective driving licence to drive the Crane. That liability of the respondent no.2 could be ascertained only on the proving of the accident and the rash and negligent act of the driver of Opponent No.1.

It is further contended that deceased himself is tortfeasor for accident and as such, Petitioner can not take advantage of wrong committed by deceased's own wrong and present claim is liable to be rejected. Further the age, income and occupation of deceased and claim of the petitioner is denied being excessive and exorbitant. Hence, prayed to dismiss the petition with costs.

4. In the background of such rival pleadings, this Tribunal was pleased to frame the following issues ;

ISSUE NOS.	ISSUE
1	Whether Petitioner proves that deceased died due to injuries sustained by him in road side vehicular accident occurred by reason of rash and negligent driving on the part of driver of vehicle bearing registration No.GJ-12-AN-0571 ?
2	Whether Petitioner proves he is entitled to compensation ? If yes, what amount and from

	whom ?
3	What final order ?

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

ISSUE NOS.	FINDINGS
1	In Affirmative.
2	In Affirmative.
3	As per final order.

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

(A) Oral Evidence :-

Sr. No.	Name of witness	Exhibit
1	Affidavit of chief examination of Petitioner	20

(B) Documentary Evidence :-

Sr. No.	Particulars	Exhibit
1	Attested Copy of FIR	22
2	Attested Copy of Spot Panchnama	23
3	Attested Copy of Post-mortem Report	24
4	Copy of Insurance Policy of Crane No.GJ-12-AN-0571	25

5	Copy of RC Book of Crane No.GJ-12-AN-0571	

7 Learned advocate for Petitioner has not adduced further evidence and filed closing pursis at Exh.27.

8. Learned Advocate for Opponent No.2 has produced following documentary evidence in its defence ;

Sr. No.	Particulars	Exhibit
1	True Copy of Insurance Policy of Crane No.GJ-12-AN-0571	30
2	True Copy of Extract of driving licence of driver of Crane No.GJ-12-AN-0571	31
3	Certificate of Fitness of Crane No.GJ-12-AN-0571	32

9. Learned Advocate Mr.Ganatra for petitioner has submitted written argument at Exh.33. Sum and Substances of argument is that at the time of accident, deceased was going as pedestrian and due to rash and negligent driving of Crane No.GJ-12-AN-0571, accident occurred and deceased died.

It is further argued that weaving was ancestral business of deceased and he was also experienced and skill worker of weaving, and monthly income of deceased was Rs.5,000/-. In view of above, under various heads, Petitioner has claimed compensation of Rs.6,00,000/- along with costs and interest at the rate of 12% per annum from the date of claim petition till realization from opponents.

10. Learned advocate for Opponent No.2 submitted written argument vide Exh.34. Crux of argument is that at the time of accident, deceased was more than 75 years of old and he has no source of income. That, Petitioner was not depend on income of deceased as he had independent source of income, hence Petitioner is not entitled to get compensation more than Rs.50,000/-.

It is further argued that driver of Crane No.GJ-12-AN-0571 was not holding valid and effective driving licence at the time of accident and it is proved from document at Exh.31. Hence, he prayed to dismiss Claim against this Opponent.

11. 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 :-

12. I have considered the rival contentions of the learned counsels for the parties and perused the records. Prior to proceeding to decide the issue of negligence, it would be relevant to state here that the present petition is filed u/s 166(1)(c) of the MV Act, while deciding such petitions, summary procedure is to be followed and it is merely an inquiry under Section 168 of the Act. Even the strict rules of evidence are not

applicable during inquiry under these provisions. The Hon'ble Apex Court, in the case of **National Insurance Co. Ltd. v. Rattani, as reported in 2009(3) MhLJ (SC) 754**, laid down that

"The certified copy of the First Information Report can be looked into for the purpose of arriving at finding of fact under which circumstances the accident occurred." Similar view is taken by the Hon'ble Bombay High Court in the case of United India Insurance Co. Ltd. v. Sayaji Shind, as reported in 2009(3) MhLJ 539, laying down that Certified copy of the First Information Report and Spot Panchnama can be read in evidence without its formal proof."

13. I have also gone through the FIR and Panchnama of place of accident as well as testimony of Petitioner. The validity, admissibility and genuineness of these documents were not challenged by the Opponent.

14. In order to discharge this burden, Petitioner appeared in the witness box as PW-1 and tendered his affidavit of chief at Exh.20. Petitioner has also relied on FIR at Exh.22 and spot Panchnama at Exh.23. On going through the FIR and spot Panchnama, it appears that in the accident, one vehicle was involved. Perusal of the FIR at Exh. 22 shows that complaint has been lodged against the driver of Crane No.GJ-12-AN-0571 for causing accident by driving his vehicle in rash and negligent manner.

It appears that at the time of accident, deceased was going as pedestrian along the roadside, near bus-stand of village Arambhda. According to the FIR at Exh.22, while deceased was passing through the Bus-stand by walking, due to rash and negligent driving on the part of driver of Opponent No.1, Crane ran over the deceased, resultant, deceased received severe head injuries and died on the spot.

Herein case on hand, deceased was going as pedestrian and passing though the Bus-stand of Arambhda village Dwarka-Okha Highway Road. On perusal of the entire facts and circumstances of the case, it appears that the accident took place due to rash and negligence driving on the part of driver of Crane bearing registration No.GJ-12-AN-0571. If driver of offending vehicle had taken a slight care to avoid the accident, unfortunate mishap could not have taken place, and therefore, driver of Crane bearing registration No.GJ-12-AN-0571 should be held to be negligent. Further, while walking on the road on highway, pedestrian should also take care and have to be vigilant. Hence, **10%** contributory negligence of deceased is held. So, I answer this issue No.1 accordingly.

Issue No. 2 :-

15. Learned advocate Mr.Tanna for Insurance Company has argued that Petitioner herein has his own independent source of income and not dependent on the income of deceased, he being major son of the deceased was married and also gainfully employed. Therefore, Petitioner is not entitled to get the compensation under the head of dependency.

On the contrary, learned advocate Mr.Ganatra for Petitioner argued that Petitioner was dependent on the deceased and he has been deprived of his love and affection and income, thus, entitled to compensation as claimed.

It is required to note that the legal representatives of the deceased could move application for compensation by virtue of clause (c) of Section 166(1) of the Motor Vehicles Act. The major married son who is also earning and not fully dependent on the deceased, would be still covered by the expression “legal representative” of the deceased. That liability to pay compensation under the Act does not cease because of absence of dependency of the concerned legal representative.

At this juncture, it would be required to refer the Judgment of Hon’ble Apex Court in case between **National Insurance Company Limited Vs. Birender and Ors.,reported in AIR 2020 SUPREME COURT 434,** where in Hon’ble Apex Court has observed regarding major sons of the deceased who are married and gainfully employed or earning, can claim compensation under the Motor Vehicles Act and further observed as follows ;

“ 15. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependent on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”

16. Thus, as per aforementioned observations of Hon’ble Apex Court, Petitioner herein is entitled to get compensation under the head of dependency.

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.

[1] Age :- Petitioner has produced copy of Post-mortem Report at Exh.24,wherein his age is mentioned as ‘75 years’. Hence, **75 years of age** of deceased at the time of accident is considered.

[2] Multiplier :- The age of the deceased is taken as 75 years, as discussed herein above, which would attract the **multiplier of 5** as per decision of **Sarla Verma vs. Delhi Transport Corporation, reported in 2009 (6) SCC 212.**

[3] Income :- As far as the quantum of compensation in this case is concerned, as per statement of Petitioner on affidavit that his deceased father earned Rs.5,000/- per month by doing weaving work. Petitioner has not produced any documentary evidence in support of his contention. Therefore, in absence of any proof of income and considering the age of deceased as 75 years, it is just and legal to consider his age as notional income at Rs.3,000/-.Hence, **Rs.3,000/- P.M**. is considered.

[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 was 75 years old at the time of accident, hence Petitioner is not entitled to get award under future prospectus of income.

[5] Deduction towards personal and living expenses :- Herein case on hand, there are one dependent of the deceased being son. It is required to note that Petitioner has admitted in cross-examination that deceased was his father and has total five children, among them are four daughters and one son. It is true that daughters have not been joined as a party. He want to proceed with matter as sole Petitioner. Therefore, as per decision of Hon'ble Apex Court in case of National Insurance Co. Ltd. vs. Pranay Sethi (Supra), when there is sole dependent of deceased being son, 1/3rd is to be deducted towards personal and living expenses of the deceased. Now, deducting 1/3 amount from monthly income of Rs.3,000/- divided by 1/3rd comes to Rs.1000/- and deducting 1/3 amount from Rs.3,000/- (Rs.3000/- – Rs.1000/-) **Rs.2,000/-** comes after deduction of personal and living expense. Deduction towards personal and living expenses.

[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 aforementioned judgment, 10% rise is also awarded towards 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.

[7] Consortium :- It is pertaining to note that, as a result of this accident, the Petitioner has lost his beloved father and thereby lost is 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 18th 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. In the present case, it is appropriate to award Rs.48,000/- to the Petitioner being a son of the 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.3,000/-
2	1/3 deduction towards personal expenditure	Rs.1000/-
3	Net monthly income for calculating compensation (3000-1000 = Rs.2000/-)	Rs.2,000/-
4	Total compensation (Rs.2000 x 12 x 5)	Rs.1,20,000/-
5	Loss of Estate	Rs.18,000/-
6	Funeral Expense	Rs.18,000/-
7	Parental Consortium (Rs.48000/- x 1)	Rs.48,000/-
TOTAL :-		**Rs.2,04,000/-**

LESS : 10% Negligence of the deceased :-	Rs.20,400/-
FINAL AMOUNT :-	**Rs.1,83,600/-**

liability to pay the compensation :-

18. Learned advocate Mr.Tanna on behalf of Insurance Company has argued that extract of driving licence of driver of Crane No.GJ-12-AN-0571 was having licence of LMV from 30/11/2009 to 04/08/2021. Accident is cover under the category of MGV having unladen weight 12000 Kgs. Hence, driver of Crane No.GJ-12-AN-0571 is not authorized to drive Crane. Therefore, Insurance Company is required to be exonerated.

19. Whereas,learned advocate for Petitioner argued that deceased was third party, hence, on behalf of owner, Insurance Company is liable to pay compensation to Petitioner.

20. On going through the Extract of driving licence of driver of Opponent No.1 at Exh.31, it appears that at the time of accident, he was authorized to drive LMV vehicles only.

Whereas at the time of accident, driver of Opponent No.1 was drove the vehicle - Crane bearing registration No.GJ-12-AN-0571 and as per certificate of fitness at Exh.32, Crane is fall under the category of 'MGV'. It is required not that driver of Opponent No.1 was holding licence to drive 'LMV Vehicle' as per extract of licence placed on record vide Exh.31. Therefore, driver of Opponent No.1 was not authorized to drive vehicle Crane. Furthermore, it is also an admitted facts that deceased was third party. Hence, Insurance Company is liable to pay first to the Petitioner and subsequently recover the amount from the owner.

21. It is required to note that, it is statutory right of a ***"Third Party"*** to recover amount of compensation so awarded from insurer. It is for insurer to proceed against insured for recovery of amount in event there has been violation of any condition of Insurance Policy then also insurer cannot avoid liability. The Hon'ble Apex Court in **National Insurance Co. Ltd. V/s. Swaran Singh, reported in 22004, ACJ 1 (SC)** as under ;

" Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of section 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal."

Further, in the case law of **AIR 2009 Supreme Court 2177 (Division Bench) in the case of Bhuwan Singh v. M/s. Oriental Insurance Co. Ltd. & Anr.,** Wherein the Hon'ble Supreme Court has held that *"by virtue of provision of Section 149 of M.V. Act 1988, the Insurance Company has been held responsible to pay compensation to the third party."*

22. Therefore, as per the aforesaid discussions in light of the ratio laid down by the Hon'ble Apex Courts in cited Judgment, Opponent Nos.1 and 2 are jointly and severally liable to pay compensation to the Petitioner as decided in issue No.1 that,

driver of Crane No.GJ-12-AN-0571 was held negligent for causing accident and it has come on record that on the date of accident, Opponent No.1 was owner as per RC Book at Mark 5/4 and opponent No.2 is Insurance Company of the said Crane as per Insurance Policy at Exh.30

23. Moreover, it will be open to Insurance Company of Crane No.GJ-12-AN-0571 i.e. **The New India Assurance Company Limited** to initiate proceeding for recovery of the awarded amount from Opponent No.1 being owner of said vehicle, in case of awarded amount deposited by Insurance Company as directed. In the result, I answer issue No.2 in affirmative and accordingly.

24. In view of aforesaid discussion, this Tribunal is of considered opinion that petitioners are held entitled for the compensation of **Rs.1,83,600/- (Rupees One Lakh Eighty 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.

<u>Issue no. 3 :-</u>

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

<u>F I N A L = O R D E R</u>

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

2- Petitioner is held entitled for compensation of **Rs.1,83,600/- (Rupees One Lakh Eighty 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- **The New India Assurance Company Limited** is entitled to initiate recovery/Execution proceedings against Owner of Crane No.GJ-12-AN-0571 (Opponent No.1), in case of awarded amount deposited by Insurance Company in Tribunal. It is made clarified that Insurance Company is at liberty to file directly Execution Petition against Opponent No.1, without filing of separate proceedings on the basis of this order.

4-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

5- 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 11th March, 2016 titled as Divisional Manager, The Oriental Insurance Co. Ltd. Vs. Rajesh & Ors.

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

7- On depositing the aforesaid amount of compensation, deficit Court fees, if any, and amount of interim compensation would paid if any, be deduct first and thereafter, from the remaining amount, **40%** shall be paid to the Petitioner by direct transfer to the credit of the bank account of the petitioner by NEFT or RTGS after proper verification and thereafter, remaining **60%** of the compensation amount shall be deposited in the name of petitioner in a Nationalized Bank or in any Government Security of the choice of Petitioner 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.

8- The Petitioner is directed to furnish his 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 Opponent Nos.1 and 2 shall pay costs of the Petitioner 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 27th day of March-2026 under my hand and seal.

Digitally signed by
NEHAL RAJESHBHAI JOSHI
on 27/03/2026 17:44:08 IST.

(Nehalkumar Rajeshbhai Joshi)
M.A.C.T. [Main] &
Principal District Judge, Jamnagar
Code No.: GJ01318

Date: -27/03/2026
Place: - Jamnagar.
A J RAVAL/PS