

Received on : 28.01.2020
Registered on : 28.01.2020
Decided on : 22.07.2026
Duration : YY MM DD

Exh. : _____

**BEFORE THE MOTOR ACCIDENT CLAIM TRIBUNAL (Aux.)
AT JUNAGADH**

M.A.C.P. No. 27 of 2020

Claimants :

Legal heirs of Decd. Vipul Maganbhai Chauhan

- | | | | |
|------------------------------|----|------------|--|
| 1. Hinaben Vipulbhai Chauhan | 30 | House Hold | Besides Baroda
Bank, Dolatpara,
Junagadh |
| 2. Bhavna Maganbhai Chauhan | 24 | House Hold | – " – |

VERSUS

Opponents :

(Driver / Owner of Truck No. GJ-03 -V-7719):

- | | | | |
|-------------------------------|-------|------------------|--|
| 1. Anilbhai Ranchhodbhai Maru | Adult | Driver/
Owner | Village Vijapur,
Tal. & Dist.
Junagadh |
|-------------------------------|-------|------------------|--|

**CLAIM PETITION U/S 166 OF THE MOTOR VEHICLE ACT
FOR THE COMPENSATION OF Rs. 15,00,000/-**

Appearance :-

*LA **Mr. K.L.Sanchela** for claimants*

Ex-parte against Opponent No. 1

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

- (1) The captioned petition has been preferred by the applicants to have compensation under section 166 of the Motor Vehicles Act, 1988

for compensation of Rs.15,00,000/- along with interest.

- (2) On perusal of record, it appears that the present petition was filed against No.1 Driver of Truck No. GJ-03- V- 7719, no name was mentioned (2) owner of Truck : Anilbhai Ranchodbhai Maru (3) Insurance Co. : The Go Digit General Insurance. However, as per the application filed by the opponent no.3 insurance company, it was found that the truck was not insured during the time of accident. Therefore, the name of opponent no.3 was deleted. Further, the owner was himself driver of truck at the time of incident. Furthermore, name applicant nos.2 and 3 , who happened to be father and motor of deceased Vipulbhai, were deleted as they died during the proceeding the present claim. Hence, the applicant has filed the amended petition.

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

- (3.1) The claimants allege that on 18.11.2018 at approximately 2:30 p.m., the deceased, Vipulbhai Chauhan, was traveling on his motorcycle and, while crossing the road at Dolatpara near Eagle Temple, the truck bearing No. GJ-03-V-7719, driven by opponent No. 1, was being driven in a rash and negligent manner and at an excessive speed, and it dashed with the deceased 's motorcycle, resulting in the accident. As a result, Vipulbhai Chauhan sustained fatal injuries and succumbed to death. Consequently, the claimants have filed this petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs. 15,00,000/- from the opponents.
- (3.2) According to the petition, the applicant no.1 is Widow and applicant no.4 is the sister of the decd. respectively.
- (3.3) According to the case, the opponent no.1 is driver / owner of said vehicle Truck No. GJ-03-V-7719 and now such Truck is referred as 'the Truck' herein below.

(4) Defence of Opponents :-**(4.1) Driver and Owner of the truck/ (opponents no.1) :-**

The notice was served upon Opponent (the driver / owner of the Truck), vide Exhibit 6. Despite this, he did not appear—either in person or through counsel—and did not file any reply. Consequently, the Tribunal issued an order (Exhibit 1) dated 26.5.2022, proceeding ex-parte against Opponent.

(5) The Evidence of parties :-

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

ORAL EVIDENCE :-

Exh.28	Deposition of examination-in-chief of claimant No. 4 – Bhavnaben Chauhan
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DOCUMENTARY EVIDENCE :-

Exh.30	True copy of FIR
Exh.31	True copy of place of panchnama
Exh.32	True copy of Driving licence of opponent
Exh.33	True copy of R.C. Book of Truck
Exh.34	True copy of Charge-sheet
Exh.35	True copy of Form No. 54
Exh.36	True copy of death certificate of decd. Vipulbhai
Exh.39	True copy of death certificate of applicant No. 2
Exh.40	True copy of death certificate of applicant No. 3
Exh. 41	True copy of MLC Certificate
Exh. 42	True copy of Statement of Bhavnaben

(5.2) The Ld. Advocate for the claimants has submitted closing pursis vide Ex. 43 declaring to close their evidence.

Issues :-

(6) After considering the application, following issues have been framed vide **Exh.13** as under:-

1. Whether applicants prove that deceased had expired on account of accidental injuries sustained in a vehicular accident that occurred on 18.11.2019, due to rash and negligent driving of the driver of the Truck No. GJ-03-V-7719, involved in the accident ?
2. Whether the applicants are entitled to any compensation ? If yes, what amount ?
3. What order and against whom ?

(7) Reply of above issues :-

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

(8) As regards procedure of tribunal :-

- (8.1)** 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.
- (8.2)** 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.”

(8.3) Therefore in said judgment it has been specifically stated that the inquiry under the M.V. Act 1988 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.

(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 Truck was negligent, and it has been proven by the claimants.

(9.2) 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**.

(9.3) The applicant no.4 Bhavna Maganbhai Chauhan has filed her examination in chief at Exh.28, wherein , she has adheared to the facts stated in the petition. She has stated on oath that on 18-11-2018, deceased Vipul Maganbhai was proceeing on motor cycle from Dolatpara towards the bank opposite Eagle Temple. At that time, when he was crossing the road, one truck bearing no.GJ-3-V-7719 coming from Junagadh dircetion, which was driven by poonent

no.1, rashly and negligently and collided with the motorcycle of deceased. Therefore, vipulbhai sustained serious injuries on head, leg and hands. He was rushed to hospital firstly at Junagadh. As he had sustained serious injuries on head and other parts of body, he was taken to Ahmedabad Civil Hospital for further treatment, where the deceased was operated and given treatment there. Then after, he was brought back to Junagadh at home but again the health of deceased was deteriorated and therefore, he was again admitted at Junagadh Civil Hospital at indoor patient. However, Vipulbhai died on 22-12-2019 due to further worsen of health. It is to be noted that the opponent has neither appeared nor cross-examined the applicant to contradict the facts stated on oath. Hence, the facts stated on has remained uncontroverted. Therefore, there is no reason to disbelieve the same.

(9.4) The complaint was filed against the driver of truck No. GJ-03-V-7719. The copy of FIR is produced at Ex. 30 in which, it is mentioned about the Truck No. GJ-03-V-7719. However, the driver name is not mentioned. After investigation on the basis of said complaint, it was found that the accident was occurs and therefore, chargesheet was filed against the accused. The copy of charge sheet is produced vide Ex. 34, which has been filed against the driver of the Truck Anilbhai Maru i.e. present opponent no 1. It also appears that the chargesheet was filed for offence u/s. 279,337 and 338 of I.P.C. and S.177,184 of M.V. Act. Therefore, it appears that the accident was caused by the opponent while driving truck no.GJ-03-V-7719 rashly and negligently.

(9.5) The panchnama at place of accident is produced vide Ex. 31. The form no.54, which is in respect of accident, accident information report at Exh.35. While, the death certificate of deceased Vipulbhai is produced at Exh.36, which shows that he died on 22-12-2019. Therefore, it is established that the deceased died due to the injuries sustained in the accident. Hence, it proves that deceased

Vipulbhai died due to said accident.

(9.6) Hence, I give my answer to issue no.1 in Affirmative.

As regards quantum :

(a) As regards age and multiplier :

(10) The claimants has not produced any authentic evidence i.e. Aadhar Card, Election Card, School Leaving Certificate of the decd. regarding the proof of age of decd. The claimant No. 4, in her affidavit has stated that the age of decd. at the time of accident was 32 years. This Tribunal cannot rely simply on the words given by the applicant. Further, no P.M. Report is produced. However, considering the F.I.R Exh.30, the complainant i.e. present applicant no.4 has stated that deceased Vipulbhai was her elder brother. Further, she has stated her age as 26. Therefore, though there is no document on record to saw the exact age of deceased at the time of incident. But, the from the clue from the FIR, it emerges that the deceased was elder than the claimant no.4. Hence, looking to the facts and circumstance of the case, there is no other alternative than to believe the age mentioned by the claimant as true. Hence. this Tribunal think 32 Age of deceased Vipulbhai at the time of accident. Hence, the age of deceased Vipulbhai is considered as 32 Yrs. at the time of incident.

(11) So far as the multiplier is concerned, as held herein above, the deceased was 32 years old at the time of the accident and hence, as per the judgment of Hon'ble Supreme Court in the case of Smt. Sarla Varma (Supra.) , the applicants are entitled to get multiplier of 16 as the deceased come in between the age group of 31 to 35 years . Hence, I award the multiplier of 16 to the applicants.

(b) As regards income :

(12) Herein, the applicants have pleaded that the deceased was doing service in Garage and was earning Rs. 25,000/- p.m. While in FIR

Exh.30, the applicant has mentioned that her father and elder was doing the work of acrh reparing in rented shop. The Claimant has failed to produced any evidence to show the income of deceased. So, in the absence of any cogent evidence, it cannot be said that deceased was getting Rs. 25,000/- monthly by doing garage work. Hence, in the absence of any reliable document, it would be just to caluculate income on the basis of minimum basic wage. In the present case, the accident was occurred on 18-11-2019. Therefore, in Gujarat the minimum wage for the period from 01-10-2019 to 31-03-2020 for skilled person in zone -II is shown as Rs.326.40/- per day. So, the monthly income would come Rs.9,792/- and it is consider to be just and proper. Hence, the monthly income of applicant is determine as Rs.9,792/-

- (13)** The deceased was considered to be self employed. Since the deceased was 32 years old at the time of the accident and therefore, he falls in the category of below 40 years , as per the decision of the Hon'ble Apex Court reported in 2017 ACJ 2700 in case of National Insurance Co. v. Pranay Sethi. So, as per the said judgment, future prospects @40% i.e. Rs.3916/-(40% of Rs.9,792/-) is required to be awarded in the income of the deceased. Hence, the total monthly prospective income of the deceased would come at Rs.13,708/- per month.

(c) Deduction towards Personal Living Expenditure ;

- (14) As per the claim petition, there are** total of 4 dependents at the time of incident to the deceased, including the deceased 's widow, father and mother and her sister. However, during the present case, the applicant no. 2 and 3 died, who happened to be father and mother of deceased Vipulbhai, whose death certificates are produced at Exh. 39 and 40 respectively. Therefore, there are total two Dependants of the deceased. According to the judgment of

Sarla Varma Vs. Delhi Transportation Corporation 2009 (6) SCC 121 , 1/3 th of the income is required to be deducted i.e. Rs.4,569.33/- i.e. round figure Rs.4,569/- (i.e. 1/3 of 13,708) by way of personal and living expenses from monthly income of deceased Rs.13,708/- is required to be deducted in the present case and hence, monthly family dependency loss would come to Rs.9,139/- per month.

(d) Calculation of Compensation under the head of Loss of Family Dependency ;

- (15) In view of the aforesaid discussions, considering the loss of monthly family dependency to the applicants to the tune of Rs.9,139/- and applying the multiplier of 16 dependency of family would come to the loss of Rs.21,50,400/- (Loss of monthly dependency Rs.9,139/- x 12 Months x 16 Multiplier) and hence I award Rs.17,54,688/- to the applicants under the head of loss of family dependency.

(e) COMPENSATION UNDER CONVENTIONAL HEADS ;

- (16) It is also the case of the applicants that on account of untimely death of the deceased, the applicants have incurred expenditure for funeral of the deceased and the applicants have also suffered loss of estate and loss of love and expectation of life. This Tribunal has perused the decision of the Hon'ble Apex Court rendered in the case of National Insurance Co. v. Pranay Sethi reported in 2017(16) SCC 680 wherein Hon'ble Apex Court has awarded lump sum total amount Rs.70,000/- to the applicants on conventional heads i.e. Rs.15,000/- on the head of loss of estate, Rs.40,000/- on the head of loss of consortium and and Rs.15,000/- on the head of funeral expenses and has also held that the said compensation should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years and hence in the present case on hand, the applicants are entitled to the aforesaid amounts of compensation under the conventional

heads with 20% enhancement (accident year-2015 and Judgment year-2025) i.e. Total Rs.84,000/- (Rs.70,000/- + Rs.14000/-) and hence I award lump sum total amount Rs.84,000/- (i.e. 18000/- + 48,000/- + 18,000/-) to the said applicants under conventional heads..

(17) Calculation Table :-

Future loss of income	Rs17,54,000/-
Loss of consortium	Rs.48,000/-
Loss of estate	Rs.18,000/-
Funeral expenses	Rs.18,000/-
TOTAL	Rs.18,38,000

(18) As regard rate of interest as contemplated u/s.171 of the Motor Vehicle Act,1988.

Considering the facts and circumstances of present case and keeping in mind prevailing rate of interest of nationalize bank and considering the principles 'just' compensation and considering the rate of interest which was prevailing at the time of accident, **8%** rate of simple interest per annum would be just and proper in present cases.

As to opponents

- (19)** Based on the evidence presented, it is evident that the opponent is the registered owner of the Truck with the registered number GJ-03-V-7719, as stated in the R. C. Book produced vide Exh.33.

Conclusion :-

- (20)** It is settled law that there is no bar to award the compensation amount beyond the relief claim in petition. As per discussion made above, the claimants are entitled to the above calculated compensation.

- (21) As discussed herein above herein it is proved that
- (a) The sole negligence of driver of the Truck i.e., opponent has been proved.
 - (b) The death of deceased is causa causans of vehicular accident.
 - (c) Therefore, opponent (driver / owner of the Truck) is liable to pay the compensation as calculated above.

Therefore I give my answer as to issue no.1 in affirmative as discussed and so far as issues No. 2 & 3 are concerned, I pass following order :-

-:: ORDER ::-

- (1) The present claim petition which is preferred under Section 166 of Motor Vehicles Act, 1988 is hereby **allowed**.
- (2) The claimants are entitled to get amount of **Rs.18,38,000/- (Rupees Eighteen Lakhs Thirty Eight Thousand only)** as compensation.
- (3) The Opponent is liable to pay compensation to the present claimants as calculated above and they are also jointly and severally liable to pay simple interest at the rate of 8% per annum from the date of this petition till payment or realization of the said amount to the claimants.
- (4) The opponent have to bear the entire cost of this petition.
- (5) The all interim orders shall merge into final order.
- (6) If any amount is paid U/s.140 of the Motor Vehicle Act,1988 then that amount shall be deducted from the awarded amount.
- (7) Under section 168(3) of the Motor Vehicles Act, 1988, opponent shall deposit said awarded amount with interest as held above within 30 days from the date of this order.
- (8) Nazir is hereby directed to deduct the amount of court fee if it is leviable from the claimant.
- (9) The order as regard disbursement be made at the time of

withdrawal of amount.

(10) Award be drawn accordingly.

Pronounced in the open Court today

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Date : 22.07.2026.

JUNAGADH

(AMIT RAMESHBHAI RANA)

M. A. C. Tribunal (Aux.)

JUNAGADH

[GJ00965]