

Received on : 24.09.2021
Registered on : 24.09.2021
Decided on : 30.06.2026
Duration : YY MM DD
04 09 06

Exh. : _____

**BEFORE THE MOTOR ACCIDENT CLAIM TRIBUNAL
(Main)
AT JUNAGADH**

M.A.C.P. No.329 of 2021

Claimants :

Legal heirs of Decd. Sanjaybhai Mohanbhai Kansagara

- | | | | |
|--|----|---------------|--|
| 1. Shilpaben Sanjaybhai
Kansagara | 40 | House
Hold | Vill. Nanadiya
Tal.Manavadar
Dist.Junagadh |
| 2. Sahil Sanjaybhai Kansagara | 20 | Study | – " – |
| 3. Mohanbhai Laxmidasbhai
Kansagara | 60 | Retired | – " – |
| 4. Kantaben Mohanbhai
Kansagara | 55 | House
Hold | – " – |

VERSUS

Opponents :

(Driver, Owner & Insurer of Tractor No. GJ-11-CD-3797) :-

- | | | |
|------------------------------------|--------------|--|
| 1. Karsanbhai Naranbhai
Karmata | Adult Driver | Vill.Santalpur
Tal.Vanthali
Dist. Junagadh |
|------------------------------------|--------------|--|

- | | | |
|---|-------------|--|
| 2. Sangabhai Kumbhabhai Haran | Adult Owner | Vill. Santalpur
Tal. Vanthali
Dist. Junagadh |
| 3. ICICI General Insurance Co., Ltd., | -- Insurer | Motibagh,
Junagadh |
| <i>(Owner & Insurer of Trolley No. GJ-11-V-6941) :-</i> | | |
| 4. Hiren Hamirbhai Kodiyater | Adult Owner | Vill. Santalpur
Tal. Vanthali
Dist. Junagadh |
| 5. The IFFCO TOKIO Gen. Insu. Co., Ltd., | -- Insurer | 202/203, Space
Odyssey, KKV
Hall, 150' Ring
Road, Bharat Van
Society, Nalanda
Society, Rajkot |

**CLAIM PETITION U/S 166 OF THE MOTOR VEHICLE ACT
FOR THE COMPENSATION OF ₹ 50,00,000/-**

Appearance :-

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

LA Mr. H.V.Dhorajiya for the opponent No. 1, 2 & 4

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

LA **Mr. V.S.Jethva** for the Opponent No. 5

:- JUDGMENT :-

(1) The captioned petition has been preferred by the claimants to have compensation under section 166 of the Motor Vehicles Act, 1988 for compensation of ₹ 50,00,000/- along with interest.

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

(2.1) The claimants assert that on 15.07.2021, at about 9:30 a.m., the deceased was riding his motorcycle bearing Registration No. GJ-11-BP-4597 from Nanadiya Village towards Junagadh. When he reached near Bantiya Village at Santalpur Dhar, a tractor bearing No. GJ-11-CD-3797, attached to trolley No. GJ-11-V-6941, was being driven by Opponent No. 1 at a high speed and in a negligent manner. The driver suddenly applied the brakes, causing the deceased's motorcycle to collide with the rear side of the tractor-trolley. As a result of the accident, the deceased sustained multiple injuries to various parts of his body and was admitted to the hospital for treatment. Therefore, the claimants have filed the present claim petition seeking compensation from the opponents.

(2.2) According to the petition, claimant No. 1 is the widow, claimant No. 2 is the son and claimant No. 3 & 4 is the Father and mother of decd. Sanjaybhai

(2.3) According to the case, the opponent nos.1, 2 & 3 are driver, owner and insurer of Tractor No. GJ-11-CD-3797 and opponent No. 4 & 5 are the Owner and Insurer of Trolley bearing No. GJ-11-V-6941 and now such respective vehicles will be referred to as "Tractor & Trolley" respectively. .

(3) Defence of Opponents :-

(3.1) Opponent No. 1, 2 & 4 Driver & Owner of Tractor & Owner of Trolley) :-

The learned advocate for Opponent Nos. 1, 2, and 4

appeared and filed a written statement vide Exh. 87, wherein all the averments made in the claim petition were denied. It was further contended that the claim petition is not maintainable due to the non-joinder of necessary parties, as the owner and insurer of the deceased's motorcycle have not been impleaded as parties to the proceedings. It was further submitted that, on the date of the accident, the deceased himself was riding the motorcycle negligently and sustained fatal injuries after falling from it. Therefore, according to the opponents, a false claim has been filed against them. The opponents further contended that their tractor was parked on the roadside and that the driver had gone to fetch water at the relevant time. It was asserted that the tractor was not moving on the road when the deceased's motorcycle, allegedly being driven at an excessive speed, collided with the rear side of the parked tractor. The opponents denied all allegations of negligence and liability and further contended that the deceased's motorcycle was not insured. It was also submitted that, in the event any liability is fastened upon them, the vehicles in question were duly insured with their respective insurance companies and, therefore, any compensation awarded should be recovered from the concerned insurers and not from the opponents personally. Hence, they prayed for dismissal of the claim petition.

(3.2) Opponent No. 3 (Insurer of Tractor) :-

The learned advocate for Opponent No. 3 appeared and filed a written statement vide Exh. 25, wherein all the

averments made in the claim petition were denied. It was contended that the alleged driver of the tractor attached with trolley did not possess a valid and effective driving licence at the time of the accident. It was further submitted that the accident did not occur due to any negligence on the part of the tractor driver, as he was driving slowly and cautiously on the left side of the road. The opponent further contended that the deceased himself was the author of the accident and was solely responsible for its occurrence, as he was riding his motorcycle in a rash and negligent manner. As a result of such negligent driving, the accident occurred. It was also contended that the deceased had contributed to the occurrence of the accident and was, therefore, guilty of contributory negligence. Accordingly, it was prayed that the percentage of negligence attributable to each driver be determined. Hence, the opponent prayed for dismissal of the claim petition with costs on the aforesaid grounds.

(3.3) Opponent No. 5 - (Insurer of Trolley) :-

The learned advocate for Opponent No. 5 appeared and filed a written statement vide Exh. 61, wherein all the averments made in the claim petition were denied. It was contended that the person driving the vehicle did not possess a valid and effective driving licence on the date of the accident. It was further submitted that the driver was under the influence of alcohol at the time of the accident and had thereby violated the terms and conditions of the insurance policy. It was also contended that the trolley was not involved in the alleged accident and was not being

driven in a rash or negligent manner. Further, a specific contention was raised that the driver of the trolley did not possess a valid and effective driving licence at the time of the accident. It was further submitted that the accident occurred solely due to the negligence of the deceased himself, as he was riding his motorcycle in a rash and negligent manner. The opponent further contended that, if any liability is fastened upon it, the contributory negligence of the deceased should also be taken into consideration while determining such liability. Hence, the opponent prayed for dismissal of the claim petition with costs.

(4) The Evidence of parties :-

(4.1) Following oral as well as documentary evidence has been adduced by the applicants in support of their case :-

(4.2) ORAL EVIDENCE :

Ex. 32	Deposition in form of Affidavit of examination-in-chief of claimant No. 1 – Shilpaben Sanjaybhai Kansagara
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DOCUMENTARY EVIDENCE :-

Exh. 38	Copy of Income Tax Return for year 2019-2020
Exh. 39	Copy of Income Tax Return for year 2020-2021
Exh. 40	Attested copy of FSL Report
Exh. 41	Copy of Aadhar Card of applicant No. 2
Exh. 42	Copy of Birth certificate of applicant No. 2
Exh.69	Attested copy of driving licence of decd. Sanjaybhai
Exh.70	C.T.Scan Report, MRI Report etc.
Exh.71	Medical Bills

Exh.72	Copy of Aadhar Card of claimant
Exh.73	True copy of FIR
Exh.74	True copy of place of panchnama which has been carried out by the concerned police station
Exh.75	True copy of Inquest panchnama which has been carried out by the concerned police station
Exh. 76	True copy of P.M. Note
Exh. 77	True copy of driving licence (Opponent No. 1 – Driver of Tractor)
Exh. 78	True copy of R.C. Book of Tractor
Exh. 79	True copy of R.C. Book of Trolley

(4.3) The Ld. Advocate for the claimant has submitted closing pursis vide Ex.80 declaring not to lead any further evidence in the matter.

(4.4) The Following oral evidence has been adduced by the Opponent No. 1 in support of their case :-

ORAL EVIDENCE :

Exh. 89	Deposition in form of Affidavit of examination-in-chief of opponent No. 1 – Karsanbhai Karamata
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(4.5) The Ld. Advocate for the opponent No. 1, 2 & 4 has submitted closing pursis vide Ex.91 declaring not to lead any evidence in the matter.

(4.6) The Following Documentary evidence has been adduced by the Opponent No. 3 – Insurer of Tractor in support of their case :-

DOCUMENTARY EVIDENCE :

Exh. 95	Copy of Insurance policy of Tractor
Exh. 96	Copy of Summary - Final Report (Charge-

	sheet)
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(4.7) The Ld. Advocate for the opponent No. 3 – Insurer has submitted closing pursis vide Ex.97 declaring not to lead any further evidence in the matter.

(4.8) The Ld. Advocate for the Insurer of Trolley i.e. Opponent No. 5 has produced following evidence :-

DOCUMENTARY EVIDENCE :-

Exh. 101	Form No. 24
Exh. 102	Receipt of fees paid for report at RTO, Junagadh

(4.9) The Ld. Advocate for the opponent No. 5 – Insurer of Trolley has filed closing pursis vide Ex. 103 declaring not to lead any further evidence in the matter.

(4.10) The Ld. Advocate for the claimant has filed written argument vide Ex. 107 and has relied on certain precedents.

(4.11) The right to file written argument for opponent No. 1, 2 & 4 was closed by passing order on 10.6.2026.

(4.12) The Ld. Advocate for the Insurer of Tractor i.e. opponent No. 3 has filed written argument vide Ex. 110.

(4.13) The Ld. Advocate for the Insurer of Trolley i.e. opponent No. 5 has filed written argument vide Ex. 112 and has relied on certain citations.

Issues :-

(5) After considering the application, evidence and arguments of the parties, following points are emerged to decide the

matters :

1. Whether it is proved that the deceased sustained injuries and died on account of rashness and negligence in driving on the part of the driver of the vehicle involved in the accident ?
2. What Amount, if any, the claimants are entitled to by way of compensation and from which of the opponents ?
3. What order ?

(6) 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.

(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 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.

(8) As regards Involvement of the Vehicle in the accident and negligence :-

(8.1) The Ld. Advocate for the applicants has argued that the driver of the Tractor was negligent at the time of accident.

(8.2) The Ld. Advocate for the Opponent No. 1, 2 & 4 would have argued that the said accident has occurred due to sole negligence on the part of the driver of motorcycle.

(8.3) The Ld. Advocate for the insurer of Tractor i.e. opponent No. 3 has argued that said accident has been occurred due

to sole negligence on the part of the motorcycle driver.

(8.4) The Ld. Advocate for the insurer of Trolley i.e. opponent No. 5 has argued that said accident has been occurred due to sole negligence on the part of the motorcycle driver.

(8.5) 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 10 pt 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**.

(8.6) In the petition, it is pleaded that the driver of the Tractor was negligent at the time of the accident.

(8.7) Herein, the FIR vide Ex. 73 states that the negligency of the deceased i.e. driver of motorcycle. The charge-sheet vide Ex. 96 has been filed against the driver of motorcycle i.e. decd. himself, and considering Sections 155 to 172 of the Code of Criminal Procedure' 1973, the concerned investigating agency has filed a report under Section 173 of the Code of Criminal Procedure. The investigating agency has stated in Column No. 8 of the charge-sheet that :-

“ગઈ તા.૨૮/૦૭/૨૦૨૧ ના રોજ આ કામે મરણ જનાર સંજયભાઈ મોહનભાઈ કણસાગરા ઉ.વ-૪૪ રે. નાનડીયા તા.માલાવદર જી.જુનાગઢ નાઓએ પોતાના કબજાની હોન્ડા કંપનીની ટ્રીમ

યુગા મો.સા. નંબર-જી.જે.૧૧ બી.પી.૪૫૯૭ ની લઘને પોતાના ગામ નાનડીયા થી સવારે સાડા આઠેક વાગ્યાના સમયે જુનાગઢ દલાલીના કામે જતો હતા ત્યારે સાંતલપુર ધાર તથા બેટીયા ગામના પાટીયા વચ્ચે રોડ ઉપર પોતાના કબજાની ટુ વ્હીલ મો.સા તે પુર ઝડપે અને બેફીકરાઈથી ચલાવી આગળ ઉભેલ એક બંધ હાલતમાં ટ્રેક્ટર નંબર જી.જે.૧૧ સી.ડી.૩૭૯૭ ની ટ્રોલી સાથે પાછડથી અથડાવી પોતાના શરીરે ઈજાઓ પહોંચાડી સારવાર દરમ્યાન પોતાનું મોત નીપજાવી ગુન્હો કર્યા બાબત"

(8.8) Herein, it is stated in FIR that :

"અને આ બનાવ બાબતે મારા દીકરાને પૂછતા તેમણે જણાવેલ હતું.પુ નાનડીયાથી જુનાગઢ આવતો હતો ત્યારે સાંતલપુર પાર અને બંટીયા ગામ વચ્ચે રોડ ઉપર એક બંધ હાલતમાં ટ્રેક્ટર પડેલું હતું, તે ટ્રેક્ટર માં મારી મો.સા.મારાથી પાછડની સાઈડે ટ્રોલીમાં ટાચર પાસે ભટકાય ગયેલ છે. ,અને મને સરીરે ઈજાઓ થયેલ હતી, અને આ એકસીડન્ટ થવાથી ત્યા માણસો ભેગા થઈ ગયેલા હતા અને આ માણસોએ મને ટ્રેક્ટર ના નંબર લખી આપેલ છે, તેવું જણાવીને આ મારા દીકરાએ મને એ ટ્રેક્ટર નંબર લખેલ ચીઠી આપતા જેમાં ટ્રે કટર નંબર જોતા જી,જે.૧૧ સી,ડી.૩૭૯૭ નો લખેલ હતો."

(8.9) Herein, on petition side, one Shilpaben has been examined and she has admitted that she has not seen the accident.

(8.10) Herein, same time, the driver who was driving the Tractor and Trolley has been examined vide Ex. 89 wherein, he has deposed that :-

"આ કામના ગુજરનાર સંજયભાઈ મોહનભાઈ કણસાગરા તેમના હેવાલાની મોટર સાયકલ લીને તા.૧૫/૦૭/૨૦૨૧ ના રોજ સવારના ૯:૩૦ અરસામાં જતા હતા ત્યારે અમો સામાવાળા નં.૧ ના અમારા ટ્રેક્ટર નં. જી.જે.૧૧ સી.ડી.૩૭૯૭ ટ્રોલી નં.જી.જે.૧૧ વી.૬૯૪૧ નરેડી થી સાંતલપુર અમારા ગામ જતા હતા. ત્યારે અમો સામા નં.૧ ના હવાલાનું ટ્રેક્ટર તથા ટ્રોલી રોડના સાઈડના કાંઠા ઉપર મુકીને મેઈક વોટર કરવા ગયેલ ત્યારે પાછળથી ગુજરનાર તેમની હવાલીની મોટર સાયકલ બેફામ પુર ઝડપે ચલાવી તેમજ બેદરકારી રીતે ચલાવી ટ્રોલીના પાછળના ભાગે ભટકાયેલ અને ગુજરનાર નીચે પડી ગયેલ આ વખતે ટ્રેક્ટર અને ટ્રોલી રોડના સાઈડના કાંઠા ઉપર બંધ હાલતમાં પડેલ હતું."

(8.11) Therefore, said driver of the Tractor i.e. Karsanbhai Naranbhai Karamata has admitted that at the time of accident, the Tractor and Trolley was stationed and the decd. by driving the motorcycle has dashed with the said Tractor and Trolley.

(8.12) Herein, the report U/s. 173 of the Code of Criminal Procedure' 1973 has been relied upon and produced by the Insurer vide Ex.96 and column No. 8 of the said report said that :

“ગઈ તા.૨૮/૦૭/૨૦૨૧ ના રોજ આ કામે મરણ જનાર સંજયભાઈ મોહનભાઈ કણસાગરા ઉં.વ-૪૪ રે. નાનડીયા તા.માણાવદર જી.જુનાગઢ નાઓએ પોતાના કબજાની હોન્ડા કંપનીની ફરીમ યુગા મો.સા. નંબર-જી.જે.૧૧ બી.પી.૪૫૯૭ ની લઈને પોતાના ગામ નાનડીયા થી સવારે સાડા આઠેક વાગ્યાના સમયે જુનાગઢ દલાલીના કામે જતો હતા ત્યારે સાંતલપુર ધાર તથા બેટીયા ગામના પાટીયા વચ્ચે રોડ ઉપર પોતાના કબજાની ટુ વ્હીલ મો.સા. તે પુર ઝડપે અને બેફીકરાઈથી ચલાવી આગળ ઉભેલ એક બંધ હાલતમાં ટ્રેક્ટર નંબર જી.જે.૧૧ સી.ડી.૩૭૯૭ ની ટ્રોલી સાથે પાછડથી અથડાવી પોતાના શરીરે ઘજાઓ પહોંચાડી સારવાર દરમિયાન પોતાનું મોત નીપજાવી ગુંહો કર્યા બાબત”

(8.13) Therefore, said report says that :

વંથલી પીસર.કે ના પાટે એ નંબર ૧૧૨૦૩૦૬૮૨૧૦૩૪૪/૨૦૨૧ ઇ.પી.કો. કલમ ૨૭૯ ૩૦૪(અ),MVA ૭.૧૭૭, ૧૮૪, મુજબના કરીયાદી મોહનસાડ પટેલ છે.વ-૬૫ ધંધો-ખેતી રહે-નાનડીયા પાણીના રાક્ષ પાસે તા-માણાવદર જી-જુનાગઢ મો-૭૦૯૬૨૯૫૪૪૭ નાએ ગઈ તા.૨૮/૦૭/૨૦૨૧ ના રોજ અત્રે પો.સ્ટે.ના પો.હેડ.કોના બી. એન, પરમાર MITRA-અને જણાવેલ કે,ગક તા-૧૫/૦૭/૨૦૨૧ ના રોજ મારો દીકરો અમારા ગામ નાનડીયાથી સવારુ સાડા આઠેક વાગ્યાના સમયે અમારી મો.સા નંબર-જી.જે. ૧૧ બી.પી.૪૫૯૭ હોડા કંપનીની ડીમ યુગા શી લઈને જુનાગઢ 1 કામે જવા માટે નીકળેલા હતા અને કુ તથા મારા બીજા પરીવારના સભ્યો અમારા ઘરે હાજર હતા ત્યારે સાઠા નવેક વાગ્યાના સમયે મારા કુટુંબીક ભત્રીજા ભાવેશભાઈ જયસુખભાઈ કણસાગસ રહે નાનડીયા વવે ખાસ ૨ આવેલો અને મને જણાવેલ કે,ફમણા રસંજયભાઈના ફોનમાંથી ૧૦૮ એમ્બ્યુલન્સ વાળાનો મને ફોન આવેલ અને જણાવેલ કે,આ ફોન વાળાભાઈનું સાંતલપૂર અને બેટીયા વચ્ચે રોડ ઉપર એક્સીડન્ટ થયેલ છે,અને તેને લઈ છે,અને આપને ત્યા જવાન છે. તેલન ાવને બાળી પાણી ભૂકીશા એ જણાવતાં હું તરતજ અમ્યારા ગામથી જુનાગઢ સરકારી હોસ્પિટલ ગયેલા હતા,અને ત્યા જઈને જોતા આ મારી દીકરો ઈમરજન્સી વોર્ડમા દાખલ કરેલ હતો, અને આ બનાવ લાવ્યાં સુરાર પર સંભાભાઈ મોહનભાઈ કણસાગસ ઉવરૂક રહે,નાનડીયા વાળાને પૂછતા તેમણે જણાવેલ હતું કેતુ નાનડીયાથી જુનાગઢ આવતો હતો ત્યારે સાંતલપુરધાર તથા બંટીયાગામ વચ્ચે રોડ ઉપરના અને આ માણસોએ મને ટ્રેક્ટર ના નબરે લેખ કારમાં મારી મો.સા.માસાર પાછડની સાઈડે ટોલીમાં ટાયર પાસે ભટાકાઈ ગયેલ,અને મને સરીરે ઈજાઓ થયેલી હતી,અને આ એક્સીડેન્ટ થવાથી ત્યા માણસો ભેગા થઈ ગયેલ હતા,અને આ માણસોએ મને ટ્રેક્ટર ના નંબર લખી આપેલ છે, તેવું જણાવીને છે મારા દીકરાએ અને એ ટ્રેક્ટર નંબર લખેલ ચીઠી આપતા જેમાં ટ્રેક્ટર નંબર જોતા જી.જે.૧૧ સી.ડી.૩૭૯૭ નો લખેલ હતો.અને પછી આ મારા દીકરાની સારવાર ચાલુ હતી,અને પછી આ મારી દીકરો બેભાન જેવા સાઈ ગમેહ હતા,અને પછી સાંજના સાડા પાંચેક વાગ્યાના આજુબાજુ આ મારા દીકરાને વધુ સારવાર માટે રીબથ કીટીકલ હોસ્પિટલ ઝાંઝરડા ચોકડી ખાતે લઈ ગયેલ હતા અને ત્યા સારવાર ચાલુ હતી ત્યારે આ મારો દીકાં તા, ૨૨/૦૭/૨૦૨૧ ના રોજ સવારના સાડા નવેક વાગે ડો.સાહેબે આ મારા દીકરાને તપાસીને તેઓ મરણ ગયેલ હોવાનું જણાવેલ હતું.અને પછી ત્યા પોલીસ આવી ગયેલી હતી,અને આ માસ દીકરાની લાસ ઉપર અગનો કા પી.એમ, કરાવી લાસન કબ્જો અમોને આપતા અમો અમારા વતન લઈ ગયેલ અને અમારા સમાજના રીવાજ મુજબ અંતીમ સંસ્કાર કરેલ છે વીગેરે ફરીયાદ આપતા જે વી મતલબની ફરીયાદ પો.હેડ, કોન્સ,બી,બેન,પરમાર નાઓ: લઈ અંગે વંથલી પી.એ. ના P50 વી.જે,વદર પો.હેડ.કર્ટિસ નાઓએ ગુનો દાખલ કરી આગળની તપાસ પો.હેડ.કોન્સ,બી,એન પરમારને સોપેલ તેણે આ કામે ગુવીળી જગ્યાનું પંચનામું કરેલ તેમજ સાહેદોના નીવેદનો લીધેલા । તેમજ તેમજ એફ.એલ અધિકારી શ્રી ને સ્થળ વીઝીટ માટે બોલાવેલ તેમજ ટ્રેક્ટર તથા મો,સા,ની યાંત્રીક તપાસની કરાવેલ તેમજ આ કામે મરણ જનાર ની પી.એમ.નોટ આવતા

તેમા મરણ જનાર મોત હેડ ઈજરીના કારાં થયેલાનું જણાઈ આવેલ છે. જેથી આ કામે સંજયભાઈ મોહનભાઈ કણસાગરા ઉ.વ.૪૪ રહે, નાનડીયાગામ પાણીના ટાકા પાસે તા. માણાવદર જી.જુનાગઢ નાઓ તા.૧૫/૦૭/૨૦૨૧ ના રોજ પોતાનાગામ નાનડીયાથી મો.સા.નંબ જી.જે.૧૧ બી.પી.૪૫૯૭ ની લઈને જુનાગઢ દલાલીના કામ માટે સવારના સાડા આઠેક વાગ્યે નીકળેલા હતા,અને પછી વંથલી તાલુકાના બટીયા ગામના પાટીયા તથા સાંતલપુરધાર વચ્ચે પહોંચેલા હતા ત્યારે ત્યા રોડ ઉપ સાઈડમાં ટ્રેક્ટર નંબર જી.જે.૧૧ સી.ડી.૧૭૯૭ નું બંધ હાલતમાં પડેલ હતું.અને તેમાં આ કામે મરણ જનાર પોતાની મો.સા.પૂર ઝડપે અને બેફીક્સઈ ચલાવી કલાક ૦૯/૩૦ વાગ્યાના અરસામાં મરણ જનારે પોતાન મો.સા ટ્રેક્ટરની પાછડ ટ્રોલીના ભટકાવી પોતાના સરીરે ગંભીર ઈજાઓ પહોંચાડી પોતાનુ સારવાર દરમ્યાન મોત નીપજાવી ગૂઢો કરેલ હોય, જેથી આ બનાવ બાબતે બીજી કોઈ આગળની કાર્યવાહી કરવાની રહેતી નથી જેથી અ કામે એબેટેડ સમરી ભરી મે.ના.પો.અધિ.સા કેશોદ વિભાગ મારફતે અસલ કાગળો પાનં.૧ થી સુધીના સામેલ કરી આપ નામદાર કોર્ટમાં એબેટેડ સમરી કાગળો મોકલી આપેલ છે. જે વચાણે લઈ ફોબેટ્રેડ સમરી મજુર કરવ વીનંતી છે જે આપ નામદાર કોર્ટને વિદિત થાય

(8.14) Herein, FIR is also relied upon both parties and such FIR has been lodged by the father of the decd. and the FIR says that :

"તમે ત્યા આવો તેવુ મને જણાવેલ છે, અને આપણે દવાખાને જવાનુ છે, તેવુ મને મારા કુટુંબીક ભત્રીજાએ જણાવતા હુ તથા મારા બીજા સબંધીઓ તરતજ અમારા ગામથી જુનાગઢ સરકારી દવાખાને ગયેલા હતા અને ત્યા જઈને જોતા આ મારો દીકરો ઈમરજન્સી વોર્ડમાં દાખલ કરેલ હતો, અને આ બનાવ બાબતે માશ દીકરાને પૂછતા તેમણે જણાવેલ હતું.કું નાનડીયાથી જુનાગઢ આવતો હતો ત્યારે સાતલપૂર ધાર અને બંટીયા ગામ વચ્ચે રોડ ઉપર એક બંધ હાલતમાં ટ્રેક્ટર પડેલુ હતું."

(8.15) Therefore, said part is nothing but oral Dying Declaration which has been stated by the decd. to his father and therefore, Sec. 32 of the Indian Evidence Act, 1872 comes into way which says that :

Section 32 : Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant. Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:-

(1) **When it relates to cause of death** - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.....

(8.16) Therefore, considering the report U/s. 173 of the Code of Criminal Procedure' 1973 and considering the oral Dying Declaration which has been part of the FIR says that Tractor and Trolley was stationed in the middle part of the road.

(8.17) Herein, the time of the accident is shown in FIR is 9.30 a.m. and same facts has been admitted by the petitioner No. 1 in her cross-examination that :-

“જનાવ સવારના નવથી સાડા નવ વાગ્યે બનેલો.”

(8.18) Therefore, such accident has been occurred in day time and report U/s. 173 of the Code of Criminal Procedure' 1973 says negligent on the part of the decd. Further, **Rules Regulation, Sec. 23 says that :--**

Motor Vehicles (Driving Regulation) 2017, more particularly, 17 says that :

17. Keeping safe distance.-

(1) A driver driving behind another vehicle shall keep sufficient distance, commensurate with the traffic conditions, from the vehicle ahead, so as to be able to stop (pull up) safely if the vehicle ahead suddenly slows down or stops.

(2) When being followed by another vehicle, not suddenly brake without a compelling reason.

(3) The driver shall during rainfall, snow or storm or ice on the road due to severe weather conditions and during other adverse weather conditions,

further increase the distance from the vehicle ahead.

(8.19) Therefore, under said Regulation, the decd. was to keep sufficient distance from the said Tractor and Trolley.

(8.20) Herein, the Ld. Advocate for the applicant has relied upon the judgement of the Hon'ble High Court in the case of **Arifbhai Usmanbhai Vohra & Anr Vs. Yusufbhai Yasinbhai Mirza & Anr. In R/First Appeal No. 788 of 2024 wherein, it has been observed in Para 6 & 6.1 that :**

6) Having heard the learned Advocate for the appellants and perusing the record as well as the impugned judgment and award, it appears that the learned Tribunal has appreciated the evidence produced on the record i.e. affidavit of appellant No.1 - claimant No.1 produced at Exh.22 and panchnama of scene of accident (Exh.31). Perusing the panchnama, it appears that Eicher was parked on pakka road without any indicator and it also appears that rider of Activa dashed his vehicle on rear portion of stationary vehicle, which was parked on the middle of the road without any indicators or reflectors or parking lights and due to glare of the lights of vehicles coming from opposite direction, the deceased could not see the parked stationary Eicher and his Activa dashed on the rear portion of the stationary vehicle due to which the alleged accident occurred and hence, the claimants have alleged 100% liability of the stationary Eicher. The driver of the offending Eicher, who was the best witness, has not stepped into the witness box. The factum of Eicher being parked on pakka road without any indicator or reflector is not disputed by the respondent insurance company and even the learned Tribunal has accepted the fact that the driver of Eicher had parked his vehicle on the public road without any signals or indicators or reflectors in the night hours. Though the learned Tribunal has saddled the deceased -driver of Activa with 70% contributory negligence. Even, from the panchnama and complaint itself, it reveals that at the night hours, Eicher vehicle was parked on the public road without reflectors or indicators.

[6.1) Further, as per Section 121 of MV Act, the driver of the motor vehicle shall make such signals on such occasions and as per Section 122, no person incharge of the motor vehicle shall cause or allow the vehicle or any

trailer to be abandoned or to remain at rest at any public place which is likely to cause danger, obstruction or undue inconvenience to the other users of road or the public place. Under Sections 126 and 127(2) of the MV Act, driver of stationary vehicle is duty bound to immediately remove such vehicle from the public place by towing service or try to remove the obstruction as per Regulation 15 of Rules of Road Regulations of 1989 which was also prevailing on the date of the incident and every driver of motor vehicle shall park the vehicle in such a way that does not cause or is not likely to cause danger/obstruction or any undue inconvenience to the other road users and it cast the duty on the driver of the motor vehicle that vehicle shall not be parked at or near the road crossing or on the main road.

(8.21) Therefore, it is revealed that the Eicher was parked during the night hours, whereas the accident occurred during the daytime. At the same time, the Tractor and Trolley were stationed in the middle of the road. Therefore, the contributory negligence of the driver of the Tractor and Trolley is also established. Accordingly, it is proved, on the standard of the preponderance of probabilities, that the deceased was 80% negligent in causing the accident, while the negligence of the driver of the Tractor and Trolley is established to the extent of 20%.

(8.22) Herein, the Ld. Advocate for the petitioner has relied upon the Judgement of **Hon'ble Apex Court in the case of Sushma Vs. Nitin Ganapati Rangole & Ors., in Civil Appeal Nos. 10648 of 2024 (Arising out of SLP (Civil) No(s.) 21172 of 2021, wherein, in Para 23, it reflects that :**

23. On going through the above extract from the impugned judgment, it is evident that the High Court recorded an affirmative finding that the offending truck was parked in the middle of the road. This finding as borne out from the evidence is not under challenge and has attained finality. The accident took place on 18th August, 2013 which as per the Hindu calendar

fell on Shukla Paksha Dwadashi, and **thus, there was not even a remote possibility that the road would be illuminated by moonlight at the time of the accident.** The discussion of evidence by the Tribunal and the High Court makes no reference to availability of streetlights at the collision site and hence, there is no doubt that at the time of the accident, the conditions on the road would have been pitch dark making it virtually impossible for the incoming vehicles to sight the stationary offending truck within a reasonable distance.

Therefore, the said accident occurred during the night hours, whereas in the present case, the accident occurred during the daytime. Hence, this precedent is not helpful to the petitioner.

(8.23) Herein further, the PM report which is at Ex. 76 says that decd. died due to injury caused to vital organ such as lung lever etc. and therefore, it proves that decd. died due to said accidental injury.

As to injury and disability :-

(9) In this case, the claimants has produced reports of C.T. Scan and MRI report vide Ex. 70 which shows that :

“MSCT imaging was performed using sub millimeter thin contiguous axial scan of chest with abdomen and pelvis plain, Coronal and sagittal reformatted images were obtained. Findings – THORAX :- Left sided moderate pneumothorax is noted, left side Mild Hemothorax is oted, Left lower lobes shows few areas of lung contusions with minimal lacerations, displaced fracture of left sided 2nd to 9th Ribs are noted, Changes of chest wall and abdominal wall emphysema are noted on left side. ABDOMEN : Mild Hemoperitoneum is noted III defined hypodensity is noted involving left love of liver suggest p/o liver haematoma, III defined hpodensity is noted involving midpole of spleen ? Low gradesplenic injury, left kidney appear slightly swallow with perirenal fat stranding ADV ; Contrast enhanced study for detailed evaluation.

MRI report : MRI study of brain protocol was performed using TIW, T2W, DWI, GRE axial and flair coronal images

Brain parenchyma: Multiple scattered are areas of diffusion hyperintensity are noted involving cortico-subcortical region of left high fronto-parietal paramedian region (left posterior ACA territory), left thalamus, bilateral parieto-occipital paramedian region, right lateral frontal lobe and both cerebellum without obvious haemorrhagic foci possibility of posttraumatic ischaemic aetiology appears likely. Effacement of cerebral sulci is noted possibility of cerebral oedema.

Ventricular system: Mass effect is noted in form of compression over left lateral ventricle with mild (3 mm) midline shift towards right side.

Both the lateral, third and fourth ventricles otherwise appear normal. No evidence of periventricular nodules.

Skull base and sella: Pituitary gland appears normal. Posterior fossa: Rest of the cerebellum and brainstem appear normal.

IMPRESSION:

1. Multiple scattered are areas of diffusion hyperintensity involving both cerebral hemisphere, left thalamus both cerebellum without obvious haemorrhagic foci possibility of posttraumatic ischaemic aetiology appears likely over axonal injury.

2. Mass effect in form of compression over left lateral ventricle with mild (3 mm) midline shift towards right side. MSCT SCAN OF ABDOMEN WITH PELVIS

MSCT imaging was performed using submillimeter thin contiguous axial scan of abdomen and pelvis with I.V contrast. Coronal and sagittal Reformatted images were obtained.

FINDINGS:

Evidence of nonvisualisation of left renal artery is noted just after its origin from abdominal aorta suggest p/o thrombosis /avulsion.

Left kidney appear hypodense in appearance suggest ischemia.

Distal body of pancreas shows illdefined hypodensity throughout its parenchyma suggest p/o pancreatic laceration.

Lower pole of spleen shows small ill defined hypodensity suggest p/o laceration. Mild hemoperitoneum is noted.

Mild dilatation of bowel loops are noted throughout abdomen suggest p/o ileus. Left lobe of liver shows haemangioma of size 32 mm.

Gall bladder and intrahepatic Billiary radicles appear normal.

Right kidney and suprarenal glands appear normal. No evidence of mass, calculus or hydronephrosis is seen. No definite enlarged paraaortic,

paracaval, portal or peripancreatic lymphnodes is seen. Aorta and both upper psoas muscles appear normal.

Urinary bladder appears empty. Foley's bulb in situ.

Prostate appears normal. No prostatic calcification or mass lesion is seen.

Rectum appears normal. No definite invasion of perirectal fat or fistulous connection is seen. No definite rectal wall thickening is noted.

No definite pelvic mass lesion is seen. Iliopsoas and bony pelvis appear normal.”

(10) Therefore, the report of C.T. Scan and MRI report proves that the concerned person has sustained a injuries as stated above.

(11) Herein, it is an undisputed fact that the accident occurred on 15.7.2021 and the injured died on 22.7.2021 during the ongoing treatment.

(12) As regarding Age & Multiplier :-

The applicant has produced an Aadhaar Card in which the date of birth of the deceased, Sanjaybhai Kansagara is recorded as 22.3.1977. The accident occurred in year 2021 ; therefore, at the time of the accident, the deceased, Sanjay Kansagara, was approximately 44 years of age. Referring to the precedent set in the case of *Sarala Verma vs. Delhi Road Transport Corporation*, reported in **2010 (1) GLR 18**, it is necessary to use a **multiplier of 14**.

As regards Income :-

(13) In this claim petition, the claimant has deposed that he was earning Rs. 40,000/- per month by doing Brokerage business in Marketing yard and also doing Management work in private company. Claimant has not produced any bank statement or any authentic evidence to show that what amount he actually earned by doing business /

management work.

- (14) The claimant has produced the Income Tax Returns for the assessment years 2019–2020 and 2020–2021. The return for the year 2019–2020 was filed on 24.05.2020, wherein the total annual income of the deceased was shown as Rs. 2,45,775/-. The return for the year 2020–2021 was filed on 10.01.2021, showing a total annual income of Rs. 4,25,830/-. The accident occurred on 15.07.2021. Since both Income Tax Returns were filed prior to the date of the accident, the average income reflected therein is required to be considered. The total income for both years comes to Rs. 6,71,605/- (Rs. 2,45,775/- + Rs. 4,25,830/-). The average annual income, therefore, comes to Rs. 3,35,802/- (Rs. 6,71,605/- ÷ 2). Dividing the same by 12 months, the monthly income comes to Rs. 27,983/-, which is rounded off to Rs. 28,000/- per month. Accordingly, it is held that, at the time of the accident, the deceased was earning Rs. 28,000/- per month.
- (15) Furthermore, since the age of the deceased has been established as 44 years old, in accordance with the mandate of the Hon'ble Apex Court in the case of *National Insurance Company Versus Pranay Shethi and ors.*, as reported in AIR 2017 SC 5157, there is 25% of amt. required to be considered as prospective income of the decd.

Future Loss of Income :-

- (16) Rs.28,000/- monthly income X 12 Months X 14 Multiplier
= Rs.47,04,000/- + 25% Prospective Income is Rs.
11,76,000/- = Rs. 58,80,000/-. (Rs. 47,04,000/- +

11,76,000/-)

(16.1) Herein, in the application, it is stated that there are a total of four dependents, namely the widow, son and decd. father and mother. Following the judgment of *Sarla Varma (Supra)*, which requires deducting 1/3rd of the income, the future loss of income would amount to Rs. **39,20,000/-** (*Total Income Rs.58,80,000/- divided by 3, resulting in Rs.19,60,000/-, to be deducted from Rs.58,80,000/- which totals Rs.39,20,000/-*).

Loss of consortium :-

(17) Considering the judgment of *Pranay Shethi (Supra)*, an amount of Rs.44,000/- is required to be granted under the head of Loss of consortium. This is because a 10% increase is mandated according to the said verdict. Therefore, Rs.44,000/- is to be granted under this head.

As to Loss of Filial consortium :-

(18) In the case of *United India Insurance Company Ltd. Versus Satwinder Kaur*, the Hon'ble Apex Court, in **Civil Appeal NO. 2705 of 2020 (arising out of SLP (Civil) NO. 28548 of 2014)**, decided on June 30, 2020, granted an amount under the head of loss of filial consortium. Following the precedent set in that case, an amount of Rs.80,000/- is granted for the loss of Filial consortium to the Father and Mother who have lost their son, as he was their support. Therefore, an additional Rs.**80,000/-** is required to be granted towards parental consortium.

As to Loss of parental consortium :-

(19) In the case of *United India Insurance Company Ltd. Versus*

Satwinder Kaur, the Hon'ble Apex Court, in **Civil Appeal NO. 2705 of 2020 (arising out of SLP (Civil) NO. 28548 of 2014)**, decided on June 30, 2020, granted an amount under the head of loss of parental consortium. Following the precedent set in that case, an amount of Rs.40,000/- is granted for the loss of parental consortium to the children who have lost their father, as he was their support. Herein, a son has lost his father. Therefore, an additional Rs.40,000/- is required to be granted towards parental consortium.

(20) As regards Medical Expenses :

Herein, the claimant has produced medical bills amounting to Rs. 1,71,358/- vide Ex. 71, hence an amount of Rs. 1,71,358/- (Rounded off Rs. 1,71,350/-) is granted under this head and hence, the same Rs. 1,71,350/- is awarded under this head.

Loss to estate :-

- (21)** Considering the judgment of **Pranay Shethi (Supra)**, Rs.15,000/- is required to be granted under the head of Loss to estate.

As to funeral expenses

- (22)** It is true that in life everything is uncertain, certain thing is only death. Therefore, one has to die and one has to make expenses for the funeral but this death is not natural one. Therefore, Rs.15,000/- is appropriate amount for the funeral expenses.

(23) Calculation Table :-

Future loss of income

Rs.39,20,000/-

Loss of consortium	Rs.44,000/-
Loss of filial consortium	Rs.80,000/-
Loss of parental consortium	Rs. 40,000/-
Medical bills	Rs. 1,71,350/-
Loss of estate	Rs.15,000/-
Funeral expenses	Rs.15,000/-
T O T A L . . .	Rs.42,85,350/-
Less : Decd. Sanjaybhai Negligency 80%	Rs.34,28,280/-
Net Total	Rs. 8,57,070/-
Rounded off	Rs . 8,57,000/-

(24) 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 ownership and existence of policy :

(25) Herein, the Registration Certificate (R.C.) book of the tractor was produced vide Exh. 78, which shows that Opponent No. 2 is the registered owner of the said tractor. The insurance policy produced vide Exh. 95 reveals that the vehicle was covered under a Miscellaneous Vehicle Package Policy for the period from 27.02.2021 to 26.02.2022. Since the accident occurred on 15.07.2021, the policy was in force on the date of the accident. Hence, it is proved that, at the time of the accident, Opponent No. 2

was the owner of the tractor and that the vehicle was duly insured with Opponent No. 3.

- (26)** Herein, the Registration Certificate (R.C.) book of the trolley was produced vide Exh. 79, which shows that Opponent No. 4 is the registered owner of the said trolley. Further, Form No. 24, produced vide Exh. 101, indicates that the vehicle was covered under a third-party insurance policy for the period from 20.02.2021 to 19.04.2022. Since the accident occurred on 15.07.2021, the policy was valid and in force on the date of the accident. Hence, it is proved that, at the time of the accident, Opponent No. 4 was the owner of the trolley and that the vehicle was duly insured with Opponent No. 5.

As to driving license :

- (27)** Herein burden to prove the fact as regards not having valid and effective driving license lies upon the insurer, and such burden has not been discharged by the insurer.

(28) As to Fitness and Permit :-

Herein, it is argued on behalf of the insurer that:

On the Issue of Fitness and Permit:

The Driver of the Tractor has used his vehicle in violation of Policy condition and breach of Law opponent No. 3 insurance company cannot be held liable to pay the amount of compensation for the breach of condition in terms of Section 149 of the MV Act.

► It is submitted that, this opponent has taken specific defense of road route permit and Fitness in written statement field.

It is the duty of insured opponent no.1 & 4 to submit permit and Fitness of the vehicle. Opponent no.1 & 4 has not submitted permit and Fitness of the vehicle no. GJ-11-V-6941.

It is duty of opponent no.4 to provide all document of the vehicle to the insurer U/S 134 of the Motor vehicle act. But opponent no.4 failed to do so.

► It further submitted that. Opponent no.4 has not complied with the burden lies upon him to prove that, the vehicle was having valid permit and Fitness at the time of accident.

➤ On the other hand, this opponent has successfully proved that the vehicle no. GJ-11-V-6941 was not having valid permit and Fitness at the time of accident.

➤ Looking to the above fact it is proved that, there is statutory violation of the condition of the policy and hence this opponent is not as such in law to indemnify opponent. No.4

➤ This opponent has served discovery to opponent no 1 & 4. Also produced RC extract from RTO Junagadh at exh. 100, 101, 102. This opponent has proved that vehicle no. GJ-11-V-6941 was driving the vehicle which is public service vehicle without having valid permit and Fitness.

➤ It is submitted that on the day of the accident there was no legal and valid permit and Fitness to ply the truck and so there is breach of condition of policy, Therefore, the insurance company cannot be held to be liable to pay the compensation to the applicant. We rely upon the decision in the case of New India Assurance Company Limited V/s Kamlaben Wd/o Sultansinh Hakumsinh Jadav and others, reported in 1993(1) GLR 779.

(29) Herein, insurer has produced Form No. 24 which has been issued by the RTO vide Ex. 101 and this Form No. 24 is relating to Trolley bearing No. GJ-11-V-6941 and which says that “Registration Valid upto 7.8.2020 and Fitness valid Upto 7.8.2020”.

(30) Therefore, it proves that Registration of the Trolley was up to 7.8.2020 and said accident has been occurred on 15.7.2021. Therefore, on the date of accident, the Registration of Trolley was expired. Herein, the Ld. Advocate for the said Insurer has relied on following precedents. which says that :

1] Kerala High Court Pareed Pillai vs Oriental Insurance Company Ltd on 9 October, 2018.

**21 2022 ACI 2771 THE SUPREME COURT OF INDIA
Gohar Mohammed V. U.P. State Road Trans. Corpo.**

Motor Vehicles Act, 1988, section 149 (2) read with section 66- Motor insurance-Permit Route permit-Liability of insurance company Tribunal exonerated insurance company from liability on the ground that offending

bus did not have valid permit to ply on the route where accident occurred- Owner of bus filed appeal before High Court contending that bus had temporary permit to ply on the route where accident occurred-High Court observing that owner did not produce the original permit and failed to examine anyone from Transport Department affirmed the findings of Tribunal-Contention that information under RTI Act proves that permit was issued and the requisite fee was paid on the next day of issuance of permit-Information under RTI Act is not clear as to when the permit was issued and who issued the same-Alleged permit was issued on Saturday and it is not clear as to why deposit of fee was asked on the next day, i.e., on Sunday and even if permit was valid then also the bus was plied on a route different from the one specified in the permit-Whether Tribunal and High Court were justified in holding that bus did not have valid permit and fastening liability on the owner of bus-Held: yes. (Paras 4 to 6, 8, 9)

- (31)** However, in the present case, the trolley was attached to and being operated by the tractor; therefore, the expiry of the registration certificate did not contribute to the occurrence of the accident. Consequently, the aforesaid precedent is of no assistance to the insurer. Had the issue related to the tractor itself, the said precedent would have supported the insurer's case.

Conclusion :-

- (32)** As discussed herein above herein it is proved that :-
- (a) The negligency of driver of the Tractor bearing No. GJ-11-CD-3797 attached with Trolley No. GJ-11-V-6941 is proved to the extent of 20% whereas, the negligency of the driver of Motorcycle bearing Registration No. GJ-11-BP-4597 is proved to the extent of 80%.
 - (b) Therefore, opponents no.1, 2 & 3 (driver, owner & Insurer of the Tractor and opponent No. 4 & 5 (owner

and insurer of Trolley are jointly and severally liable to pay the compensation as discussed and 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 **partly allowed**.
- (2)** The claimant/s are entitled to get amount of **Rs.8,57,000/-** (*Rupees Eight Lacs Fifty Seven Thousand only*) as compensation.
- (3)** The opponents no.1 to 5 shall jointly and severally liable to pay compensation to the present claimant 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 claimant/s.
- (4)** The opponent No. 1 to 5 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 No. 3 & 5 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
on this 30th day of June, 2026.

Date : 30.6.2026.
JUNAGADH.

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