

Received on : 17/01/2019

Registered on : 17/01/2019

Decided on : 04/09/2024

Duration : YY MM DD
05 07 18**Exh. :** _____**BEFORE THE MOTOR ACCIDENT CLAIM TRIBUNAL (Main)
JUNAGADH.****M.A.C.P. No. 11 of 2020****Claimants :**Legal heirs, dependents and representatives of deceased
Sharifbhai Abdulbhai Solanki:

	Age	Occu.	Residence
1 Anishaben Sharifbhai Solanki	37	Household work	All R/o.Main Bajar, Mendarda, Tal.Dist. Junagadh
2 Shahidarja Sharifbhai Solanki	18	Study	
3 Minor Sanyabanu Sharifbhai	15	–	
4 Minor Sijan Sharifbhai Solanki	12	–	

Applicant 1 as guardian and mother of
applicant Nos.3 and 4**VERSUS****Opponents :***(Driver, owner and insurer of Motorcycle No.GJ-03-LC-6202)*

1 Sachinbhai Bharatbhai Suvagiya	–	–	Near Patelvadi, Panchpipala, Tal.Jetpur
2 Bharatbhai Bhoghabhai Tilala	–	–	Panchpipala, Tal.Jetpur
3 ICICI Lombard General Insurance Co. Ltd.	–	–	Orbit Plaza, Second Floor, Near Statue

of Svami
Vivekanand,
Dr.Yagnik Road,
Rajkot

**CLAIM PETITION U/S 166 OF THE MOTOR VEHICLE ACT
FOR THE COMPENSATION OF Rs.30,00,000/-**

Appearance :-

LA Mr. A. A. Sutar for claimants.

LA Mr. Y. G. Domadiya for opponent Nos.1 & 2.

LA Mr. M. C. Jani for opponent No.3.

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

(1) The captioned petition has been preferred by the applicant to have compensation under Section 166 of the Motor Vehicles Act, 1988 for compensation of Rs.30,00,000/- along with interest.

(2) Facts of the case of the claimant :-

(2.1) It is the claimants' case that on 23.08.2019, the deceased was proceeding by walking on Jetpur Dhoraji road near village Pedhala at about 10.00 O'clock at night at that time, the opponent No.1 drove the motorcycle in full speed, and in a manner endangering the human life and dashed against the deceased due to which the deceased had sustained the serious injuries and ultimately succumbing to them. Therefore, the claimants have filed the present claim petition seeking compensation of Rs.30,00,000/- from the opponents under Section 166 of the Motor Vehicle Act, 1988 (*hereinafter referred to as 'the MV Act'*).

(2.2) According to the petition, the applicant no.1 is widow and applicant Nos.2 to 4 are children of the deceased Sharifbhai.

(2.3) According to the case, the opponent no.1 is driver, opponent No.2 is owner / insured and opponent no.3 is insurer of said vehicle

Motorcycle No.GJ-03-LC-6202 and it is referred as '*the Motorcycle*' hereinafter.

(3) Defence of Opponents :-

(3.1) Driver and owner / insured of the Motorcycle (opponent Nos.1 & 2) :-

The opponent Nos.1 & 2 have appeared through their lawyer and filed a reply via Exh.15, wherein they denied most of the facts of the claim petition and have admitted the factum of accident as stated in para 7 of the petition that on 23/08/2019, said accident had occurred on Jetpur Dhoraji Road near Pedhala village but denied the negligence and contended that said accident had occurred due to negligence of the deceased as he was crossing the road without looking aside. It is thus prayed to dismiss the petition against them. Alternative they have submitted that in case of their any negligence and award is passed in favour of the claimants, the claimants are entitled to get the compensation from the opponent No.3 with whom the vehicle was insured.

(3.2) Insurer of the Motorcycle (opponent No.3) :-

The opponent No.3 appeared through it's lawyer and submitted their written statement, as evidenced by Exh.18. In the written statement, most of the facts of the petition have been denied. Additionally, it is submitted that the incident took place on 23.08.2019 and FIR was lodged on 30.08.2019 and no proper reasons for late complaint have been stated in the FIR. It is further contended that as per the medical history of the deceased shows that unknown four wheeler dashed with patient while he was crossing the road creating doubt about the insertion of vehicle fraudulently. It is further argued that the opponent No.1 did not hold a valid and effective driving license at the time of the accident and owner had willfully handed over the vehicle to him, thereby breaching the terms and conditions of the policy. It is further

argued that the petition suffers from non-joinder of parties as the applicants have not joined all the legal heirs of deceased. Consequently, the insurance company is not liable to pay compensation, and it is requested to dismiss this claim petition.

(4) The Evidence of parties :-

(4.1) Following evidence has been adduced by the parties in support of their case :-

(4.2) Oral Evidence :-

Exh.20	Affidavit as to examination-in-chief of applicant no.1
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(4.3) Documentary Evidence :-

Exh.24	Attested copy of FIR
Exh.25	Attested copy of panchnama of place of accident
Exh.26	Attested copy of charge-sheet
Exh.27	Attested copy of Driving License of opponent No.1
Exh.28	Attested copy of R.C. Book of Motorcycle No.GJ-03-LC-6202
Exh.29	Attested copy of Insurance Policy of the vehicle
Exh.30	Attested copy of inquest panchnama
Exh.31	Attested copy of PM Note
Exh.32	Attested copy of case summary of Gokul Superspeciality Hospital
Exh.33	Attested copy of Form No.54
Exh.34	Attested copy of Village Form No.7 of Survey No.540 of Village Ambala
Exh.35	Medical Bills

(4.4) Following evidence has been adduced by the opponent No.3 in support of their case :-

(4.5) Oral Evidence :-

Exh.46	Deposition of witness Dr.Badalkumar Parshotambhai Vachhani, Medical Officer
Exh.54	Deposition of witness Dr.Azaz Daudbhai Solanki Clinical Assistant

Exh.61	Deposition of witness Dr.Sanjaybhai Maganbhai Tilala, Neuro Surgeon, Synergy Hospital, Rajkot
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(4.6) Documentary evidence produced by opponent No.3:

Exh.47	Original Case papers (2 Pages)
Exh.55	History case papers of Gokul Superspeciality Hospital, Rajkot
Exh.56	Injury Certificate issued by Gokul Superspeciality Hospital, Rajkot
Exh.62	Admission History and Physical Assessment Form of Synergy Superspeciality Hospital
Exh.63	Certificate of Injury issued by Gokul Hospital, Rajkot.
Exh.68	Terms and conditions of policy of motorcycle having Engine No.22223 and Chasis No.14995

(4.7) Ld. Advocate for the claimants has submitted closing pursis vide **Exh.36** same time the lawyer for the opponent No.3 has tendered closing pursis vide **Exh.64 & Exh.69**.

Issues :-

(5) After considering the application, following issues have been framed vide **Exh.19** as under:-

1. Whether applicants prove that deceased had expired on account of accidental injuries sustained in a vehicular accident occurred on 23/08/2019, due to rash and negligent driving of the driver of the Motorcycle No.GJ-03-LC-6202, involved in the accident?
2. Whether the applicants are entitled to any compensation? If yes, what amount?
3. What award and against whom?

(6) Reply of above issues :-

1. Issue no.1 : In Negative, as discussed.
2. Issue no.2 : As per final order.
3. Issue no.3 : As per final order.

(7) As regards procedure of tribunal :-

(7.1) The section 168 and section 169 state that an inquiry is required to be held. Section 168 of the motor vehicle Act 1988 says that subject

to the rules made the tribunal may follow such summary procedure as tribunal thinks fit.

- (7.2) The Hon'ble Tripura High Court in the case of *Sankar Chandra Das vs Sujit Saha* reported in **LAWS (TRIP)-2014-2-2**, after considering the various judgment of Hon'ble Apex Court, has laid down that *"HERE it would be pertinent to mention that the Apex Court clearly indicated that the summary procedure mandated under sections 168 and 169 should not be one like a regular civil suit"....."5.SECTION 168 of the M.V. Act provides that the Claims Tribunal after giving notice of the application to the insurer and giving the parties (including the insurer) an opportunity of being heard, shall hold an inquiry into the claims and make an award determining the just amount of compensation"....."It is our considered view that the inquiry contemplated by the legislature under section 168 is not an adjudication as contemplated under the Code of Civil Procedure or under the Evidence Act"....."The manner of summoning the witnesses, the manner in which documents can be exhibited may not be as rigid-and as technical as provided in the Code of Civil Procedure or the Indian Evidence Act, but the inquiry has to be in consonance with the settled principles of natural justice."*
- (7.3) Therefore in said judgment it has been specifically stated that the inquiry under the MV Act to deal application u/s 166 is not required to be conducted like suit and technicalities of Code of Civil Procedure 1908 and the Evidence Act 1872 would not be applicable while holding the inquiry or while deciding the admissibility of evidence.
- (8) Learned Advocate for the applicants has filed his written arguments vide Exh.70 whereas Ld.Advocate for the opponent No.3 has filed his written arguments vide Exh.72.
- (8.1) Precedents which are relied upon the parties are discussed at appropriate place in this judgment.

(9) As regards Involvement of the Vehicle in the accident & negligence :-

(9.1) The learned lawyer for the applicants has argued that the driver of the Motorcycle was negligent, and it has been proven by the applicants. Further, it has been stated that doctor who has been examined vide Exh.46 has specifically stated that the accident has been occurred due to motorcycle. It has been argued out that the experts which have been examined vide Exh.54 and Exh.61 have not stated that the person who has given history are eye witness of the accident or not and therefore, history which has been given to expert who has deposed vide Exh.46 is required to be considered.

(9.2) Ld. Advocates for the opponents have argued that the said accident has been occurred due to sole negligence on the part of the deceased and there is no involvement of the vehicle as alleged. Further, it has been argued out that no explanation is come on record as to why the Police complaint was made after seven days of the accident. Further, Ld.Advocate for the insurer has relied upon the evidence of experts which are examined vide Exh.54 and Exh.61 and relying and giving emphasis on said documents, it has been specifically argued out that the alleged vehicle is not involved in the accident.

(9.3) It is incumbent on the claimant to prove negligence before owner or insurance company could be held liable for the compensation because liability of owner of vehicle to compensate the victim is based on law of torts. Proof of negligence remains lynch pin to recover compensation and said ratio has been propounded by the Hon'ble Apex Court in the case of *Minu B Mehta anrs. vs Balkrishan Ramchandra Nyan anrs.* reported in **AIR 1977 SC 1248**. Even same ratio again reiterated in the case of *National Insurance Company limited vs Prembhai Patel* reported in **AIR 2005 SC 2337**.

(9.4) The petition alleges that the driver of the Motorcycle No.GJ-03-LC-

6202 was negligent at the time of the accident. This fact was also testified to by applicant No.1 in Exh.20.

(9.5) A copy of the FIR, Exh.24 is lodged by claimant No.1 of the deceased – Anishaben W/o.Sharifbhai Abdulbhai Solanki. It is stated in the FIR by the complainant that on 23/08/2019, the complainant, deceased and her children had gone in Maruti Zen No.GJ-09-M-0154 at Bavadavadar to visit Dargah and had returned back at about 08.00 hours at night to visit Asaba Pir's Dargah at Pedhala village and reached Pedhala village at about 09.45 hours at night and the car was parked in the compound of Dargah and deceased had gone on side of the highway for washroom at about 10.00 hours at night and she heard a big sound and the complainant and her children had gone on the road to see as to what had happened and found that one Honda motorcyclist had collided with her husband and had fallen down and motorcyclist had also fallen and sustained injuries. It is further stated that her husband had received serious injuries on the head and fracture on left leg and both were taken in Eeco Car to Jetpur Government Hospital where from the deceased was referred to Rajkot and both were admitted to Rajkot hospital and deceased was admitted in Gokul Hospital whereby the deceased had expired during the treatment on 26/08/2019.

(9.6) The deponent has deposed that he and her decd. husband were going by way of walking near Asaba Pir Dargah and that time, the driver of the motorcycle came and dashed such motorcycle with her husband and therefore, such accident has been occurred. Said witness in cross examination has admitted that:

"મારા સાસુ-સસરા હયતા નથી. એ વાત ખરી છે કે, કલેઈમ પીટીશનમા દર્શાવ્યા સીવાય અન્ય કોઈ વારસદારો નથી. બનાવ બન્યો ત્યારે હું દરગાહમાં અંદર હતી. એ વાત ખરી છે કે, મે બનાવ નજરે જોયેલ નથી. બનાવ બાદ મારા પતિને સૌપ્રથમ જેતપુર સરકારી દવાખાને લઈ ગયેલા અને ત્યાં હું સાથે હતી. બનાવ બાદ હું પણ

બેભાન થઈ ગયેલ હોય તેથી જેતપુર સરકારી દવાખાને ડોક્ટરશ્રીએ મને કોઈ પુછપરછ કરેલ નથી. જેતપુર સરકારી દવાખાનેથી ગોકુલ હોસ્પિટલ, રાજકોટ લઈ ગયેલા. ગોકુલ હોસ્પિટલમાં લઈ ગયા ત્યારે હું સાથે હતી. એ વાત ખરી નથી. કે, મને ગોકુલ હોસ્પિટલમાં ડોક્ટરશ્રીએ બનાવ બાબતે પુછપરછ કરેલી. એ વાત ખરી નથી કે, મે ગોકુલ હોસ્પિટલમાં એવું લખાવેલ છે કે, અજાણ્યા ફોરવ્હીલ વાળાએ હડકેટે લીધેલ છે."

(9.7) Therefore, said witness has admitted in cross examination that she has not seen the occurrence of accident. Further, she has admitted that she was with her husband when her husband has been taken to the Gokul Hospital, Rajkot.

(9.8) Thus, deceased had met with an accident on 23/08/2019 at about 10.00 hours at night and was taken to Jetpur Government Hospital for treatment. The claimants have produced the extract of Janava Jog Entry vide Mark-43/1. The said entry shows that it was noted by Jetpur Taluka Police Station on 23/08/2019 at 22.15 hours which further reveals that Dr. B.P.Vachhani of Civil Hospital, Jetpur has informed that deceased had met with an accident by bike and for further treatment he was referred to Civil Hospital, Rajkot. Thus, station diary is having specific entry of the accident and mode of occurrence of the accident by motorcycle.

(9.9) Herein, it is undisputed fact that FIR has been lodged by the claimant No.1 wherein she has put story of accident as under:

" ગઈ પતા.૨૩/૮/૧૯ ના રોજ સવારના આઠેક ગાયાના ખવતે હુ તથા મારા બાળકો તથા મારા પતી એમ અમો બધા અમારી મારુતી જેન નં .જી.જે.-૦૯-એમ-૦૧૫૪ મા બેસી આઠેક વાગ્યે બાવળાવદર ગામે દરગાહે સલામ કરવા ગયેલ હતા અને રાત્રીના આઠેક વાગ્યે મો પેઢલા ગામ પહેલા અસાબા પીરની દરગાહે સલામ કરવા રવાના થયેલ અને અમો આશરે પોણા દસેક વાગ્યે પેઢલા પહોચેલ અને અમારી કાર દરગાહ ના કંપાઉન્ડમાં રાખેલ અને મારા

પતીને પેશાબ લાગતા તેઓ હાઈવે રોડ પર સાઈડમા પેશાબ કરવા ગયેલ તે વખતે દશેક વાગ્યા હશે અને આ ખવતે જોરથી અવાજ આવતા હુ તથા મારા છોકરાઓ રોડ ઉપર જોવા ગયેલ તે ખવતે મારા પતી સાથે એક હોન્ડા વાળા એ ભટકાડીને નીચે પછાડી દીધેલ"

(9.10) While in deposition said witness has put story of accident as under:

"આ કામમાં અમો અરજદાર નં.૧ છીએ. અમો અરજદારનાં પતિ શ્રી શરીફભાઈ અબ્દુલભાઈ સોલંકી તા. ૨૩/૦૮/૨૦૧૯ ના રોજ, રાત્રીનાં આશરે દશેક વાગ્યે પોરબંદર હાઈવે રોડ ઉપર, આશાબાપીરની દરગાહ પાસે રોડ ની સાઈડમા ચાલીને જતા હતા ત્યારે, આ કામનાં સામાવાળા નં.૨ ના મો.સો. નં.GJ-03-LC-6202 નાં ચાલકે પોતાના હવાલાવાળુ મો.સા. પુરઝડપે, બફીકરાઈથી તથા મનુષ્યની જીદગી જોખમારય તે રીતે ચલાવી મારા પતિને હડફેટે લઈ અકસ્માત કરેલ છે."

(9.11) Therefore, on one hand it has been stated that she and her husband were gone to accident place with four wheeler vehicle while in deposition, she states that they were going by way of walking. Therefore, the evidence of the said witness does not transpires confidence because she has totally changed version of the fact of the accident.

(9.12) Further, she has admitted in her cross examination that she has not seen the accident and therefore, when she has not seen the accident and such fact has been come from the cross examination and cross examination is the tool which has been given by the Evidence Act to check the veracity of the examination in chief and by way of that tool, it has come on record that said witness is not eye witness of the accident.

(9.13) Now, here three experts have been examined and now, from said experts Tribunal has to find out truth to the standard of preponderance of probabilities.

(9.14) The opponent No.3 has examined said Dr.Badalkumar Parshotambhai Vachhani at Exh.-46 wherein in his examination-in-chief he has deposed that on 23/08/2019 he was serving as Medical officer in Jetpur Government Hospital and further deposed that patient was brought to the hospital on 23/08/2019 at 10.00 hours at night and the person accompanied had stated that:

"પેઢલા દરગાહ પાસે બાઈક સાથે અથઢાતા ડો. રૈયાણી સાહેબના દવાખાનેથી સરકારી હોસ્પીટલમાં આવેલ છે."

The said witness has also produced the original case papers vide Exh.-47 wherein the history is given as:

"લાવનાર જણાવે છે કે પેઢલા દરગાહ પાસે બાઈક સાથે અથડાતા સ.હો. આવેલ છે. રૈયાણી સાહેબની ત્યાથી લાવેલ છે."

Thus, during the examination of the said witness nothing contrary has come on record. On the contrary, Civil Hospital, Jetpur is the hospital where the decd. was taken for treatment after the accident had occurred from the hospital of Dr.Raiyani.

Furthermore, the opponent No.3 has examined Dr.Azaz Daudbhai Solanki vide Exh.54 who has deposed in his examination-in-chief that he is serving as Medical officer in Gokul Hospital, Rajkot and has stated the history as:

""દઈ રોડ ક્રોસ કરતા હતા અને અજાણ્યા ફોરવ્હીલરે તા.૨૩/૦૮/૨૦૧૯ ના રોજ રાતના દસ વાગ્યે ઠોકર મારેલી." આ હીસ્ટરી દઈના ભાઈ ઈલ્ચાસભાઈ સોલંકીએ આપેલી હતી.

The said witness has produced the case history vide Exh.55 wherein it is stated that "Unknown four wheeler dashed with Pt. While he was crossing a road at Pedhala village on 23/08/2019 at 10 pm". In cross examination, said witness has deposed that:

"(૩) ઈલ્ચાસભાઈ બનાવ સમયે હાજર હતા કે કેમ? તેની મે પુછપરછ કરેલી નહી.

દર્દીએ પહેલા ૧૦૮ મા પ્રાથમિક સારવાર લઈ ત્યારબાદ જેતપુર સરકારી હોસ્પિટલમાં સારવાર લીધેલી અને ત્યારબાદ રાજકોટ સીવીલ હોસ્પિટલમાં સારવાર લીધેલી અને ત્યારબાદ અમારી હોસ્પિટલમાં લાવેલા હતા."

(9.15) The opponent No.3 has also examined Dr.Sanjaybhai Maganbhai Tilala vide Exh.61 who has stated in his examination-in-chief that he is working as Neuro Surgeon in Synergy Hospital since last five years. He has deposed that:

"આ દર્દીને અમારી હોસ્પિટલમાં તા.૨૪/૦૮/૨૦૧૯ ના રોજ રાત્રીના કલાક ૧ ૨:૦૦ વાગ્યે લાવવામાં આવેલા હતા. આ દર્દીના પિતા ભરતભાઈ પી. સુવાગીયાનાઓએ બનાવ બાબતે હિસ્ટ્રી આપેલી કે, "સચીનભાઈ તા.૨૩/૦૮/૨૦૧૯ ના રોજ કલાક ૦૮:૩૯ વાગ્યે માંડલીકપુર ગામ નજીક, ટકીયા હાઈ-વે (ધોરાજી-માંડલીકપુર રોડ) ટુ-વ્હીલર પર જતા હતા અને કોઈક અજાણ્યા વાહન સાથે અથડાતા તેમને ઈજા થયેલ છે."

It is pertinent to note here that said Sachinbhai who was taken to Synergy Hospital, Rajkot is none else but the opponent No.1 who is the joined as driver of the motorcycle.

The said witness has admitted during his cross examination that:

"એ વાત ખરી છે કે, આ દર્દીને અગાઉ જેતપુર મુકામે ડો.રૈયાણીને ત્યાં પ્રાથમિક સારવાર લઈને આવેલા હતા. ડો.રૈયાણીએ આ દર્દીને કરેલ સારવારના કોઈ કાગળો મારી પાસે નથી."

The said witness has produced the case papers vide Exh.62 wherein history is stated as "A/H/O RTA (Bike Vs. unknown vehicle) at 8.30 pm on 23/08/2019 at Mandlik pur village near Talaja Highway (Dhoraji-Madhavpur Road). Took primary treatment with Dr.Raiyani (Jetpur) & from there for further management."

(9.16) Therefore, following story are coming on record:

1. FIR says that decd. and his wife went near Asapir Dargah with Maruti Zen No.GJ-9-AM-0154 and thereafter, decd. get down for the purpose of urinal and there, the motorcycle caused such accident;
2. In petition as well as in the deposition the petitioner NO.1 has deposed that when she and her husband went to Asapir's Dargah that time, said motorcycle caused the accident;
3. In cross examination, said witness has admitted that she has not seen the accident;
4. The expert of Exh.46 says that "લાવનાર જણાવે છે કે પેઢલા દરગાહ પાસે કાઈ સાથે અથડાતા અહીં આવેલ છે."
5. Thereafter, decd. was taken to Gokul Hospital and said expert vide Exh.54 said that "અમારા હીસ્ત્રી પેપર્સ મુજબ દર્દીની હીસ્ત્ર આપવામાં આવેલ કે, "દર્દી રોડ ક્રોસ કરતા હતા અને અજાણ્યા ફોરવ્હીલરે તા.૨૩/૦૮/૨૦૧૯ ના રોજ રાતના દસ વાગ્યે ઠોકર મારેલી." આ હીસ્ત્રી દર્દીના ભાઈ ઈલ્ત્યાસભાઈ સોલંકીએ આપેલી હતી.
6. Further, herein the paper of Gokul Hospital is produced vide Exh.63 wherein history has been stated that "history given by patient relative (Bharatbhai P. Suvagiya - Father), A/H/O RTA (bike vs unknown vehicle) at 8:30 pm on 23/08/2019 at Mandlikpur village near Takiya highway (Dhoraji-Mandlikpur road) patient took primary treatment at Dr. Raiyani (Jetpur) & from there shifted here for further management."
7. Further, one expert has been examined vide Exh.61 and who has treated the opponent No.1 and wherein history has come that "આ દર્દીના પિતા ભરતભાઈ પી. સેવાગીનાઓએ બનાવ બાબતે હીસ્ત્ર આપેલી કે, "સચીનભાઈ તા.૨૩/૦૮/૨૦૧૯ ના રોજ કલાક ૦૮:૩૦

ગામે માંડલીકપુર ગામ નજીક, ટકીયા હાઈ-વે (ધોરાજી-માંડલીકપુર રોડ)
 ટુ-વ્હીલર પર જતા હતા અને કોઈક અજાણ્યા વાહન સાથે અથડાતા
 તેમને ઈજા થયેલ છે."

(9.17) Therefore, said witness says that the opponent No.1 has been admitted in his hospital. Herein, Exh.63 says "A/H/O RTA (bike vs unknown vehicle) at 8:30 pm on 23/08/2019 at Mandlikpur village near Takiya highway (Dhoraji-Mandlikpur road) " and such accident is for the opponent No.1. While Exh.55 is history for the decd. which says that accident took place at village Pedhala. In google map distance between village Pedhala and Mandlikpur shows 3.2 Km and herein, two histories have come (1) which has been given for the opponent NO.1 and (2) another which has been given for the decd. Herein, it is undisputed fact that the opponent Nos.1 and 2 have filed reply wherein the factum of accident has been admitted but Tribunal has to see whether such admission is correct or not. Herein, considering the history which has been given for the opponent NO.1 and same time, from the conduct of the petitioner No.1 it transpires that she has narrated story in FIR and same time she has narrated story in deposition and both story were different. Further, the history which has been given before the expert who has been examined vide Exh.54 says that history has been given for the decd. that unknown four wheeler has dashed the decd. and same time, the opponent NO.1 has stated that such accident has been occurred near village Mandlikpur. Further, even history of the decd. which has been given to Gokul Hospital as to time of the accident is 10.00 pm while history which has been given by the opponent No.1 is 08.30 pm. Therefore, place and time is different so far as accident of decd. and the opponent No.1 is concerned. Therefore, all said facts leads Tribunal to believe that the motorcycle which is mentioned in Exh.47 is not the motorcycle of the opponent NO.1. Therefore, the

motorcycle is not involved in the accident. If motorcycle is involved in the accident then such fact must have shown to the Gokul Hospital because expert who has deposed vide Exh.54 has stated that said history was given on 24/08/2019 and accident has been occurred on 23/08/2019. Therefore, considering the history which has been given by the opponent NO.1 who is also eye witness so far as his accident is concerned and therefore, such history have more weightage then history which has been given by the another persons who are not victim of the accident and therefore, all said circumstances, if it had been considered by any prudent man then such prudent man would have come to conclusion that alleged motorcycle bearing No.GJ-03-LC-6202 is not involved in the present vehicular accident. Further, charge-sheet is not the evidence and charge-sheet is not the conclusive proof and if no any contrary evidence comes on record then Tribunal would have had corroboration of charge-sheet as to factum of the accident but as discussed above, history before the Medical Officer, evidence of the Medical Officers are such that they do not permit to believe the fact of charge-sheet as true fact and therefore, herein, the involvement of the motorcycle is not proved. Since, involvement of the said motorcycle is not proved and therefore, Order XX Rule 5 of the Code of Civil Procedure, 1908 comes into way which says that:

"Court to state its decision on each issue.—In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is, sufficient for the decision of the suit."

(9.18) The claimant has not adduced any evidence to take a view other than the view taken as per above discussion. Therefore, the claimants have miserably failed to prove the involvement of the motorcycle in the alleged accident.

Conclusion :-

- (10) As discussed herein above herein it is proved that
- (a) The claimant has failed to prove the involvement of the motorcycle No.GJ-03-LC-6202 in the present vehicular accident.
- (10.2) Therefore, my answer as to issue no.1 in negative, as discussed, and so far as issues No. 2 & 3 are concerned, following order is passed:-

-:: ORDER ::-

- (1) The present claim petition which is preferred under Section 166 of Motor Vehicles Act, 1988 is hereby **dismissed**.
- (2) Award be drawn accordingly.
- (3) No order as to cost.

Pronounced in the open Court today
on this 4th day of September, 2024.

Date : 04.09.2024
Junagadh.

(B. G. Dave)
M. A. C. Tribunal (Main)
Junagadh
[GJ00469]