

Ex. ____



Received on	21/01/2021
Registered on	21/01/2021
Decided on	05/05/2026
Duration	Y. M. D.

**BEFORE THE
4TH MOTOR ACCIDENT CLAIMS TRIBUNAL (Aux.)
DISTRICT COURT KHEDA AT NADIAD.**

M.A.C.P. No.91/2021

PETITIONER:~**Legal Heir of****Deceased Vikasbhai Dineshbhai Rathod****Age: 20 Yrs.,**

- (1) **Deleted vide order below Exh.22**
Dineshbhai Ramabhai Rathod
Age: 48 Yrs., Occup.: Labour work,
- (2) Kaliben Dineshbhai Rathod
Age: 45 Yrs., Occup.: Household,
Residence: Dashamatavalu Faliyu,
Mu.: Jeswapura, Po.: Hariyala,
Ta.Dist.: Kheda.

V E R S U S**OPPONENTS:-**

- (1) **(Owner of Motorcycle No.GJ.01.PF.3983)**
Mahendrasinh Varsubha Gohil
Residence: Thakor Vas, B/h. Panchayat House,
Pirana Road, Mu.: Piplag, Ta.Dist.: Ahmedabad.
- (2) **(Insurance Co. of Motorcycle No.GJ.01.PF.3983)**
ICICI Lombard General Insurance Company Ltd.
Address: 3rd Floor, 304, Beverli Arcade,
Opp. Woodland Restaurant, College Road,
Mu.Po.Ta.: Nadiad, Dist.: Kheda.

<u>APPEARANCE:-</u>	
For the Petitioners	Ld.Advocate Mr. V.B. Rathod
For the Opponent No.1	Ld.Advocate Mr. M.K. Shenva
For the Opponent No.2	Ld.Advocate Mr. A.C. Shah

Petition u/S. 166 of the M.V.Act.
Claim Valued at Rs.40,00,000/-.

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

(1) Present petition is preferred by the petitioner **under Section-166** of Motor Vehicle Act, for getting compensation of **Rs.40,00,000/-**.

(2) The case of the petitioner in brief is that :-

(2.1) That on 10/09/2016, at about 3.00, at midnight, deceased Vikasbhai was returning back on the Motorcycle bearing registration No.GJ.01.PF.3983 as a pillion rider from Vatva and when they were passing through the place of incident i.e. on Kheda- Bareja Road, Nr. Sarasa Patiya, at that point of time, driver of the Motorcycle No.GJ.01.PF.3983 was driving his Motorcycle in excessive speed and due to rash and negligent driving it endangering to the human life and he lost his control over the steering and dashed with the divider, as a result serious accident occurred, in which deceased sustained serious injuries and he died on the spot.

(3) The notices were duly served upon the opponents. Opponent No.1 appeared through his Ld.Advocate but has not filed any reply.

Opponent No.2 appeared through its Ld.Advocate and filed its written statement vide Exh.26 wherein, the claim of the petitioners is denied in *toto*. The facts with regard to age, income and fact of the accident are denied. Opponent No.2 has stated that the driver of the said Motorcycle was not holding valid and effective driving licence at the time of accident hence, owner has breached the terms and conditions of the said policy. Further, it is submitted that this is case of driver

implantation at the time of accident deceased was driving the Motorcycle but as he was not holding driving licence, Virasangbhai Mahotbhai Zala is implanted as driver, hence, Insurance Company is not liable to pay the compensation.

- (4) The evidence produced by the petitioners are as follows.

Oral Evidence:-

Exh.24: Examination in chief by Affidavit of Kaliben Dineshbhai Rathod, Petitioner No.2

Documentary Evidence

Sr. No.	Description of Documents	Exh. Mark
1	Copy of Complaint (Dt.10/09/2016)	32
2	Copy of Panchnama of the place of incident (Dt.10/09/2016)	33
3	Copy of Inquest Panchnama of the deceased Vikasbhai (Dt.10/09/2016)	34
4	Copy of P.M. Note of the deceased Vikasbhai (Dt.10/09/2016)	39
5	Copy of Charge-sheet (Dt.10/09/2016)	31
6	Copy of R.C. Book of the Motorcycle No.GJ.01.PF.3983	40
7	Copy of Insurance Policy of the Motorcycle No.GJ.01.PF.3983	Mark-3/6

The Ld.Advocate for the petitioner has closed his evidence by producing closing purshis vide Exh.35.

Opponent No.2 has produced the affidavit of Virsingbhai Mahotbhai Zala vide Exh.51

The Ld.Advocate for the Opponent No.2 has closed his evidence by producing closing purshis vide Exh.52.

- (5) Ld. Advocate for the applicant has produced his written arguments vide Exh.53, wherein he argued regarding facts

regarding accident, age and income should be considered as per his claim petition and stated that the deceased is the third party for the Insurance Company hence, Insurance Company is liable to pay compensation to the claimants. In support of his arguments he has produced Judgment reported in *2012 ACJ 1370 in case of New India Assurance Co. Ltd. V/s. Pazhaniammal and others*

- (6) Ld. Advocate for the opponent No.2 has produced his written arguments vide Exh.57, wherein he mainly argued regarding this is case of driver implantation at the time of accident deceased was driving the Motorcycle but as he was not holding driving licence, Virasangbhai Mahotbhai Zala is implanted as driver, hence, Insurance Company is not liable to pay the compensation and in support of his say he has also examined Virsangbhai Mahotbhai Zala before this tribunal. He has also produced Judgments in support of his arguments: (1) *MAC App. No.378/2017 in case of The Oriental Insurance Co. Ltd. V/s. Champabati Ray and Ors.* (2) *Civil Appeal No.7824 of 2011 (Arising out of SLP (C) No.6618 of 2011) in case of D.Sampath V/s. United India Insurance Co. Ltd. & Anr.* (3) *Civil Appeal No(s) 2551 of 2020 (arising out of SLP (Civil) No(s). 1738 of 2018) in case of Sri Anthony @ Anthonay Swamy V/s. The Managing Director, K.S.R.T.C.*
- (7) My Ld. Predecessor has framed following issues vide Exh.17:-

Issues

(1)	Was there an accident arising out of the use of motor vehicle?
(2)	Did that accident result in death?
(3)	What is the amount of compensation payable under the IIInd Schedule of the Motor Vehicle Act,

	1988?
(4)	What Award and relief?

- (8) My findings on the above issues are as under as per below reasons:-

Findings

- (1) In the affirmative.
 - (2) In the affirmative.
 - (3) As per final order.
 - (4) As per final order.
- (9) Heard. Read the petition, written statement, arguments, citations & evidence produced. On the basis of the evidence produced, arguments advanced and citations the reasons for which are as under.

REASONS

ISSUE NOS.1&2

"I have also gone through the relevant authorities and written argument submitted by the concerned advocate. This Tribunal has great respect for the observations made by the Higher Forum and ratio laid down in the Judgments. This Tribunal is fully agree with the ratio laid down in the cited authorities. But, the reliance on the decision without looking into the factual background of the case before it, is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyze a decision and isolate from it the ratio decidendi. What is the essence in a decision, is its ratio and not every observation found therein, nor what logically flows from the various observations made in the Judgment."

(10) Negligence:-

While deciding a claim petition, the quantum of proof of negligence is preponderance of probability as has been held in the judgment viz. **(i) Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819 and (ii) Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.**

It is the case of the present petitioners that on 10/09/2016, at about 3.00, at midnight, deceased Vikasbhai was returning back on the Motorcycle bearing registration No.GJ.01.PF.3983 as a pillion rider from Vatva and when they were passing through the place of incident i.e. on Kheda- Bareja Road, Nr. Sarasa Patiya, at that point of time, driver of the Motorcycle No.GJ.01.PF.3983 was driving his Motorcycle in excessive speed and due to rash and negligent driving it endangering to the human life and he lost his control over the steering and dashed with the divider, as a result serious accident occurred, in which deceased sustained serious injuries and he died on the spot.

(10.1) From the deposition of the applicant No.2 at Exh.24, Complaint produced vide Exh.32, Panchnama of the place of accident, Exh.33 and the Post-mortem Report produced vide Exh.39, it is proved that, present petition arises from the death occasioned in accident arising from use of Motorcycle.

(10.2) The Ld.Advocate for the petitioner has examined the petitioner No.2 at Exh.24, wherein she has stated whole facts as mentioned in her claim petition. She was cross-examined by the Ld.Advocate for the Opponent

No.2, wherein she has stated that she was not present at the time of accident and she has not seen the accident.

(10.3) The Complaint produced vide Exh.32, which is lodged by the Shaileshkumar Natubhai Rathod, wherein he has stated that on the date of incident he received telephonic message from Amitbhai and he has stated that Vikasbhai Dineshbhai Rathod met with an accident near Sarasa Patiya Highway Road hence, he and his uncle went to the place of incident and saw that Vikasbhai Dineshbhai Rathod died and his deadbody was lying on the place of incident and one Motorcycle was lying on the place of incident and he has stated that Virsingbhai Mahotbhai Zala was admitted in the accident and he stated that Virsingbhai Mahotbhai Zala was driving the said Motorcycle and due to his negligence the said accident occurred, in which Vikasbhai sustained serious injuries and he died.

(10.4) Looking to the Panchnama of place of incidence, Exh.33, wherein the place of incident has been mentioned, and one Motorcycle was lying on the place of incident and its number plate was incomplete, which is damaged from the front side and left side. It is also mentioned that after inspecting carefully its numbers have been removed. It is also mentioned that spare parts of the Vehicle were also lying on the place of incident.

Charge-sheet has been filed against the Virsangbhai Mahotbhai Zala, which is produced at Exh.31.

(10.5) Ld.Advocate for the Opponent no.2 has produced affidavit of the Virsangbhai Mahotbhai Zala at Exh.51, wherein he has stated that on the date of incident deceased

Vikasbhai told him to went in Vatva Fair and deceased Vikasbhai was driving the Motorcycle No.GJ.01.PF.3983 and he was travelling as a pillion rider and when they were passing through the place of incident the deceased Vikasbhai lost his control over the steering the dashed with the divider and accident occurred and he sustained injures and they were taken to the Civil Hospital in 108 Ambulance and they were admitted and during treatment Vikasbhai was died. He has stated that Police Officer has falsely done procedure against him as he was driver of the said Motorcycle and lodged offence against him.

He was cross-examined by the Ld.Advocate for the applicant wherein he has stated that "એ વાત ખરી છે કે ખેડા ટાઉન પોલીસ સ્ટેશનમાં કોઈ વખતે મારે જવાનું થયેલ નથી. એ વાત ખરી છે કે મારી સામે કોઈ અકસ્માતનો કેસ પોલીસમાં દાખલ થયેલ નથી. એ વાત ખરી નથી કે ખેડા ટાઉન પોલીસ સ્ટેશનમાં તા.૦૮.૧૧.૨૦૧૬ નારોજ ગયેલો. એ વાત ની મને ખબર નથી કે ખેડા ટાઉન પોલીસ સ્ટેશનમાં મને ખોલાવવામાં આવ્યો હોય કે સ્લીપો આપવામાં આવી હોય અને ત્યાં મારો ફોટો પાડવામાં આવ્યો હોય. એ વાત ખરી નથી કે મારી સામે કોઈ એક્સીડેન્ટ કેસ દાખલ થયેલ હોય અને તે સંબંધે કોર્ટ મને નોટીસ આપેલ હોય. એ વાત ખરી નથી કે નુતન નાગરીક સહકારી બેંક અમદાવાદની મે મુલાકાત લીધેલ. એ વાત ખરી છે કે મે મામલતદાર કચેરી માતરની મુલાકાત લીધેલ. એ વાત મને હાલ યાદ નથી કે મામલતદાર કચેરીમાં જે સોગંદનામું કરેલું તે કોના કહેવાથી કરેલું. એ વાત ખરી નથી કે સોગંદનામામાં શુ વિગત લખેલી તે હું જાણતો નથી. એ વાત ખરી છે કે આ સોગંદનામું કરતા પહેલા વિમા કંપનીના કોઈ અધિકારી કે ઇન્વેસ્ટીગેટર ને મળેલો. એ વાત ખરી છે કે સદરહુ અધિકારી કે ઇન્વેસ્ટીગેટરનું નામ ઘણો સમય થયેલ હોય હાલ યાદ નથી. એ વાત ખરી છે કે સદરહુ સોગંદનામું કોણે તૈયાર કરી આપેલ તે હાલ યાદ નથી. એ વાત ખરી નથી કે મે નડીઆદ ખાતે આવેલ આઈ.સી.આઈ.સી.આઈ. લોખંડાડ જનરલ

ઇન્સ્યોરન્સ કંપનીની શાખાની મુલાકાત લીધેલી. એ વાત ખરી છે કે ખેડા ટાઉન પોલીસ સ્ટેશનમાં મારી સામે ફ.ગુ. રજી. નં. ૧૧૬/૧૬ થી અકસ્માત સંબંધેનો ગુનો દાખલ થયેલો. એ વાત ખરી છે કે હુ વકિલ શ્રી. જે.એલ.પરમારનાઓને ઓળખુ છુ અને તેઓને મે મારી સામે અકસ્માત અંગેનો પોલીસ કેસ દાખલ થયેલો તેમાં વકીલ તરિકે રોકેલ હતા, જે કેસ આશરે બે વર્ષ ચાલેલો. એ વાત ખરી છે કે હુ વિકાશભાઈ દિનેશભાઈ રાઠોડને ઓળખુ છું. એ વાત ખરી છે કે તા.૧૦.૦૯.૨૦૧૬ નારોજ હુ તથા દિનેશભાઈ બાઈક ઉપર જતા હતા ત્યારે અકસ્માતમાં ઇજાઓ થયેલ અને તેમાં મને તથા વિકાશભાઈને ઇજાઓ થયેલ. એ વાત ખરી છે કે વિકાશભાઈનુ સારવાર દરમ્યાન મરણ થયેલ. એ વાત ખરી છે કે મને જે ઇજાઓ થયેલી તેના માટે પ્રથમ ખેડા સીવીલમાં અને ત્યારબાદ વધુ સારવાર માટે અમદાવાદ સીવીલ હોસ્પિટલ લઇ ગયેલા. એ વાત ખરી છે કે અકસ્માત સ્થળેથી મારા પિતાજી મને સારવાર માટે હોસ્પિટલ લઇ ગયેલા. એ વાત મને યાદ નથી કે વિમા કંપનીના ઇન્વેસ્ટીગેટર દ્વારા મારો કોઇ જવાબ લેવામાં આવેલ કે કેમ. એ વાત હાલ મને યાદ નથી કે પોલીસે મારી સામે કોઇ ખોટો કેસ કર્યા બાબતની અરજી ડી.એસ.પી. સાહેબ કે કોર્ટને કરેલ હોય તેવુ બનેલ કે કેમ.

(10.6) The Ld.Advocate for the Opponent No.2 has produced Police statement of Virsangbhai Mahotbhai Zala at Mark-42/1, wherein he has stated that on the day of incident he and deceased were travelling on the Motorcycle and all of sudden he lost his control over the steering and dashed with the divider and at that time he was driving the said Motorcycle and he sustained injuries and Vikas was travelling as a pillion rider and he fell down and sustained injuries on chest and shoulder.

(10.7) Now, looking to the affidavit, wherein Virsangbhai has stated that he sustained injuries and they were taken to the Civil Hospital in 108 Ambulance and during treatment deceased Vikasbhai died and in his cross-examination he

stated that એ વાત ખરી છે કે અકસ્માત સ્થળેથી મારા પિતાજી મને સારવાર માટે હોસ્પિટલ લઇ ગયેલા. Further, looking to the complaint at Exh.32, the complainant has stated that when they reached the place of incident Vikasbhai was died on the spot even in the claim petition also mentioned that Vikasbhai died on the spot and his dead body was lying on the place of incident hence, there were contradictory in the statement of the Virsangbhai and complainant. Further, Virsangbhai has stated firstly stated that એ વાત ખરી છે કે મારી સામે કોઈ અકસ્માતનો કેસ પોલીસમાં દાખલ થયેલ નથી. thereafter he himself has stated that એ વાત ખરી છે કે ખેડા ટાઉન પોલીસ સ્ટેશનમાં મારી સામે ફ.ગુ. રજી. નં. ૧૧૬/૧૬ થી અકસ્માત સંબંધેનો ગુનો દાખલ થયેલો. એ વાત ખરી છે કે હુ વકિલ શ્રી. જે.એલ.પરમારનાઓને ઓળખુ છુ અને તેઓને મે મારી સામે અકસ્માત અંગેનો પોલીસ કેસ દાખલ થયેલો તેમાં વકીલ તરિકે રોકેલ હતા, જે કેસ આશરે બે વર્ષ ચાલેલો. Hence, looking to the statement of the Virsangbhai it is proved that there are contradiction in his own statements hence, it is proved from his cross-examination that he was involved in the accident and some material facts he suppressed from this Hon'ble Tribunal.

Hence looking to the evidence on record and all the police papers like complaint, charge-sheet as well as police statement of Virsingbhai himself, it clearly reveals that the he was driving the said Motorcycle No. GJ.01.PF.3983 at the time of accident and due to his negligence the said accident occurred in which deceased Vikasbhai sustained injuries and he died on the spot. Hence, my answer to the Issue Nos.1 & 2 are in the Affirmative.

Issue Nos. 3&4

(11) Quantum of Compensation:-

Deceased Vikasbhai has suffered injuries in the said accident and he died, for no negligence of him, and hence as legal heir of the deceased is entitled to receive compensation.

(11.1) Income:-

So, far as the point of Quantum is concerned the petitioner has stated that deceased was running Pan-Bidi shop and getting monthly income of Rs.20,000/-. Applicant has not produced any documentary evidence to prove the income of the deceased. The petitioner has stated in her cross-examination that he has not produced any evidence to prove the income of his deceased son. Hence, in absence of cogent evidence and looking to the year of accident the income of the deceased is assessed as Rs.7,700/- per month.

(11.2) Age:-

Petitioner has stated age of the deceased Vikasbhai as 20 years. The Ld.Advocate for the claimant has not produced any evidence to prove the age of the deceased Vikasbhai hence, looking to the P.M. Note at Exh.39, wherein approximate age of the deceased has been mentioned as 20 years at the time of accident hence, considering the age of the deceased and as per reported judgment of **National Insurance Co. Ltd. V/s. Pranay Sethi & Ors. SLP (Civil) No.25590/2014** the multiplier of '18' would be applicable.

(11.3) Future Prospective Income:-

As the deceased Vikasbhai was aged about 20 years, hence, 40% is required to be added towards the

prospective income, and hence the monthly amount comes to **Rs.7,700+3,080=10,780/-**.

(11.4) Dependency Loss :

It is not in dispute that the deceased was unmarried and present petition filed by 1 member of family, thus considering the facts of the present case, 1/2 amount is required to be deducted towards personal expenditure of the deceased. 1/2 amount of Rs.10,780/-, comes to Rs.5,390/- and net amount which falls in the share of Petitioner, comes to Rs.5,390/- p.m. In view of the above referred discussion, claimants are entitled for following amount under the head of **Future Loss of Income :**
(Rs.5,390/- x 12 months x 18 multiplier) = Rs.11,64,240/-.

(11.5) Loss of Estate & Funeral Expenses:-

Looking to the facts and circumstances of the case, and principles laid down by Hon'ble Supreme Court in the case of (**National Insurance Co.Ltd., V/s.Pranay Sethi & Ors., SLP (Civil) No.25590/2014 dtd.31/10/2017, Para-61**), the claimant is also entitled to a sum of **Rs.18,000/- (With 10% + 10% increase i.e. 15,000 + 1,500 + 1,500)** towards loss of estate and **Rs.18,000/- (With 10% + 10% increase i.e. 15,000 + 1,500 + 1,500)** towards funeral expenses.

(12) In view of the above referred discussions, petitioner is entitled for the following amount as compensation :-

Future loss of dependency.	Rs. 11,64,240/-
Loss of estate	Rs. 18,000/-
Funeral	Rs. 18,000/-
Total Amount of Compensation	Rs. 12,00,240/-

(13) Liability:~ So far as the liability is concerned, as discussed above, the accident was occurred due to sole negligence on

the part of the driver of the Motorcycle No.GJ.01.PF.3983 and in view of Insurance Policy Mark-3/6, at the time of accident the Motorcycle No.GJ.01.PF.3983 was insured with opponent No.2, which was in force at the time of accident further, also looking to the policy the Insurance Company has taken premium of Rs.100/- for owner/driver hence, also Opponent No.2 Insurance Company can not be escaped from its liability, hence opponent no.3- Insurance Company of said vehicle is also liable to indemnify the owner. Therefore, Opponent Nos. 1 & 2 are jointly and severally liable to pay compensation to the claimant.

(14) INTEREST :-

In view of prevalent rate of interest, awarded amount shall carry interest at the rate of 7.5% per annum from the date of the application till realization, hence Issue nos.3 & 4 are answered as per final order and following final order is passed:-

:- FINAL ORDER :-

- [1]** The claim petition is hereby partly allowed.
- [2]** The applicants are entitled to recover **Rs.12,00,240/-**
(Rupees Twelve Lakhs Two Hundred and Forty only) from the present opponents, who are jointly and severally liable to pay awarded amount to the Petitioner with interest at the rate of 7.5% per annum, from the date of the claim petition till realization.
- [3]** The opponents are hereby directed to deposit awarded amount within 30 days from the order.
- [4]** It is hereby further ordered to the opponents that, as per the guidelines of Hon'ble Supreme Court, the amount of award

- [5] Deficit court fees stamp, if any, be recovered from the awarded amount and interim amount, if paid, be adjusted.
- [6] On depositing the above amount of award by the opponents in this Tribunal, deficit Court Fee Stamp, if any on the awarded amount, be deducted first and thereafter out of the remaining amount payable to the petitioner and 70% amount be deposited in the name of applicant in any nationalized bank of the choice of applicant for the period of Five Years and remaining 30% amount be paid to the applicant.
- [7] The petitioner will not be entitled to, get any loan, advance or withdrawal or, create any encumbrances on the aforesaid fixed deposit receipt without prior permission of this Tribunal. However periodical interest accrued from time to time on the fixed deposits be paid to petitioner.
- [8] Award be drawn accordingly.

Signed and pronounced in the open Court on 05th
Day of May, 2026.

Date:05/05/2026 (MUKESHKUMAR JAYANTILAL BRAHMBHATT)
Place: Nadiad 4th M.A.C.T. (Aux.)
Kheda at Nadiad
Code No.GJ00754