

GJJN210004652021



Received on	15-06-2021
Registered on	15-06-2021
Decided on	15-07-2026
Duration	YY MM DD
	05 01 00

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL[AUX.]
AND ADDITIONAL DISTRICT COURT,

JUNAGADH AT KESHOD.

M. A. C. P. No.04 of 2021

Ex.-42

**LRs of deceased Harsukhbhai Karshanbhai
Borichangar (Joshi) : -**

1. Shobhanaben Harsukhbhai Borichangar,
Aged about - 51 years, Occu. - Household,
Religion:Hindu,
2. Jaydipkumar Harsukhbhai Joshi,
Aged about - 30 years, Occu. - Service,
Religion:Hindu,
3. Udaykumar Harsukhbhai Joshi,
Aged about - 28 years, Occu. - Service,
Religion:Hindu,
R/o. All at Ambalgadh, Tal. Malia-hatina
Dist. Junagadh.

Claimants....

Versus

Driver/Owner of Bolero Vehicle No. GJ-11-TT-8696 :-

1. Govindbhai alias Govindkumar Punjabhai Karmata,
Aged Abt. : Adult, Occupation: Agriculture & Milk,
Religion: Hindu,
R/o. Ambalgadh, Tal. Malia-hatina, Dist. Junagadh.

Opponent....

Subject :- **To obtain Compensation of Rs.40,00,000/- U/s.166 of the M. V. Act.**

Appearance :

For the applicants. Ld. Adv Mr. S.V.Borichangar.

For Opponent No.1. Ld. Adv Mr. Y.S.Karud.

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

1. The LR's of deceased have filed this claim petition under Sec.166 of the M. V. Act against the opponent to recover the amount of Rs.40,00,000/- as compensation in respect of accidental injuries and resultant death of deceased Harsukhbhai Karshanbhai Borichangar (Joshi) in vehicular accident.
2. The claim petition contains following facts : -

[A] Accident as described :

On 21/01/2021, at 09:00 A.M., when the deceased Mr. Harsukhbhai Karshanbhai Borichangar (Joshi) was proceeding on Motorcycle No. GJ-11-MM-5307 on correct side of the road [Tarsingada-Ambalgadh road], the opponent No.1 came with his Bolero Jeep No. GJ-11-TT-8696 very speedily and rashly and dashed the deceased. The Motorcyclist Mr. Harsukhbhai Karshanbhai Borichangar (Joshi) succumbed to death on the spot because of grievous injuries sustained by the collision

F.I.R. No. I-18/2021 was lodged against the Opponent No.1.

3. [B] Reasons for the claim :

The Claimants have averred that at the time of accident the deceased was 57 years old; that he was earning Rs. 30,000/- monthly income by way of Agriculture income and other animal husbandry business. He was hale and hearty. Had he not meet with the accident, he would have lived longer. Due to accident the claimants suffered loss of dependency because if the deceased was alive, he would have contributed his income to the dependent family. Hence, the claimants have claimed Rs.40,00,000/- as compensation from opponents.

- 4.** Opponent was duly served with the notice. The Opponent has filed the written statement vide Exh.-17, wherein he has denying the facts alleged in main claim petition and also denied the age, income, nature of occupation as well as negligence on part of Opponent. It has contested that the averments made by the claimants, are not true and hence they are denied; that the nature of injuries and subsequent death sustained by the deceased are also denied. Further it is averred that deceased himself was the author of the alleged accident as the deceased driven his Motorcycle in rash and negligent manner and dashed with the Opponent and deceased having no driving license to drive the Motorcycle. All-in-all requested to reject the claim petition

with cost.

5. The applicants have produced the following oral and documentary evidences in support of their claim petition to get compensation :-

Oral Evidence

Particulars	Ex.
Deposition of claimant No.1 Shobhanaben Harsukhbhai Borichangar.	21

Documentary Evidence

Sr. No.	Particulars	Ex/Mark
1.	Copy of F.I.R.	22
2.	Spot Panchnama.	23
3.	Inquest Panchnama.	24
4.	P.M. report.	25
5.	School Leaving Certificate of deceased.	26
6.	Village Form No.8-A.	27
7.	Copy of Aadhar Cards of claimants No.1 to 3.	28 to 30
8.	Copy of Driving licence of the Opponent No.1	31
9.	Copy of R.C.Book of vehicle No. GJ-11-TT-8696.	32

The Opponent has produced the following oral evidence :-

Oral Evidence

Particulars	Ex.
Affidavit in form of Examination of chief by Opponent No.1 Govindbhai alias Govindkumar	37

Punjabhai Karmata.	
Copy of Judgment in CC No. 369/2021.	40

6. Ld. Advocates of the respective parties have argued the matter as per thier case. Heard the arguments.
7. In view of above pleadings, the following issues have arisen at **Ex.18** for the determination of this claim petition.
 1. Whether it is proved that the deceased sustained injuries and succumbed to death on account of rashness or 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 ?

My findings on the above issues are as under:-

1. In affirmative.
2. As per final order.
3. As per final order.

~: REASONS :~

Issue No.1 - NEGLIGENCE

8. Negligence is implicit in an accident. The liability to pay compensation arises only on proof of negligence and the claimants have to show that the driver of the offending vehicle was negligent or at fault. However, the claimants are not required to prove factum of negligence as it is required to be proved in a criminal case.

Clamant No. 1 has filed her affidavit in examination of Chief vide Exh.-21, wherein repeated the same as on 21/01/2021, at 09:00 A.M., when the deceased Mr. Harsukhbhai Karshanbhai Borichangar (Joshi) was proceeding on Motorcycle No. GJ-11-MM-5307 on correct side of the road [Tarsingada-Ambalgadh road], the opponent No.1 came with his Bolero Jeep No. GJ-11-T-8696 very speedily and rashly and dashed the deceased. The Motorcyclist Mr. Harsukhbhai Karshanbhai Borichangar (Joshi) succumbed to death on the spot because of grievous injuries sustained by the collision.

Ld. Advocate Mr. Y.S. Karud cross-examined the witness. Except for her admission that she does not know whether the deceased held a driving license, nothing contrary came on record.

The opponent filed affidavit in the form of an examination-in-chief vide Exhibit-37, reiterating the facts stated in the written statement. During cross-examination by the learned advocate for the claimant, the opponent admitted that complaint and charge-sheet have been filed against him.

This is case of head on collision between Motorcycle and Bolero Jeep. The F.I.R. describes rash and negligent driving of the Opponent No.1 and after Police Investigation Charge-sheet was also filed against the Opponent No.1. Upon perusal of Panchnama, considering the directions around the accident Spot, it transpires that the Bolero Jeep No.GJ-11-TT-8696, crossed the median of road and hit the Motorcycle with asymmetrical force. Damaged to both the vehicles, as described in Panchnama also suggest that because the Jeep crossed the Median of road, its driver side was also affected and the force was such that it had gone deep up to fuel tank of Motorcycle. Thus this is clear case of negligence on the part of driver of Bolero Jeep NO. GJ-11-TT-8696, that is the Opponent Govindbhai alias Govind kumar Punjabhai Karmta, I find that Opponent No. 1 is solely responsible. Therefore, I decide **Issue No. 1 in the affirmative.**

9. Issues No.2 & 3 QUANTUM

It is well settled that in case of motor accident claim, an endeavor is made to put the claimant/s in the pre-

accidental position. The damage to be awarded are to be adequate in terms of money so that the injured/claimants is/are put in the same position had they not suffered the loss on account of wrong of the opponent, though no amount of compensation can restore the loss of limb or experience of pain or loss of life.

In fatal accident claim, the measures of damage are as under:-(i) the pecuniary loss of suffered [loss of past]

(ii) the pecuniary loss which is likely to be suffered by the dependents as a result of such death [loss in future] [dependency loss]

According to the claimants they were dependents of the deceased and by this claim they have sought compensation under head of loss of dependency and under other conventional heads.

[A] To arrive at amount of loss of dependency Tribunal has to take following four steps:-

- (i) Gross income - In context, if + addition to income for future prospects [if applicable in case] is to be determined on basis of proof or presumption.
- (ii) Having regard to number of dependents of the deceased, deduction is to be made in regard to the amount which deceased would have contributed to

the dependent family.

- (iii) Having regard to the age of the deceased and period of active career the appropriate multiplier is to be selected.

Aspect of income of deceased :

In oral evidence, the claimant No. 1, reiterated all facts as to income and source of income of the deceased. To prove such income of deceased claimant have produced the village form No.8-A pertaining to name of deceased along with claimants, which shows that the deceased having agricultural land and also earn the income from land and it can also presumed that the deceased having income from animal husbandry, so in view of this Tribunal income of the deceased at the time of accident is considered around **20,000/- per month** for calculation of the compensation.

Age of the deceased at the time of accident:

The claimants have averred that the deceased was 57 years old at the time of the accident. Claimants have produced the school leaving certificate of the deceased vide Exh.-26, which shows that the DOB of the deceased as 15-06-1963, whereas the date of accident happened on 21/01/2021, so the the deceased was aged around 57 years, 07 months and 06 days. Accepting this the age of the deceased is

considered to be within the age group of 56 to 60 years. Consequently, as per the settled position of law, a multiplier of '9' is applicable for the calculation of compensation.

Future Prospects:

In view of the principles laid down by the Hon'ble Supreme Court in **Special Leave Petition (Civil) No.25590/2014 : National Insurance Company Ltd. v. Pranay Sethi and Ors., decided on 31-10-2017**, as the deceased was aged 57 years, so 10% is to be added to his actual income, for the assessment of future prospects. Therefore, I add 10% amount to the referred assessed income. Then the amount would work out to Rs.22,000/- [Rs.20,000 /- + Rs.2,000/-]. So, **Rs.22,000/-** would be the the monthly income and it come to Rs. **2,64,000/-** (22,000*12) annual income of the deceased which is considered for the purpose of calculating dependency loss.

Deductions on personal expenses:

Further, so far as the deductions of personal expenses of the deceased is concerned, considering the judgment reported in **2009 ACJ 1298 (SC) : Sarla Verma v/s. Delhi Transport Corporation**, 1/3 amount should be deducted from his yearly income as personal expenses of the deceased as the dependent family members are 3. Hence, after deducting 1/3 amount out of Rs.2,64,000/- towards personal expenses of the deceased, the amount would work

out to **Rs.1,76,000/-** [Rs.2,64,000/- – Rs.88,000/-].

Multiplier:

Considering the Judgment of *Sarla Verma (Supra)* the claimants are entitled to get multiplier of '09' for the age of deceased.

Amount for loss of dependency:

Thus, the amount for loss of dependency would come to **Rs.15,84,000/-** [Rs.1,76,000/- x 09]. It appears from the records that the present claimants have lost their family member and thereby also lost love, affection and future expectation of life. If the deceased would have not died in the accident, the deceased will be much helpful to the family.

It can also be believed that on account of death of deceased, the claimants must have spent reasonable amount for the funeral expenses of the deceased. In view of the principles laid down in *Pranay Sethi (Supra)* it is settled that, “Reasonable figures on conventional heads, namely, loss of consortium, loss of estate and funeral expenses are to be considered. So in this case Rs.77,000/- [Rs.44,000/-, Rs.16,500/- and Rs.16,500/-] and thus, the claimants are entitled to get **Rs.77,000/- under the conventional head.**

It is pertinent to note that the claimant has claimed total compensation for **Rs.40,00,000/-** but as per above calculation, **Rs.16,61,000/-** is just and reasonable compensation.

Towards loss of dependency	Rs. 15,84,000/-
Towards loss of estate	Rs. 16,500/-
Towards funeral ceremony	Rs. 16,500/-
Towards consortium	Rs. 44,000/-
Total Compensation	16,61,000/-

LIABILITY

- 10.** So far as liability is concerned, accident occurred due to sole negligency of Opponent No.1, i.e driver of Bolero Jeep bearing No. GJ-11-TT-8696.

Driving License :

Perusing the driving license produced by the claimants vide Exh.-31, shows that Govindbhai P Karmata having license No. GJ1120130020845CDOI, it is reveals that Opponent No. 1 was holding a valid and effective driving license on the date of the accident.

Ownership of the Vehicle :

As far as the ownership of the offending Bolero Jeep is concerned, the claimants have produced the copy of R.C.Book vide Exh.-32, wherein the owner of the Vehicle No. GJ-11-TT-8696 is shown as Mr. Govindkumar Punjabhai Karmata, i.e Opponent. Therefore, Opponent is

liable to pay the compensation to the claimants.

Since, Opponent is found solely negligent for the occurrence of the accident, Opponents is solely liable to pay the aforementioned compensation to the claimants.

INTEREST :~

11. So far as the interest is concerned, as per the judgment of Honourable Supreme Court in the case of **Yeramma & others V/s. G. Krishnamurthy and another**, reported in **2014 ACJ - 2161**, the interest @ 8% should be awarded. Hence, I decide issue No.2 & 3 of this claim petition accordingly and pass the following final order :

~: O R D E R :~

1. The Claim Petition is partly allowed.
2. The applicants of **MACP No.04/2021** does recover an amount of **Rs.16,61,000/- (Rupees Sixteen Lakhs Sixty One Thousand only)**, from opponent solely, as compensation with interest @ 8% per annum from the date of filing the petition till realization of awarded amount along with proportionate costs.
3. The opponent is solely liable to pay compensation to the applicants as decided and he is directed to deposit the amount in the office of this Tribunal within 30 days and as per the direction of the **Hon'ble Supreme Court of India**,

in Writ Petition(Civil) No. 534/2020, the opponent is directed to deposit the awarded amount through R.T.G.S. or N.E.F.T. as per details given below :-.

Name of Beneficiary : Motor Accident Claim Tribunal (Auxiliary), Keshod.

Account Number: 40742882423

IFSC Code : SBIN0060052

4. N.F.L. amount, if any paid, be deducted from the awarded amount.
5. On realization of the above said amount, deficit court fees, if any, shall be recovered.
6. On depositing the said amount, it shall be distributed equally amongst each applicants and then-after, **30% amount** be paid to the claimants in cash by A/c. Payee Cheque after due verification and remaining **70% amount** be invested in any Nationalized Bank as per their choice and in their names in separate Fixed Deposit Receipt for the period of **FIVE YEARS**. The claimants shall be entitled to receive the periodical interest thereon.
7. It is further ordered that the claimants will not be entitled to withdraw the said F.D.R. before its maturity date or to have loan thereon without prior permission of this Tribunal. Further, the concerned Bank will be under obligation to release the said F.D.R. on the date of its maturity without requiring release order from the Tribunal.

8. The opponent is also directed to scrupulously follow the direction given by the Hon'ble High Court in the case of **Smt. Hansaguri Prafulchandra Ladhani & Ors. vs. The Oriental Insurance Co. Ltd.** reported in **2007(2) G.L.H. Page 291** with regard to computation of interest by spreading the amount over the relevant year from the date of claim petition till the date of deposit and deduction of Tax at Source on the amount of interest.
9. The opponent to bear his own costs and the opponent shall pay proportionate costs to the applicants.
10. Award be drawn accordingly.

Signed and pronounced in open Court today, this **15th day of July, 2026.**

Date : 15/07/2026.

Place : Keshod.

#PK

[Harsh Balkrishna Trivedi]

M.A.C.T. [Aux.] and
Additional District Judge,
Junagadh at Keshod.
[UIC No. GJ-00576]