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DURATION :
DD MM YY

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
ADDITIONAL DISTRICT JUDGE AT VISAVADAR**

Ex. _____

M.A.C.P. No. 253-2017 (MAIN) :
(OLD CASE NO. 336-2015)

CLAIMANT :

HEIRS OF DECD. SANJAYBHAI HARSUKHBHAI KORAT

1. Harsukhbhai Fulabhai Korat
Age : 47 Yrs., Occu. : Farming,
Resi. Sakroda, Tal. Bhesan
Dist. Junagadh

2. Muktaben Harsukhbhai Korat
Age 41 Yrs., Occu. Farming & House work,
Resi. Salrpda. Tal. Bhesan,
Dist. Junagadh

V/s.

OPPONENTS :-

Motor Car No. GJ5JB-5131 :-

1. Driver & Owner :-
Bhargavbhai Ishwarbhai Lakhani
Age : Adult, Occu. Business,
Resi. 10, Laxmiba Park Society,
Kamrej Char Rasta,
Kamrej
Surat

2. Insu. Company :
Royal Sundaram Alliance Insu. Co. Ltd.,
Chandan House, 4th Floor, Opp. Pentaloon
Mithakari six road,
Ahmedabad

Advocates :

1. Ld. Adv. Mr. G.P.Dave for the Applicant
2. Ld. Adv. Mr. R.N.Kotadia for the Opponent No. 1
3. Ld. Adv. Mr. J.D.Choudhary for the Opponent No.2

**SUBJECT : SUIT FOR THE COMPENSATION FOR RS. 20,00,000/- OF THE
MOTOR VEHICLE ACT SEC. 166**

M.A.C.P. No. 254-2017
(OLD CASE NO. 337-2015)

1. Gopalbhai @ Yogeshbhai Harsukhbhai Korat
Age : 27 Yrs.,
Occu. : Business,
Resi. Sankarda, Tal.
Bhesan

V/S.

OPPONENTS :-

Motor Car No. GJ5JB-5131 :-

1. Driver & Owner :-
Bhargavbhai Ishwarbhai Lakhani
Age : Adult, Occu. Business,
Resi. 10, Laxmiba Park Society,
Kamrej Char Rasta,
Kamrej
Surat
2. Insu. Company :
Royal Sundaram Alliance Insu. Co. Ltd.,
Chandan House, 4th Floor, Opp. Pentaloon
Mithakari six road,
Ahmedabad

Advocates :

1. Ld. Adv. Mr. G.P.Dave for the Applicant
2. Ld. Adv. Mr. R.N.Kotadia for the Opponent No. 1
3. Ld. Adv. Mr. J.D.Choudhary for the Opponent No.2

**SUBJECT : SUIT FOR THE COMPENSATION FOR RS. 15,00,000/- OF THE
MOTOR VEHICLE ACT SEC. 166**

:: COMMON JUDGMENT ::

1. Both the above claim case have been arisen from a single accident and both the claim cases have been consolidated and, therefore, they are being disposed off by this common judgment.

2. The common facts of all the the Claim Cases are as under :

a. In claim **No-253/2017 :-**

It is the say of claimant that on 10.7.2015 at about 7.30 p.m. when they were coming in his motor cycle from Bhesan to Sakroda and when they have reached near Hadmatiya Chowkdy, at that time Opponent No. 1 who is Driver of Motor Car bearing No. GJ5JB-5131 was driving with excessive speed, rashly and negligent manner and came from opposite side and caused the accident. Due to this accident, claimant has got severe fatal injuries and result in death of Sanjaybhai Korat. It is further stated by the Claimant that he is only earning member of his family. Claimant has further stated also stated that accident occurred due to rash and negligent driving on part of Car driver. Therefore, claimant have filed present claim petition to recover amount as prayed in respective claim petition.

So, he has prayed to recover an amount of Rs. 20,00,000/- from the Opponents as a compensation.

b. In claim **No-254/2017 :**

It is the say of claimant that on 10.7.2015 at about 7.30 p.m. when they were coming in his motor cycle from Bhesan to Sakroda and when they have reached near Hadmatiya Chowkdy, at that time Opponent No. 1 who is Driver of Motor Car bearing No. GJ5JB-5131 was driving with excessive speed, rashly and negligent manner and came from opposite side and caused the accident. Due to this accident, claimant has got permanent disabilities, he can not work as before. Claimant is only earning member of his family. He made huge medical expenses to recover said injuries. Claimant has also stated that accident occurred due to rash and negligent driving on part of Car driver. Therefore, claimant have filed present claim petition to recover amount as prayed in respective claim petition.

So, he has prayed to recover an amount of Rs. 15,00,000/- from the Opponents as a compensation.

3. Summons and notices were served upon the Ld. Advocate for the parties and the Ld. Advocate for the Opponent No. 1 in MACP No. 253-2017 has filed the written statement vide Ex. 15 and the Ld. Advocate for the Insurance Company - Opponent No. 2 has filed the written statement vide Ex. 17 and also filed the written objection vide Ex. 18 respectively and denied all the allegation mention in the plaint and further prayed to dismiss the claim of the applicant with heavy cost.

Further, IN MACP No. 254-2017, the Ld. Advocate

for the Opponent No. 1 has filed written statement vide Ex. 17 and the Ld. Advocate for the Insurance company i.e. Opponent No. 2 has filed the written statement vide Ex. 19 and written objection vide Ex. 20 and denied all the allegation and facts mentioned in the plaint and further prayed to dismiss the claim of the appliant with heavy cost.

4. Following issues vide Ex. 24 have been framed in both the petitions, which are as under :

1. Whether it is proved that the deceased sustained injuries and died on account of rashness of negligence in driving on the part of the driver of the vehicle / vehicles involved in the accident ?

2. What amount, if any, the claimant is entitled to by way of compensation and from which of the opponents ?

3. What Order and award ?

5. My findings on the above issues are as under :

1. In the affirmative,
2. In partly affirmative.
3. As per final order.

:- R E A S O N S :-

Issue No.1 & 2 :-

6. Claimant and Opponents have produced following documentary as well as Oral evidence, which is

produced as under : -

No.	Petition No.	Name of The applicant	Deposition Exh.	Injury Certi. Ex.	Disability Certi. / P.M.Note Ex,	Income (Rs.) (p.m.)	Agree to consider Disability body as whole
1	253/17	Harsukhbhai Fulabhai Korat	25	--	32	3000	Age-47
2	254/17	Gopal @ Yogeshbhai Harsukhbhai Korat	27	30	106	3000	Age-50 25%

7. Whereas, the Ld. Advocate has produced the PM Note / Disability Certificate in both the claim cases and the copies of FIR, Panchnama, Driving Licence, Medical bills and treatment taken at different exhibits.

8. The Ld. Advocate for the claimant in MACP No. 253-2017 has filed the written argument vide Ex. 41 and has relied on certain citation which is as under :

1. GLR 1982 PAGE NO. 785
2. ACJ 2012 PAGE NO. 2002 S.C.
3. AIR 2017 PAGE NO. 5157 S.C.
4. 2003 ACJ PAGE NO. 12 AND 2013 ACJ PAGE 2733
5. 2011 ACJ PAGE NO. 2869 & 2012 ACJ PAGE 583
6. 2014 ACC PAGE 197 S.C.

9. I have heard the arguments produced by the Ld. Advocate for the claimant and also gone through all the papers produced.

10. The Ld. Advocate for the claimant has argued at length and he has repeated all the contention of the

petition and also discussed all the documentary as well as oral evidence produced by claimants. He has further argued that claimants were traveling in his Motor Cycle and from opposite side, Motor Car bearing No. GJ5JB-5131 came with full speed and caused the accident and because of this accident, in MACP No. 253-2017 - decd. Sanjaybhai Harsukhbhai got severe fatal injury and result in death and the claimant in MACP No. 254-2017 - Gopal @ Yogeshbhai Harsukhbhai Korat got severe injuries in different parts of body and got permanent disability. Opponents No.1 & 2 being Driver/Owner & Insurance company of Motor Car bearing No. GJ5JB-5131, so, both of them i.e. Opponent No. 1 & 2 are responsible and liable to pay the compensation to the claimants of both the claim petition, so, they are liable to pay jointly and severally. However, looking to the FIR, Panchnama and other papers, this Tribunal held that both the Drivers are responsible for the occurrence of accident and, hence, this Tribunal found that if both the Drivers have vigilant and take proper care, the present accident may be avoided. Hence, looking to the nature of vehicle and evidence, this Tribunal fixed 70% for the Opponents & 30% for the claimant as contributory negligence of both the driver involved in the accident in MACP No. 253-2017 and this Tribunal fixed 100% for the opponents i.e. Opponent No.1 & 2 jointly and severally in MACP No. 254-2017 as the claimant is pillion rider and was sitting back side of Motor Cycle bearing No. GJ6L-6152.

11. Looking to the facts, affidavit and cross-examination of the both the claimants, I am satisfied that the accident had occurred and the complaint was lodged against the driver of the Motor Car. Therefore, considering the nature of vehicles, details of Place Panchnama and other papers and so, here in this case considering the entire evidence and record this Court replied issue No.1 in affirmative in above manner. Therefore, it would be just and proper to consider that applicant himself was responsible to the extent of 30% whereas Motor Car bearing No. GJ5JB-5131 was responsible to the extent of 70% and it is held accordingly in MACP No. 253-2017 and this Tribunal fixed 100% liability for the opponents in MACP No. 254-2017 respectively.

No	MACP NO.	Name	Age/ Age of decd	Disability Certi. % Body as whole / Dependence	Income p.a. (Rs. 3000 x 12 Mts)	Multip.	Amt.
1	253/17	Harsukhbhai Fulabhai Korat	25	1/2	36000/-	18	324000/-
2	254/17	Gopal @ Yogeshbhai Harsukhbhai Korat	27	25%	36000/-	17	153000/-

12. In MACP No. 253-2017, decd. was expired in the said accident and claimants have lost the support of the decd. and suffered pain, shock and suffering on account of death of decd. Therefore, considering the facts and circumstances of the case, it would be just and proper

to grant Rs.10,000/- towards love, affection, pain, shock and suffering and Rs.3,000/- towards funeral expenses and hence, same is granted.

13. Thus, the claimants are entitled as under:

Rs.3,24,000/-	Compensation on account of death of the decd. towards future loss of income
Rs.10,000/-	Towards pain, shock and suffering, love and affection and loss of estate
Rs.3,000/-	Towards funeral expenses
Rs.3,37,000/-	Total Compensation

Therefore, it would be just and proper to consider that applicant himself was responsible to the extent of 30% whereas Opponent No. 1 & 2 was responsible to the extent of 70% and it is held accordingly. So, 70% of Rs. 3,37,000/- = Rs. 2,35,900/-, opponent Nos. 1 & 2 jointly and severally, are held liable to pay compensation to the claimant.

14. Further in MACP No. 254-2017, as per the view of this court, claimant is entitled **Rs.1000/- towards pain, shock and suffering**. Claimant is also entitled to get **Rs.80609/- (rounded off Rs. 80,600/-) for medical expenses** - Medical bills produced vide Ex.28. Moreover, the claimants is also entitled to get **Rs.1,000/- towards special diet, transportation and attendant charges**.

N o.	MACP NO.	Name	Amount	Pain, Shock & suffering, Medical & Special Diet, Transportation etc.	Total Amount
1	253/17	Harsukhbhai Fulabhai Korat	2,35,900/ -	-----	2,35,900/-
2	254/17	Gopal @ Yogeshbhai Harsukhbhai Korat	1,53,000/ -	1000/- + 80,600/- 1000/-	2,35,600/-

15. In view of the decisions of the Hon'ble Apex Court in the case of **Sanjay Batham v. Munnalal Parihar and others - 2011 ACJ-2869** and **Mohan Soni v. Ram Avtar Tomar and others- 2012 ACJ-583**, the claimant is entitled to get amount of compensation along with interest thereon at the rate of 9% per annum from the date of his application till its realization from the opponents.

15. Thus, in view of above discussion and my findings on Issue No.1 & 2, both the above claim petitions are partly allowed by passing the following order :-

:- ORDER :-

1. The present claim petitions are, hereby, partly allowed.

2. The claimants are entitled to get amount of compensation from Opponent No. 1 & 2 jointly and severally as under ::

No.	MACP NO.	NAME	AMOUNT
1	253/17	Harsukhbhai Fulabhai Korat	2,35,900/-
2	254/17	Gopal @ Yogeshbhai Korat	2,35,600/-

3. Opponent No. 1 & 2 jointly and severally, together with running interest at the rate of 9% per annum, from the date of the application till its full realization with proportionate costs. On depositing the said amount, it will be distributed equally amongst the claimants. Out of the said amount coming to the share of each claimant, 70% amount shall be deposited in any Nationalized Bank of their choice for a period of FIVE YEARS and remaining 30% amount of their share, shall be paid to the claimants by A/c. Payee Cheques. The said investments shall carry the following terms and conditions :-

- 1.No loan, over-draft or advance, known by any other name or nomenclature, shall be made available on the said fixed deposit investment, and the Bank shall not allow any encumbrance on the said fixed deposit without written Order of this Tribunal.
 - 2.The interest on the fixed deposit as and when it becomes due, shall be paid to the claimants.
 - 3.The Bank shall intimate to the Tribunal the particulars of the fixed deposit.
- 3.On depositing the aforesaid awarded amount before this Tribunal, within 30 days, the amount of court-fees, deficit if any, be deducted from the said deposited amount.

4. Interim compensation, if any, paid or deposited under the principle of "No Fault Liability" shall be adjusted in the aforesaid amount of compensation awarded in this final adjudication.
5. Rest of the amount shall be paid over to the claimants equally by A/c. Payee Cheque after due verification.
6. The opponents shall bear their own costs
7. Award be drawn accordingly.
8. Copy of this judgment be placed in conso.
M.A.C.P.No. 254-2017.

Signed and pronounced in open court, today on this
the 20th Day of April' 2019

Place : Visavadar

Date : 20.4.2019

(Vishnuprasad Girjashanker Trivedi)

M. A. C. Tribunal(Auxiliary)

VISAVADAR

Code No. GJ-00378