

GJJN010019452021



Received on : 24.09.2021
 Registered on : 24.09.2021
 Decided on : 31.07.2026
 Duration : YY MM DD
 04 10 07

Exh. : _____

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

M.A.C.P. No. 330 of 2021

Claimants :

Legal heirs of Decd. Vaghabhai Palabhai Parmar

- | | | | |
|--|----|--------------------------------------|---|
| 1. Prabhaben Vaghabhai Parmar | 57 | House Hold | Nr. Shapur
Darwaja,
Mangrol,
Dist.
Junagadh |
| 2. Prakash Vaghabhai Parmar | 24 | Labour work
at Present
Nothing | “... “ |
| 3. Lalji Vaghabhai Parmar | 22 | “....” | “...” |
| 4. Jagrutiben D/o. Vaghabhai
Parmar, W/o. Ashishbhai
Gohel | 26 | “....” | “...” |

VERSUS

Opponents :

(Driver / Owner & Insurer of Truck No. RJ-19-GC-5015) :-

- | | | |
|----------------------|---------------|--------------|
| 1. Nainaram Baherram | Adult Driver/ | Vill Nanadia |
|----------------------|---------------|--------------|

Owner Jajer, Tal.
Baori, Dist.
Jodhpur
State—
Rajasthan

2. The United India Insu. Co., Ltd., -- Insurer Nr.Hatkesh
Hospital,
Junagadh

(Owner & Insurer of Truck No. GJ-36-T-1167) :

3. Bilal Hanifbhai Merjivan Adult Owner Mithi Vav,
Nagari Auto,
Nr.New Bus,
Stand,
Mangrol

4. The Reliance General Insu. -- Insurer 3rd Floor,
Co., Ltd., Business
Empire,
Dr. Radha
Krishna Rd.,
Rajkot

CLAIM PETITION U/S 166 OF THE MOTOR VEHICLE ACT
FOR THE COMPENSATION OF ₹ 25,00,000/-

Appearance :-

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

LA **Mr. A.I.Theba** for opponent No. 1

LA **Mr. V.H.kanjaria** for opponent No. 2

Ex-parte against Opponent No. 3

LA **Mr. P.M.Hirpara** for opponent No. 4

:- 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 ₹ 25,00,000/- along with interest.

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

- (2.1) The claimants assert that on 25.06.2021, between 3:00 a.m. and 4:00 a.m., the deceased, after taking tea at Sahil Hotel, Abu Road, attempted to start his truck bearing Registration No. GJ-36-T-1167. However, due to a technical problem, the truck could not be started. At that time, a truck bearing Registration No. RJ-19-GC-5015, driven by Opponent No. 1, came from the rear side at a high speed and in a rash and negligent manner and dashed into Truck No. GJ-36-T-1167, thereby causing the accident. As a result of the collision, the deceased sustained fatal injuries and succumbed to the same. Consequently, the claimants have filed the present claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of ₹25,00,000/- from the opponents.
- (2.2) According to the petition, Applicant No. 1 is the widow of the deceased, and Applicant Nos. 2 to 4 are the sons and daughter of the deceased.
- (2.3) According to the case, Opponent Nos. 1 and 2 are the driver/owner and insurer, respectively, of Truck No. RJ-19-GC-5015, while Opponent Nos. 3 and 4 are the owner and insurer, respectively, of Truck No. GJ-36-T-1167. Hereinafter, Truck No. RJ-19-GC-5015 shall be referred to as "Truck No. 1" and Truck No. GJ-36-T-1167 shall be

referred to as "Truck No. 2."

(3) Defence of Opponents :-

(3.1) Driver / Owner Truck No. 1 (Opponent No. 1) :-

(3.2) It transpires that Opponent No. 1 appeared through the learned Advocate on 04.09.2025 but failed to file any reply. Therefore, by order below Exhibit 1 dated 15.09.2025, the right of Opponent No. 1 to file a reply was closed.

(3.3) Insurer of Truck No. 1 (Opponent No. 2) :-

The learned Advocate for Opponent No. 2 filed a written statement vide Exhibit 21 and objections vide Exhibit 22, wherein he denied most of the averments made in the claim petition and contended that the material allegations contained therein are false, baseless, and not maintainable. He further 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 contended that the accident did not occur due to any rash or negligent act on the part of the driver of Truck No. 1. According to Opponent No. 2, the deceased himself was the author of the accident and was solely responsible for its occurrence, as he was driving Truck No. 2 in a rash and negligent manner. It was further submitted that the deceased had also 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 the deceased be determined and that the compensation be reduced proportionately to the extent of such

contributory negligence. Hence, for the aforesaid reasons, Opponent No. 2 prayed for dismissal of the claim petition against him.

(3.4) Owner of Truck No. 2 (Opponent No. 3) :-

Matter has proceeded ex-parte against the said opponent as contemplated by Order IX Rule 6-A of Code of Civil Procedure, 1908.

(3.5) Insurer of Truck No. 2 (Opponent No. 4) :-

- (3.6)** The learned Advocate for Opponent No. 4 filed a written statement vide Exhibit 20, wherein he denied most of the averments made in the claim petition and contended that the material allegations contained therein are false, baseless, and not maintainable. He further contended that the person driving the vehicle did not possess a valid and effective driving licence on the date of the accident. It was also contended that there was no valid and effective permit to ply the said vehicle and, therefore, there was a breach of the terms and conditions of the insurance policy. Further, reliance was placed upon the judgment in *Minu B. Mehta and Another v. Balkrishna*, reported in AIR 1977 SC 1248, and it was contended that a claim arising out of a motor accident before the Claims Tribunal has to be decided on the basis of the law of torts, and the claimant is required to establish that the accident occurred due to negligence. It was further submitted that the liability of the owner or the insurer extends only to the extent of liability incurred in respect of death or bodily injury arising out of the use of the motor vehicle and covered under the policy of insurance. Therefore, unless the owner has incurred

liability in respect of such death or bodily injury, no liability can be fastened upon the insurer under the policy. It was further contended that, in the present case, the owner can be held liable only upon proof of negligence and by establishing his vicarious liability for the acts of his servant. Hence, proof of negligence is a condition precedent before the owner or the insurance company can be held liable to pay compensation to the claimants in a motor accident claim. It was also contended that the deceased himself was driving Truck No. 2 and was the tortfeasor. Therefore, the applicants cannot claim compensation on account of the deceased's own negligence. Accordingly, it was submitted that Opponent No. 4 is not liable to pay any compensation. Hence, Opponent No. 4 prayed for dismissal of the claim petition with costs.

The Evidence of parties :-

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

(3.8) ORAL EVIDENCE :

Exh.42	Deposition by way of Affidavit of examination-in-chief of Claimant No. 1 – Prabhaven Parmar
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DOCUMENTARY EVIDENCE :-

Exh.47	True Copy of FIR
Exh.48	True Copy of Inquest panchnama which has been carried out by the concerned police
Exh.49	True copy of P.M.Report
Exh.50	Attested copy of driving licence of opponent

	No. 1
Exh.51	Attested copy of R.C. book of Truck No. 1
Exh.52	True copy of Fitness certificate of Truck No. 1
Exh. 53	True copy of Insurance policy of Truck No. 1
Exh. 54	Attested copy of R.C. Book of Truck No. 2
Exh. 55	Attested copy of Insurance policy of of Truck No. 2
Exh. 56	Certified copy of crime details form
Exh. 57	Certified copy of charge-sheet (final report)
Exh. 58	Certified copy of driving licence of decd. - Vaghabhai
Exh. 59	Certified copy of Aadhar card of decd. - Vaghabhai

(3.9) The Ld. Advocate for the claimant has submitted closing pursis vide Ex.60 declaring not to lead any further evidence in the matter.

(3.10) The right to produced evidence of opponent No. 1 has been closed by passing order below Ex. 1 dt. 1.6.2026.

(3.11) The Ld. Advocate for the opponent No. 2 has filed closing pursis vide Ex. 62 declaring not to lead any further evidence in the matter.

(3.12) Following documentary evidence has been adduced by the opponent No. 4 in support of their case :-

Documentary evidence :

Exh.71	Copy of Insurance policy of Truck No. 2
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(3.13) The Ld. Advocate for the opponent No. 4 has filed closing pursis vide Ex. 61 declaring not to lead any further

evidence in the matter.

(3.14) Then after the Ld. Advocate for the claimant has filed written argument vide Ex. 65 and has relied on certain precedent.

(3.15) The Ld. Advocate for the opponent No. 4 has also filed written argument vide Ex. 67 and also also relied on precedent.

Issues :-

(4) After considering the application, following issues have been framed vide **Exh.39** as under:-

1. Whether it is proved that the decd. sustained injuries and died on account of rashness and negligence in driving on the part of 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 ?

(5) **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.

(6) **As regards procedure of Tribunal :-**

(6.1) 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.

- (6.2) 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.”*
- (6.3) 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.
- (7) As regards Involvement of the Vehicle in the accident and

negligence :-

- (7.1) The learned advocate for the applicants has argued that the driver of Truck No. 1 was negligent and that the claimants have proved such negligence.
- (7.2) The Ld. Advocate for the Opponent No. 2 has argued that the said accident has occurred due to sole negligence on the part of decd. himself.
- (7.3) The Ld. Advocate for the opponent No.4 has argued that deceased himself was driving Truck No. 2 and was the tortfeasor. Therefore, the applicants cannot claim compensation on account of the deceased's own negligence.
- (7.4) 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**.
- (7.5) In the claim petition, it is alleged that the accident occurred solely due to the negligence of the driver of Truck No.1.
- (7.6) The FIR produced at Exh.47 attributes negligence to the driver of Truck No.1. Further, the charge-sheet produced at

Exh.57 has also been filed against the driver of Truck No.1, wherein it is stated that the deceased had just started Truck No.2 when the driver of Truck No.1, while driving the vehicle in a rash and negligent manner, dashed Truck No.1 into Truck No.2. It is specifically stated that the front portion of Truck No.1 collided with the rear portion of Truck No.2.

(7.7) The Crime Details Form prepared by the Investigating Officer of the concerned Police Station has been produced at Exh.56. The said document also states that the driver of Truck No.1 dashed his truck into the rear portion of Truck No.2, resulting in the accident.

(7.8) The insurer of Truck No.1 has not examined the driver of Truck No.1. Had the insurer examined the driver, his testimony, being that of an eyewitness to the accident, would have come on record. Since no eyewitness has been examined, the Tribunal is required to decide the case on the basis of the material available on record. Considering the contents of the FIR, the Crime Details Form, and the charge-sheet, and further taking into account the fact that the insurer of Truck No.1 has failed to examine its driver, it stands established that the accident occurred solely due to the negligence of the driver of Truck No.1.

(7.9) Herein, it is stated in the charge-sheet that decd. died due to said accident and therefore, the accident is only causa causance of the **Death of deceased.**

(8) **As regards age and multiplier :**

(8.1) The applicants has produced copy of Aadhar Card of decd.

vide Ex. 59, in which the date of birth was written as 25.3.1963 and the date of accident was 25.6.2021. So, it is established that the age of decd. on the date of accident is about 58 yrs., and hence the same is considered.

- (8.2) Referring to the precedent set in the case of *Sarala Verma vs. Delhi Road Transport Corporation* reported in 2010 (1) GLR 18, the multiplier of 9 is required to be applied.

As regards income :

- (9) Herein, the applicants have pleaded that the deceased was earning Rs.25,000/- per month by working as a driver and by handling goods. However, they have failed to produce any reliable documentary evidence in support of the said claim. At the same time, it is evident from the record that the accident occurred while the deceased was driving Truck No.2. His driving licence has been produced at Exh.58, and it has not come on record that he was the owner of Truck No.2. Therefore, it is established that the deceased was driving Truck No.2 as a driver. Further, the petitioners could have examined the owner of Truck No.2 to prove the income of the deceased, but they failed to do so. In these circumstances, it would be just and proper to assess the monthly income of the deceased at Rs.9,400/-. Accordingly, it is held that the deceased was earning **Rs.9,400/-** per month at the time of the accident.

Future Loss of Income :-

- (10) Since it has been established that the deceased was 58 years old at the time of the accident, 10% prospective income needs to be awarded.

(10.1) Rs.9,400/- monthly income X 12 Months X 9 Multiplier =
Rs.10,15,200/- + 10% Prospective Income i.e.
Rs.1,01,520/- = **Rs.11,16,720/-**.

(10.2) Herein, in cross examination, the petitioner Prabhaben has admitted that “એ વાત ખરી છે કે, મારી દીકરી અરજદાર નં.-૪ જાગૃતિબેન સમઢીયાળા ગામે જે ગડુ પાસે આવેલ છે ત્યાં સાસરે છે. એ વાત ખરી છે કે, જાગૃતિબેન તેના પતિ સાથે રહે છે અને તેનું ભરણપોષણ તેના પતિ કરે છે.”

(10.3) In the said circumstances and more particularly admission of Prabhaben, said petitioner No.4-Jagrutiben cannot be considered as dependent of the decd.

(10.4) In the above facts and circumstances, there are a total of **three** dependents, namely the widow and two sons. However, as discussed above, the married daughter is not considered a dependent. According to the judgment in *Sarla Verma* (supra), one-third (1/3rd) of the income is required to be deducted. Therefore, the future loss of income would amount to **Rs.7,44,480/-**. (Rs.11,16,720/- divided by 3, resulting in Rs.3,72,240/- to be deducted from Rs.11,16,720/-).

Loss of consortium :-

(11) Considering the judgment of *National Insurance Company Versus Pranay Shethi and ors. reported in AIR 2017 SC 5157*, an increase of 10% is required to be granted under the head of Loss of consortium. Therefore, **Rs. 44,000/-** is required to be awarded under this head.

As to Loss of parental consortium :-

- (12) The Hon'ble Apex Court, in the case of *United India Insurance Company Ltd. Versus Satwinder Kaur* (Civil Appeal NO. 2705 of 2020, arising out of SLP (Civil) NO. 28548 of 2014), on June 30, 2020, granted an amount under the mentioned head. Following the same precedent, herein also, an amount of Rs.80,000/- is granted for the loss of parental consortium, Therefore, Rs.80,000/- is required to be awarded towards parental consortium for two sons.

Loss to estate :-

- (13) Considering the judgment of *National Insurance Company Versus Pranay Shethi and ors. reported in AIR 2017 SC 5157*, an increase of 10% is required to be granted under the head of Loss of Estate and therefore, Rs.16,500/- is required to be granted under the head of Loss to estate.

As to funeral expenses

- (14) 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. Considering the judgment of *National Insurance Company Versus Pranay Shethi and ors. reported in AIR 2017 SC 5157*, an increase of 10% is required to be granted under the head of Loss of Funeral Expenses, therefore, Rs.16,500/- is required to be granted under the head of the funeral expenses.

(15) **Calculation Table**

Future loss of income	Rs.7,44,480/-
Loss of Consortium	Rs. 44,000/-

Loss of Parental Consortium	Rs. 80,000/-
Loss of estate	Rs.16,500/-
Funeral expenses	Rs.16,500/-
T O T A L . . .	Rs.9,01,480/-

(16) 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 :-

- (17)** Herein, the R.C. Book of Truck No. 1 was produced vide Exhibit 51, which shows that Opponent No. 1 is the driver-cum-owner of the said truck. The insurance policy of Truck No. 1 was produced vide Exhibit 53, which is a Package Policy, and the period of insurance is from 12.02.2021 to 11.02.2022. The date of the accident is 25.06.2021. Thus, on the date of the accident, the said policy was in force. Hence, it is proved that, on the date of the accident, truck of Opponent No. 1 was duly insured with Opponent No. 2.
- (18)** Herein, the R.C. Book of Truck No. 2 was produced vide Exhibit 54, which shows that Opponent No. 3 is the owner of the said truck. The insurance policy of Truck No. 2 was produced vide Exhibit 55, which is a Commercial vehicle

Package Policy, and the period of insurance is from 9.7.2020 to 8.7.2021. The date of the accident is 25.06.2021. Thus, on the date of the accident, the said policy was in force. Hence, it is proved that, on the date of the accident, truck of Opponent No. 3 was duly insured with Opponent No. 4.

As to Driving license :-

- (19) Herein, insurer have failed to discharge the burden as to concerned driver was not having effective and valid driving license at the time of accident.

Conclusion :-

- (20) As discussed herein above herein it is proved that :
- (a) The sole negligency of driver of the **Truck No. 1** i.e. opponent no.1 has been proved
 - (b) The death of deceased is causa causans of vehicular accident.
 - (c) Therefore, Opponent Nos. 1 and 2 (the driver-cum-owner and insurer of Truck No. 1) are jointly and severally liable to pay the compensation as calculated and discussed above whereas opponent nos.3 and 4 are exempted from paying any compensation to the claimants.

Therefore answer as to issue no.1 in affirmative, 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 **partly**

allowed.

- (2) The claimants are entitled to get amount of **Rs.9,01,480/- (Rupees Nine Lakhs One Thousand Four Hundred Eighty Only)** as compensation.
- (3) The opponent Nos.1 and 2 shall jointly and severally liable to pay compensation to the present claimants as calculated above and the said opponents are 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 whereas opponent nos.3 and 4 are exempted from paying any compensation to the claimants.
- (4) The opponent Nos.1 and 2 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, opponents No. 2 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 31st day of July, 2026.

Date : 31.07.2026.
JUNAGADH.

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