

Ex.: 62



Received on	09/03/2021
Registered on	09/03/2021
Decided on	24/03/2026
Duration	Y.05 M.00 D.15

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

M.A.C.P. NO.389/2021

PETITIONER/APPLICANT :~

Heir of deceased

Mukeshbhai @ Mintubhai Melabhai Bajaniya

Radhaben Mukeshbhai Bajaniya (Wife)

Age: 23 Yrs., Occup.: Household,

Residence: Mu.: Sankhalpura, Tekaravas, Becharaji,

Ta.Dist.: Mahesana

At Present Residing at: Kamla Chowkdi,

Ta.: Nadiad, Dist.: Kheda.

Versus

OPPONENTS :~

- (1) **(Driver cum Owner of Chhota Hathi No.G.J.02.ZZ.4060)**
Shamajibhai Dhulabhai Bajaniya
Age: Adult, Occup.: Driving/Business,
Residence: Naviyari, Ta.: Dasada, Dist.: Surendranagar.
- (2) **(Insurance Co. of Chhota Hathi No.G.J.02.ZZ.4060)**
Chaula Mandalam General Insurance Co. Ltd.
Address: G/5, Ground Floor, Metro City Complex,
Pij Road, Nadiad.

=====
CLAIM PETITION U/S.166 OF THE MOTOR VEHICLE ACT,
For Rs.25,00,000/-.
=====

M.A.C.P NO.390 OF 2021

PETITIONERS/APPLICANTS

Heirs of deceased

Ramilaben Manojbhai Bajaniya

- (1) Manojbhai Nathabhai Bajaniya (Husband)
Age: 40 Yrs., Occupation: Labour Work,
- (2) Minor Hinaben Manojbhai Bajaniya (Son)
Age: 15 Yrs., Occupation: Study,

- (3) Minor Nikitaben Manojbhai Bajaniya (Daughter)
Age: 09 Yrs., Occupation: Study,
- (4) Minor Ranjitbhai Manojbhai Bajaniya (Son)
Age: 07 Yrs., Occupation: Study,

Applicant No.1 is the Guardian of Applicant Nos. 2 to 4

All Residence: Mu.: Sankhalpura, Tekravas,
Becharaji, Ta.Dist.: Mahesana.

At present Residence: Kamla Chowkadi,
Ta.: Nadiad, Dist.: Kheda.

Versus

OPPONENTS :~

- (1) **(Driver cum Owner of Chhota Hathi No.G.J.02.ZZ.4060)**
Shamajibhai Dhulabhai Bajaniya
Age: Adult, Occup.: Driving/Business,
Residence: Naviyari, Ta.: Dasada, Dist.: Surendranagar.
- (2) **(Insurance Co. of Chhota Hathi No.G.J.02.ZZ.4060)**
Chaula Mandalam General Insurance Co. Ltd.
Address: G/5, Ground Floor, Metro City Complex,
Pij Road, Nadiad.

=====
CLAIM PETITION U/S.166 OF THE MOTOR VEHICLE ACT,
For Rs.20,00,000/-.
=====

Received on	08/06/2021
Registered on	08/06/2021
Decided on	24/03/2026
Duration	Y. M. D.

M.A.C.P NO.484 OF 2021

PETITIONERS/APPLICANTS

Heirs of deceased

Santokben Dhulabhai Bajaniya

- (1) Dhudabhai Kanabhai Bajaniya (Husband)
Age: 60 Yrs., Occupation: At present Nil,
- (2) Becharbhai Dhulabhai Bajaniya (Son)
Age: 40 Yrs., Occupation: Labour Work,
All Residence: Mu.: Naviyani, Ta.Dist.: Surendranagar
At present Residence: Kamla Chowkadi,
Ta.: Nadiad, Dist.: Kheda.

Versus

OPPONENTS :~

- (1) **(Driver cum Owner of Chhota Hathi No.G.J.02.ZZ.4060)**
Shamajibhai Dhulabhai Bajaniya
Age: Adult, Occup.: Driving/Business,
Residence: Naviyari, Ta.: Dasada, Dist.: Surendranagar.
- (2) **(Insurance Co. of Chhota Hathi No.G.J.02.ZZ.4060)**
Chaula Mandalam General Insurance Co. Ltd.
Address: G/5, Ground Floor, Metro City Complex,
Pij Road, Nadiad.

=====
CLAIM PETITION U/S.166 OF THE MOTOR VEHICLE ACT,
For Rs.15,00,000/-.
=====

M.A.C.P NO.485 OF 2021

PETITIONERS/APPLICANTS

Heirs of deceased

Khodabhai Malabhai Bajaniya

- (1) Jaluben Khodabhai Bajaniya (Wife)
Age: 36 Yrs., Occupation: Household,
- (2) Vishnubhai Khodabhai Bajaniya (Son)
Age: 19 Yrs., Occupation: Study,
- (3) Vijaybhai Khodabhai Bajaniya (Son)
Age: 18 Yrs., Occupation: Study,
- (4) Minor Ajaybhai Khodabhai Bajaniya (Son)
Age: 13 Yrs., Occupation: Study,
- (5) Daniben Maljibhai Bajaniya (Mother)
Age: 70 Yrs., Occup.: Household,

Applicant No.1 is the Guardian of Applicant No.4

All Residence: Becharaji, Ta.Dist.: Mahesana.

At present Residence: Kamla Chowkadi,

Ta.: Nadiad, Dist.: Kheda.

Versus

OPPONENTS :~

- (1) **(Driver cum Owner of Chhota Hathi No.G.J.02.ZZ.4060)**
Shamajibhai Dhulabhai Bajaniya
Age: Adult, Occup.: Driving/Business,
Residence: Naviyari, Ta.: Dasada, Dist.: Surendranagar.

- (2) **(Insurance Co. of Chhota Hathi No.G.J.02.ZZ.4060)**
Chaula Mandalam General Insurance Co. Ltd.
Address: G/5, Ground Floor, Metro City Complex,
Pij Road, Nadiad.

=====
CLAIM PETITION U/S.166 OF THE MOTOR VEHICLE ACT,
For Rs.20,00,000/-.
=====

Appearance:-

For the Petitioner	:	Ld.Advocate Mr. K.B. Patel
For the Opponent No.1	:	Ld.Advocate Mr. G.C. Patel
For the Opponent No.2	:	Ld.Advocate Mr. A.V. Gautam

-:: COMMON JUDGMENT ::-

- (1) These Four claim petitions arise from the same accident, hence, vide order dated 16/06/2025 passed below Exh-12, they are consolidated and common evidence is recorded in Motor Accident Claim Petition No. 389/2021.
- (2) Petitioners have filed these petitions **under Section-166 of the Motor Vehicles Act**, for the compensation on account of death sustained by them in the vehicular accident.
- (3) The factual matrix leading to the present proceeding are as under :-
(3.1) That on 05/09/2020, at about 10.00, in the morning, the deceased Mukeshbhai @ Mintubhai, deceased Ramilaben, deceased Santokben and deceased Khodabhai were returning back to their home from Sultanpur, Ta.: Dhrangdhra, Dist.:Surendranagar travelling by the Chhota Hathi bearing registration No. G.J.02.ZZ.4060. The driver of the said Chhota Hathi was driving his vehicle in excessive speed, in rash and negligent manner from very beginning and when they were passing through the place of incident i.e. between Valevad

to Naviyari Village, on Dasada to Bahucharaji State Highway Road, on 2 K.M. Road, at that point of time all of sudden one Roze came on the road, hence, driver of the said Tempo lost his control over the Tempo and Tempo dashed with Gum Arabic Tree, as a result serious accident occurred, in which all the deceased persons sustained serious injuries and died due to serious injuries. Hence, the present petitions.

(4) The notices were duly served upon the opponents.

Opponent Nos. 1 appeared through his Ld.Advocate and has filed written statement vide Exh.20 in M.A.C.P.No.389/2021 and Ld.Advocate for the opponent No.1 has produced purshis in all other claim petition that consider the reply produced in M.A.C.P.No.389/21 vide Exh.20 for the the claim petitions, wherein he denied all the allegations made in the present petitions and also stated that there was no any liability on the part of the owner as driver of the said vehicle was carrying goods in the said vehicle hence, all the liability are on the head of the opponent No.2 i.e. Insurance Company.

Opponent No.2 appeared through its Ld.Advocate and have filed their written statement vide Exh.9 in M.A.C.P.No.389/2021, vide Exh.10 in M.A.C.P.No. 390/2021, vide Exh.11 in M.A.C.P.No.484/2021 & M.A.C.P.No.485/2021, Wherein, the claim of the petitioners are denied in *toto*. The facts with regard to age, income and fact of the accident are denied. He has further submitted that driver of Chhota Hathi No.G.J.02.ZZ.4060 was driving the vehicle without holding any valid effective

and legal driving license to driver the said vehicle hence, owner has breached the terms and conditions of the Insurance Policy hence, Insurance Company is not liable to pay compensation to the claimants.

- (5) My Ld. Predecessor has framed following issues vide **Exh.10** in M.A.C.P.No.389/2021, vide **Exh.9** in M.A.C.P.No.390/2021, vide **Exh.9** in M.A.C.P.No.484/2021 and vide **Exh.9** in M.A.C.P.No.485/2021 are as follows :-

-: ISSUES :-

- (1) Whether it is proved that deceased sustained injuries and died 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 claimant is entitled to, by way of compensation and from which of the opponents?
 - (3) What order and award?
- (6) My findings of the above issues of M.A.C.P. No.389/21, M.A.C.P.No.390/21, M.A.C.P.No.484/21 & M.A.C.P.No. 485/21 are as under:-
- (1) In the Affirmative.
 - (2) As per final order.
 - (3) As per final order.
- (7) The evidence produced by the petitioners in MACP Nos.389/21, 390/21, 484/21 & 485/21 are as follows :

Oral Evidence

Exh.16 : An Affidavit of Chief Examination of the petitioner, Radhaben Mukeshbhai Bajaniya

Exh.37 : An Affidavit of Chief Examination of the petitioner No.1, Manojbhai Nathabhai Bajaniya

Exh.27: An Affidavit of Chief Examination of the petitioner No.1, Dhulabhai Kanabhai Bajaniya

Exh.32: An Affidavit of Chief Examination of the
Petitioner No.1, Jaluben Khodabhai Bajaniya

Documentary Evidences

<u>No.</u>	<u>Documents</u>	<u>Exhibit/ Mark</u>
1	Copy of Complaint (Dt.06/09/2020)	52
2	Copy of Panchnama of the place of incident (Dt.05/09/2020)	53
3	Copy of R.C. Book of Chhota Hathi No.GJ.02.ZZ.4060	55
<u>In M.A.C.P.No.389/2021</u>		
4	Copy of P.M. Note of the deceased Mukeshbhai @ Mintubhai (Dt.09/09/20)	54
<u>In M.A.C.P. No.390/2021</u>		
5	Copy of P.M. Note of the deceased Ramilaben (Dt.05/09/2020)	10
<u>In M.A.C.P.No.484/2021</u>		
6	Copy of P.M. Note of deceased Santokben (Dt.05/09/2020)	12
<u>In M.A.C.P.No.485/2021</u>		
7	Copy of P.M. Note of deceased Khodabhai (Dt.05/09/2020)	12

The Ld.Advocate for the petitioner has closed his
evidence by filing closing purshis vide Exh.56.

(8) The evidence produced by the opponent Nos.1 & 2 are as
follows.

Oral Evidence:-

Exh.40:- Affidavit of Opponent No.1, Shamjibhai
Dhulabhai Bajaniya.

Exh.44:- Deposition of Dharmdipsinh Mahendrasinh
Jadeja, Addl. Motor Vehicle Inspector, R.T.O.
Office, Surendranagar.

Exh.49:- An Affidavit of Chief Examination of Mr.
Chetan Bhikhabhai Solanki, Asst. Legal
Officer of Chola MS General Ins. Co. Ltd

Documentary Evidence

Sr. No.	Description of Documents	Exh. Mark
1	A copy of driving licence of the driver of the Chhota Hathi i.e. opponent No.1	41
2	A copy of Extract of Driving licence of the driver of the Chhota Hathi	45
3	A copy of Insurance Policy of Chhota Hathi No.G.J.02.ZZ.4060	50

Ld.Advocate for the Opponent No.1 has closed his evidence by producing closing purshis vide Exh.42

Ld.Advocate for the Opponent No.2 has closed his evidence by producing closing purshis vide Exh.57

(9) Ld.Advocate for the applicants has produced written arguments vide Exh.58, for all claim petitions, wherein he has mainly argued that charge-sheet has been filed against the driver of the Chhota Hathi and in complaint there is nowhere mentioned that the deceased were travelling as fare paying passengers in the said Chhota Hathi and wife of the deceased has stated that his husband was returning back from completing Bhajan and he was travelling with goods of Bhajan and grains of Birds and to care the goods all the deceased claimants were travelling in the said vehicle and they have not paid any fair for persons but they have only paid fair for the said goods. In support of his arguments he relied on the various Judgments of Hon'ble Supreme Court of India as well as Hon'ble High Court of Gujarat.

(1) **2021 ACJ 2558**
National Insurance Co. Ltd.
V/s.
Chamundeswari and others

- (2) **First Appeal Nos.3206 to 3209 of 2010**
Oriental Insurance Company Ltd.
V/s.
Munnabhai Jerambhai Koli (Minor) & Ors.,
- (3) **R/First Appeal Nos. 26 to 33 of 2007**
National Insurance Co. Ltd.
V/s.
Heirs of Decd.
Hansrajbhai @ Hasmukhbhai Makanbhai & 2 other(s)
- (4) **2022 (0) AIJEL-GJ 245852**
Reliance General Insurance Company Ltd.
V/s.
Bhagvanbhai Kamabhai Ulva
- (5) **2023 ACJ 1319**
New India Assurance Co. Ltd.
V/s.
Siraz Fatehsinh Mansoori and others.
- (6) **First Appeal No.1410 of 2009**
Rajeshbhai Laxmanbhai Koyani
V/s.
Vinodrai Shamjibhai Kakadia & 1
- (7) **2025 (0) AIJEL-SC-75595**
Sunita
V/s.
United India Insurance Co. Ltd.
- (8) **R/First Appeal No.1915 of 2006**
United India Insurance Co. Ltd.
V/s.
Fatmaben Ismailbhai & Ors.
- (9) **R/First Appeal Nos.1351 to 1353/ 2006**
The New India Assurance Co. Ltd.
V/s.
Nagjibhai Karmanbhai Bharwad & Ors.
- (10) **R/First Appeal No.2291 of 2010**
New India Assurance Co. Ltd.
V/s.
Vikrambhai Devjibhai Vasava & Ors.

(9.1) The Ld.Advocate for the Opponent No.1 has produced his written arguments vide Exh.59, wherein he has argued that at the time of accident deceased were travelling with goods in the said vehicle and they all were taking care of their goods of Bhajan and grains and no one has decided fair of the passengers hence, they were not travelling as unauthorised passengers in the said vehicle

but they were travelling as owner or representative of the Goods as per Section 147(1)(b)(i) of the M.V. Act. In support of his arguments he has produced Judgment of Hon'ble Supreme Court of India reported in **2021 ACJ 2558 in case of National Insurance Co. Ltd. V/s. Chamundeswari and others.**

(9.2) The Ld.Advocate for the Opponent No.2 has produced his written arguments vide Exh.60, wherein he has mainly argued that the said vehicle is registered as a goods carrying vehicle in RTO and the deceased were travelling as a passengers in the said vehicle not as a labour of insured. He has stated that in the compliant itself the complainant has stated that all the deceased claimants were travelling in the Chhota Hathi and going to attend funeral ceremony hence, it clearly reveals the fact that the deceased were not travelling in the capacity of labour, hence, cannot be held liable to pay any compensation to the claimants. Further, he has argued that the driver of the said vehicle was not holding valid and effective driving licence to drive the said vehicle, hence, owner has breached the terms and conditions of the policy therefore, Insurance company is not liable to pay compensation to the claimants.

(10) Heard. Read the petitions, written statements, evidences, written arguments and citations produced by the Ld.Advocate for the parties. On the basis of the evidence produced and arguments advanced the reasons for which are as under:-

~: REASONS :~

Issue No.1 :~

(11) 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 Petitioners that on 05/09/2020, at about 10.00, in the morning, the deceased Mukeshbhai @ Mintubhai, deceased Ramilaben, deceased Santokben and deceased Khodabhai were returning back to their home from Sultanpur, Ta.: Dhrangdhra, Dist.:Surenranagar travelling by the Chhota Hathi bearing registration No. G.J.02.ZZ.4060. The driver of the said Chhota Hathi was driving his vehicle in excessive speed, in rash and negligent manner from very beginning and when they were passing through the place of incident i.e. between Valevad to Naviyari Village, on Dasada to Bahucharaji State Highway Road, on 2 K.M. Road, at that point of time all of sudden one Roze came on the road, hence, driver of the said Tempo lost his control over the Tempo and Tempo dashed with Gum Arabic Tree, as a result serious accident occurred, in which all the deceased persons sustained serious injuries and died due to serious injuries.

(12) Petitioner No.1, Radhaben Mukeshbhai Bajaniya has filed her examination in chief vide Exh.16 in M.A.C.P. No. 389/2021, Petitioner No.1, Manojbhai Nathabhai Bajaniya has filed her examination in chief vide Exh.37 in M.A.C.P. No.390/2021, Petitioner No.1, Dhulabhai Kanabhai Bajaniya has filed his examination in chief vide Exh.27

and Petitioner No.1, Jaluben Khodabhai Bajaniya has filed her examination in chief vide Exh.32 and stated whole facts on oath as mentioned in their claim petitions.

Petitioner No.1 of M.A.C.P.No.389/2021 is cross-examined on behalf of opponent No.1, wherein she has stated that it is true that her husband went for the Bhajan and he was travelling with goods of Bhajan Mandali and grains of birds. She was also cross-examined by the opponent No.2, wherein she has stated that at the time of accident she was at her home and she has not seen the accident. Petitioner No.1 of M.A.C.P.No.390/21 is cross-examined by the Opponent No.1, wherein she has stated that he and his wife went for Bhajan and they were travelling with goods of Bhajan Mandali and grains of birds. He was cross-examined by the Opponent No.2, wherein he has stated that it is not true that driver of the Chhota Hathi was driving his vehicle at slow speed. Petitioner No.1 of M.A.C.P.No.484/21 is cross-examined by the Opponent No.1, wherein he has stated that it is true that his wife went for the Bhajan and she was travelling with goods of Bhajan Mandali and grains of birds. She was also cross-examined by the opponent No.2, wherein she has stated that at the time of accident he was at his home and he has not seen the accident. Petitioner No.1 of M.A.C.P.No.485/21 is cross-examined by the opponent No.1 wherein she has stated that it is true that her husband went for the Bhajan and he was travelling with goods of Bhajan Mandali and grains of birds. She was also cross-examined by the opponent No.2, wherein she has stated that

at the time of accident she was at her home and she has not seen the accident.

(12.1) On perusal of complaint vide Exh.52, lodged by Nanjibhai Vashrambhai Bajaniya on 06/09/2020, wherein it is stated that at the time of accident they all were travelling in the said Chhota Hathi and returning back after completing funeral ceremony of his relative and when they were passing through the place of incident all of sudden one Rose came on road and driver of the Chhota Hathi lost his control over his vehicle and dashed with the Gum Arabic Tree and serious accident occurred in which all the persons sustained serious injuries and Mukeshbhai, Ramilaben, Santokben and Khodabhai died in the above said accident.

(12.2) As per the Panchnama of place of offence vide Exh.53, wherein place of incident has been mentioned and front glass of the said Chhota Hathi Tempo was broken and driver side of the Tempa was damaged and blood marks also obtained from the left hand side of the front tyre and spare parts of the said Chhota Hathi were lying in the Cabin of the Chhota Hathi. Tree Bark of Gum Arabic Tree was also came out and spare parts of the vehicle was also lying with the said tree. Nothing has been recovered by the police authority from the place of incident.

The Opponent No.1 has been examined by the Ld.Advocate for the opponent No.1 vide Exh.40, wherein he has stated that it is true that all of sudden one Roze came and he lost his control over his steering and accident occurred.

(12.3) Thus from the oral evidence as well as Police papers i.e. complaint and panchnama, it transpires that all of sudden Roze came on the road and due to excessive speed the driver lost his control over his vehicle and his vehicle dashed with the said Gum Arabic Tree and serious accident occurred and all the deceased claimants sustained serious injuries and they died. Hence, due to sole negligence on the part of the driver of the Chhota Hathi the said accident occurred therefore, I answer Issue No.1 in the affirmative.

Issue No.2 & 3 :-

IN M.A.C.P. No.389/2021

(13) **Quantum of Compensation:-**

The petitioner has claimed compensation of Rs.25,00,000/- on account of death of her husband in the vehicular accident.

(13.1)**Income:~**

So, far as the point of Quantum is concerned the petitioner has stated that deceased Mukeshbhai was doing Masonry Work and thereby he was getting monthly income of Rs.15,000/-. In the cross-examination of the Petitioner no.1 has stated that she has not produced any documentary evidence to prove the income of the deceased. Hence, in absence of documentary evidence, considering the nature of work and year of incidence i.e. 2021 the income of the deceased can be assessed as **Rs.6,500/-** per month.

(13.2) **Age & Multiplier:-**

Petitioner have stated age of the deceased Mukeshbhai as 24 years in the claim petition. In P.M. Note

at Exh.54, the age of the deceased has been mentioned as 24 years. However, petitioner has not produced any documentary evidence to prove the age of the deceased. Hence, in absence of documentary evidence, it is presumed that age of deceased at time of incidence to be between 21 to 25 years and as per the reported judgment of *National Insurance Co. Ltd. V/s. Pranay Sethi & Ors. SLP (Civil) No.25590/2014* the multiplier of '18' would be applicable.

(13.3) Future Prospective Income:-

As per recent judgment given by Hon'ble Supreme Court of India in case of *National Insurance Co. Ltd. V/s. Pranay Sethi & Ors. SLP (Civil) No.25590/2014* has held that future/prospective income of the deceased is required to be taken into consideration and where the deceased Mukeshbhai was not working permanently and he was 21 to 25 years old at the time of accident, hence, deceased is entitled to get 40% amount i.e. Rs.2,600/- as future/prospective income. Therefore, the monthly income of the deceased Kanchanbhai comes to **Rs.9,100/-** (6,500/- + 2600/- = 9,100/-)

(13.4) Dependency Loss :

It is not in dispute that the deceased was married and one member of family has filed present claim petition. Thus considering the facts of the present case, 1/3rd amount is required to be deducted as personal expenditure of the deceased. 1/3rd amount of Rs.9,100/-, comes to Rs.3,033/- and net amount which falls in the share of claimants, comes to Rs.6,067/- p.m. In view of the above

referred discussion, claimants are entitled for following amount under the head of **Future Loss of Income** :
(Rs.6,067/- x 12 months x 18 multiplier) = Rs.13,10,472/-.

(13.5) 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.

(13.6) Consortium:-

As per reported Judgment of (National Insurance Co.Ltd., V/s.Pranay Sethi & Ors., SLP (Civil) No.25590/2014 dtd.31/10/2017, Para-61 Wife of deceased i.e. petitioner No.1 is granted consortium under the respective head to the tune of Rs. 40,000/- (with 10% + 10% increase i.e. Rs. 40,000 + 4,000/- + 4,000) i.e. **Rs. 48,000/-.**

(14) In view of the above referred discussions, claimants are entitled for the following amount as compensation :-

Future loss of dependency.	Rs. 13,10,472/-
Loss of estate	Rs. 18,000/-
Funeral Expenses	Rs. 18,000/-
Consortium	Rs. 48,000/-
Total Compensation.	Rs.13,94,472/-

IN M.A.C.P. No.390/2021

(15) Quantum of Compensation:-

The petitioner has claimed compensation of Rs.20,00,000/- on account of death of his wife in the vehicular accident.

(15.1) Income:~

So, far as the point of Quantum is concerned the petitioner has stated that deceased Ramilaben was doing Masonry Work and thereby she was getting monthly income of Rs.15,000/-. In the cross-examination of the Petitioner no.1 has stated that he has not produced any documentary evidence to prove the income of the deceased. Hence, in absence of documentary evidence, considering the nature of work and year of incidence i.e. 2021 the income of the deceased can be assessed as **Rs.6,500/-** per month.

(15.2) Age & Multiplier:-

Petitioners have stated age of the deceased Ramilaben as 35 years in the claim petition. In P.M. Note at Exh.10, the age of the deceased has been mentioned as 35 years. However, petitioner has not produced any documentary evidence to prove the age of the deceased. Hence, in absence of documentary evidence, it is presumed that age of deceased at time of incidence was between 31 to 35 years and as per the reported judgment of ***National Insurance Co. Ltd. V/s. Pranay Sethi & Ors. SLP (Civil) No.25590/2014*** the multiplier of '16' would be applicable.

(15.3) Future Prospective Income:-

As per recent judgment given by Hon'ble Supreme Court of India in case of ***National Insurance Co. Ltd. V/s. Pranay Sethi & Ors. SLP (Civil) No.25590/2014*** has held that

future/prospective income of the deceased is required to be taken into consideration and where the deceased Ramilaben was not working permanently and she was 31 to 35 years old at the time of accident, hence, deceased is entitled to get 40% amount i.e. Rs.2,600/- as future/prospective income. Therefore, the monthly income of the deceased Kanchanbhai comes to **Rs.9,100/-** (6,500/- + 2600/- = 9,100/-)

(15.4) Dependency Loss :

It is not in dispute that the deceased was married and four member of family have filed present claim petition. Thus considering the facts of the present case, 1/4th amount is required to be deducted as personal expenditure of the deceased. 1/4th amount of Rs.9,100/-, comes to Rs.2,275/- and net amount which falls in the share of claimants, comes to Rs.6,825/- p.m. In view of the above referred discussion, claimants are entitled for following amount under the head of **Future Loss of Income : (Rs.6,825/- x 12 months x 16 multiplier) = Rs.13,10,400/-**.

(15.5) 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.

(15.6) Consortium:-

As per reported Judgment of **(National Insurance Co.Ltd., V/s.Pranay Sethi & Ors., SLP (Civil) No.25590/2014 dtd.31/10/2017, Para-61** Wife of deceased i.e. petitioner No.1 is granted consortium under the respective head to the tune of Rs. 40,000/- (with 10% + 10% increase i.e. Rs. 40,000 + 4,000/- + 4,000) i.e. **Rs. 48,000/-**. In view of the judgment of Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram, reported at (2018) ACJ 2782 and the judgment of Hon'ble Gujarat High Court in FA No.2589/2021, Damor Sumitraben Jayeshbhai v. Durgashankar Kaniram Shankar**, minor applicants Nos. 2 to 4 are entitled for **Rs.1,44,000/-** towards parental consortium.

- (16) In view of the above referred discussions, claimants are entitled for the following amount as compensation :-

Future loss of dependency.	Rs. 13,10,400/-
Loss of estate	Rs. 18,000/-
Funeral Expenses	Rs. 18,000/-
Consortium	Rs. 1,92,000/-
Total Compensation.	Rs.15,38,400/-

IN M.A.C.P. No.484/2021**(17) Quantum of Compensation:-**

The petitioner has claimed compensation of Rs.15,00,000/- on account of death of his wife in the vehicular accident.

(17.1)Income:~

So, far as the point of Quantum is concerned the petitioner has stated that deceased Santokben was doing Masonry Work and and thereby she was getting monthly income of Rs.15,000/-. In the cross-examination of the Petitioner no.1 has stated that he has not produced any

documentary evidence to prove the income of the deceased. Hence, in absence of documentary evidence, considering the nature of work and year of incidence i.e. 2021 the income of the deceased can be assessed as **Rs.6,500/-** per month.

(17.2) Age & Multiplier:-

Petitioners have stated age of the deceased Santokben as 52 years in the claim petition. In P.M. Note at Exh.12, the age of the deceased has been mentioned as 70 years. However, petitioner has not produced any documentary evidence to prove the age of the deceased. Hence, in absence of documentary evidence, it is presumed that age of deceased at time of incidence was between 65 to 70 years and as per the reported judgment of ***National Insurance Co. Ltd. V/s. Pranay Sethi & Ors. SLP (Civil) No.25590/2014*** the multiplier of '5' would be applicable.

(17.3) Dependency Loss :

It is not in dispute that the deceased was married and two members of family have filed present claim petition. Thus considering the facts of the present case, 1/3rd amount is required to be deducted as personal expenditure of the deceased. 1/3rd amount of Rs.6,500/-, comes to Rs.2,167/- and net amount which falls in the share of claimants, comes to Rs.4,333/- p.m. In view of the above referred discussion, claimants are entitled for following amount under the head of **Future Loss of Income : (Rs.4,333/- x 12 months x 5 multiplier) = Rs.2,59,980/-.**

(17.4) 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.

(17.5) Consortium:-

As per reported Judgment of (National Insurance Co.Ltd., V/s.Pranay Sethi & Ors., SLP (Civil) No.25590/2014 dtd.31/10/2017, Para-61 Wife of deceased i.e. petitioner No.1 is granted consortium under the respective head to the tune of Rs. 40,000/- (with 10% + 10% increase i.e. Rs. 40,000 + 4,000/- + 4,000) i.e. **Rs. 48,000/-**.

(18) In view of the above referred discussions, claimants are entitled for the following amount as compensation :-

Future loss of dependency.	Rs. 2,59,980/-
Loss of estate	Rs. 18,000/-
Funeral Expenses	Rs. 18,000/-
Consortium	Rs. 48,000/-
Total Compensation.	Rs. 3,43,980/-

IN M.A.C.P. No.485/2021**(19) Quantum of Compensation:-**

The petitioner has claimed compensation of Rs.20,00,000/- on account of death of his wife in the vehicular accident.

(19.1)Income:~

So, far as the point of Quantum is concerned the petitioner has stated that deceased Khodabhai was doing Masonry Work and thereby he was getting monthly income of Rs.15,000/-. In the cross-examination of the Petitioner no.1 has stated that she has not produced any documentary evidence to prove the income of the deceased. Hence, in absence of documentary evidence, considering the nature of work and year of incidence i.e. 2021 the income of the deceased can be assessed as **Rs.6,500/-** per month.

(19.2) Age & Multiplier:-

Petitioners have stated age of the deceased Khodabhai as 39 years in the claim petition. In P.M. Note at Exh.12, the age of the deceased has been mentioned as 50 years. However, petitioner has not produced any documentary evidence to prove the age of the deceased. Hence, in absence of documentary evidence, it is presumed that age of deceased at time of incidence was between 46 to 50 years and as per the reported judgment of ***National Insurance Co. Ltd. V/s. Pranay Sethi & Ors. SLP (Civil) No.25590/2014*** the multiplier of '13' would be applicable.

(19.3) Future Prospective Income:-

As per recent judgment given by Hon'ble Supreme Court of India in case of ***National Insurance Co. Ltd. V/s. Pranay Sethi & Ors. SLP (Civil) No.25590/2014*** has held that future/prospective income of the deceased is required to be taken into consideration and where the deceased Rambilaben was not working permanently and he was 46 to 50 years old at the time of accident, hence, deceased is

entitled to get 25% amount i.e. Rs.1,625/- as future/prospective income. Therefore, the monthly income of the deceased Kanchanbhai comes to **Rs.8,125/-** (6,500/- + 1,625/- = 8,125/-)

(19.4) Dependency Loss :

It is not in dispute that the deceased was married and five members of family have filed present claim petition. Thus considering the facts of the present case, 1/4th amount is required to be deducted as personal expenditure of the deceased. 1/4th amount of Rs.8,125/-, comes to Rs.2,031/- and net amount which falls in the share of claimants, comes to Rs.6,094/- p.m. In view of the above referred discussion, claimants are entitled for following amount under the head of **Future Loss of Income : (Rs.6,094/- x 12 months x 13 multiplier) = Rs.9,50,664/-**.

(19.5) 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.

(19.6) Consortium:-

As per reported Judgment of (National Insurance Co.Ltd., V/s.Pranay Sethi & Ors., SLP (Civil) No.25590/2014 dtd.31/10/2017, Para-61 Wife of deceased i.e. petitioner No.1 is granted consortium under the respective head to the tune

of Rs. 40,000/- (with 10% + 10% increase i.e. Rs. 40,000 + 4,000/- + 4,000) i.e. **Rs. 48,000/-**. In view of the judgment of Hon'ble Supreme Court in **Magma General Insurance Co. Ltd. v. Nanu Ram @ Chuhru Ram**, reported at (2018) ACJ 2782 and the judgment of Hon'ble Gujarat High Court in FA No.2589/2021, **Damor Sumitraben Jayeshbhai v. Durgashankar Kaniram Shankar**, minor applicant No. 4 is entitled for **Rs.48,000/-** towards parental consortium.

- (20) In view of the above referred discussions, claimants are entitled for the following amount as compensation :-

Future loss of dependency.	Rs. 9,50,664/-
Loss of estate	Rs. 18,000/-
Funeral Expenses	Rs. 18,000/-
Consortium	Rs. 96,000/-
Total Compensation.	Rs.10,82,664/-

- (21) **Liability:-**

Ld.advocate for the opponent No.2 has argued that Chhota Hathi vehicle is Transport vehicle and all the deceased claimants were travelling in the Transport vehicle as fair paying passengers hence, owner has breached the terms and conditions of the policy. Moreover, driver of the Chhota Hathi was not holding valid driving licence to drive Chhota Hathi hence, Insurance Company is not liable to pay compensation to the claimants.

- (21.1) The Ld.Advocate for the opponent No.1 has examined opponent No.1 vide Exh.40, driver cum owner of the said Chhota Hathi, wherein he has stated before this Tribunal that all the deceased claimants were travelling with their goods and he has taken fair for the goods of Bhajan Mandali and Grains of Birds and for taking care of

their goods and they were travelling as owner or representatives of the said goods. He was cross-examined by the claimants, wherein he has stated that all the owners of the goods of Bhajan Mandali and Grains were travelling for taking care of their goods and it is true that he has decided only fair for the goods not for the passengers. He was also cross-examined by the Ld.Advocate for the Opponent No.2, wherein he has stated that it is true that the said vehicle has been considered as Transport vehicle and he was holding licence for the four wheeler. He has also stated that it is true that in his police statement he has not stated anything about goods and it is not true that they were going only for condolence meeting and not for Bhajan Mandali. He has also stated that they were travelling with the goods.

(21.2) In support of his arguments he has examined Asst. Motor Vehicle Inspector, R.T.O. Surendranagar, Dharmdipsinh Mahendrasinh Jadeja vide Exh.44, wherein he has stated that the as per abstract of driving licence at Exh.45 driver of the said Chhota Hathi was not holding driving licence as MGWG, LMV and 3W.NT. He was cross examined by the Ld.Advocate for the applicant, wherein he has stated that vehicle's weight is under 7500 k.g. that type of vehicle are put under the category of LMV.

(21.3) Moreover, Ld.Advocate for the opponent No.2 has examined Asst. Legal Manager of Chola MS. General Insurance Company Ltd. vide Exh.49, wherein he has stated that the owner has taken policy for the

transportation of goods only not for the transportation of passengers hence, owner of the said vehicle has breached the terms and conditions of the said policy. In support of his deposition he has produced Insurance Policy with terms and conditions vide Exh.50. The claimant has cross-examined the deposition witness of the opponent no.2, wherein he has stated that it is true that there was avoidance clause in the said policy and it is not true that any person travelling with goods that person's risk has been covered but for that separate premium has to be paid. He has also stated that it is true that no any evidence has been produced that deceased has hired the said vehicle.

(21.4) On the other hand Ld.Advocate for the claimants has stated that as the claimants were third party for the Insurance Company and they were travelling with goods of Bhajan Mandali and grains for birds and Insurance Company has taken third party premium and said vehicle was fall under the category of LMV and its weight is 7500 k.g. and driver of the Chhota Hathi was holding license for LMV hence, Insurance Company is liable to pay compensation to the claimants.

(21.5) I have heard the Ld.Advocate for the respective parties and also gone through the depositions of the deposition witnesses and citations produced by the Ld.Advocate for the parties. Firstly, looking to the Insurance Policy at Exh.50, wherein Insurance Company has taken premium for third party at Rs.15,746/-, Rs.50/- for coolie, owner cum driver, Rs.750/- and Rs. 50/- for Paid driver hence, all above persons' risk has been covered

under the said Policy. Further, looking to the driving licence at Exh.41, the driver of the Chhota Hathi is holding driving licence as MGWG, LMV and 3W.NT and R.T.O. Officer, Surendranagar has clearly admitted in his cross examination that vehicle's weight is under 7500 k.g. that type of vehicle are put under the category of LMV. Hence, arguments advanced regarding driving licence is not at all acceptable. Deceased Claimants were travelling with their goods in the said Chhota Hathi Tempa and taking care of their goods hence, they were travelling as representatives of the said goods and Insurance Company has taken third party premium and basically, all the deceased were also considered as third party for the Insurance Company and third party risk is very well covered under the said policy hence, Insurance Company can not escape from the liability to pay compensation to the claimants.

(21.6) Therefore, as discussed above due to sole negligence on the part of the driver of the Chhota Hathi the said accident occurred and looking to the Insurance Policy at Exh.50, the policy was in force at the time of accident hence, all the opponents are jointly and severally liable to pay compensation to the claimants for the claim petitions.

(22) 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.2 & 3 are answered as per final order and following final order is passed.

-: FINAL ORDER :-

M.A.C.P.No.389/2021

- [1] The present claim petition is hereby partly allowed.
- [2] The present petitioner is entitled to recover **Rs.13,94,472/-** (Rupees Thirteen Lakhs Ninety Four Thousand Four Hundred and Seventy Two Only) from the opponents No.1 & 2 jointly and severally with simple interest @ 7.5% p.a. from the date of the present claim petition till its realization.
- [3] The opponents No.1 & 2 are hereby directed to deposit the above amount of the award in the office of this Tribunal within one month from the date of this order, after deducting interim amount, if paid by them, if any.
- [4] It is hereby further ordered to the opponents that, as per the guidelines of Hon'ble Supreme Court, the amount of award be deposited in the District Bank Account No.02900200000658, IFSC: BARB0NADIAD (the fifth letter is Zero), Bank of Baroda, Main Branch, Nadiad, through R.T.G.S. or NEFT, and the same shall be informed to the M.A.C.T. Branch, District Court, Kheda at Nadiad, through E.Mail at mact-court khe@gujarat.gov.in as per the purshis.
- [5] 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 petitioner in any nationalized bank of the choice of petitioner for the period of Five Years and remaining 30% amount be paid to the petitioner.

M.A.C.P.NO.390/2021

- [6] The present claim petition is hereby partly allowed.
- [7] The present petitioners are entitled to recover **Rs.15,38,400/-** (Rupees Fifteen Lakhs Thirty Eight Thousand Four Hundred Only) from the opponents No.1 & 2 jointly and severally with simple interest @ 7.5% p.a. from the date of the present claim petition till its realization.
- [8] The opponents No.1 & 2 are hereby directed to deposit the above amount of the award in the office of this Tribunal within one month from the date of this order, after deducting interim amount, if paid by them, if any.
- [9] It is hereby further ordered to the opponents that, as per the guidelines of Hon'ble Supreme Court, the amount of award be deposited in the District Bank Account No.02900200000658, IFSC: BARB0NADIAD (the fifth letter is Zero), Bank of Baroda, Main Branch, Nadiad, through R.T.G.S. or NEFT, and the same shall be informed to the M.A.C.T. Branch, District Court, Kheda at Nadiad, through E.Mail at mact-court khe@gujarat.gov.in as per the purshis.
- [10] 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.
- [11] Thereafter, from the amount of compensation 40% amount be given to the claimant No.1 and remaining 60% amount be equally distributed between the minor claimants No.2 to 4 and thereafter 70% amount be deposited in the name of petitioner No.1 in any nationalized bank of the choice of

petitioners for the period of Five Years and remaining 30% amount be paid to the petitioner No.1.

Entire amount of the compensation on the part of the Minor claimants No.2 to 4 be deposited in any Nationalised Bank of the choice of petitioner for the period of five years or till the minors attain the age of majority.

M.A.C.P.NO.484/2021

- [12] The present claim petition is hereby partly allowed.
- [13] The present petitioner is entitled to recover **Rs.3,43,980/-** (Rupees Three Lakhs Forty Three Thousand Nine Hundred and Eighty Only) from the opponents No.1 & 2 jointly and severally with simple interest @ 7.5% p.a. from the date of the present claim petition till its realization.
- [14] The opponents No.1 & 2 are hereby directed to deposit the above amount of the award in the office of this Tribunal within one month from the date of this order, after deducting interim amount, if paid by them, if any.
- [15] It is hereby further ordered to the opponents that, as per the guidelines of Hon'ble Supreme Court, the amount of award be deposited in the District Bank Account No.02900200000658, IFSC: BARB0NADIAD (the fifth letter is Zero), Bank of Baroda, Main Branch, Nadiad, through R.T.G.S. or NEFT, and the same shall be informed to the M.A.C.T. Branch, District Court, Kheda at Nadiad, through E.Mail at mact-court khe@gujarat.gov.in as per the purshis.
- [16] 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.

[17] Thereafter, from the awarded amount 60% amount be given to the petitioner No.1 and remaining 40% amount be given to petitioner No.2 and thereafter 70% amount be deposited in the name of petitioners in any nationalized bank of the choice of petitioners for the period of Five Years and remaining 30% amount be paid to the petitioners.

M.A.C.P.NO.485/2021

[18] The present claim petition is hereby partly allowed.

[19] The present petitioners are entitled to recover **Rs.10,82,664/-** (Rupees Ten Lakhs Eighty Two Thousand Six Hundred and Sixty Four Only) from the opponents No.1 & 2 jointly and severally with simple interest @ 7.5% p.a. from the date of the present claim petition till its realization.

[20] The opponents No.1 & 2 are hereby directed to deposit the above amount of the award in the office of this Tribunal within one month from the date of this order, after deducting interim amount, if paid by them, if any.

[21] It is hereby further ordered to the opponents that, as per the guidelines of Hon'ble Supreme Court, the amount of award be deposited in the District Bank Account No.02900200000658, IFSC: BARB0NADIAD (the fifth letter is Zero), Bank of Baroda, Main Branch, Nadiad, through R.T.G.S. or NEFT, and the same shall be informed to the M.A.C.T. Branch, District Court, Kheda at Nadiad, through E.Mail at mact-court khe@gujarat.gov.in as per the purshis.

[22] 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.

[23] Thereafter, from the amount of compensation 30% amount be given to the claimant No.1, 50% amount be equally distributed between the claimants No.2 to 4 and remaining 20% amount be given to the claimant No.5, thereafter 70% amount be deposited in the name of petitioner Nos.1 to 3 & 5 in any nationalized bank of the choice of petitioners for the period of Five Years and remaining 30% amount be paid to the petitioner Nos.1 to 3 & 5.

Entire amount of the compensation of the Minor claimant No.4 be deposited in any Nationalised Bank of the choice of petitioner for the period of five years or till the minor attains the age of majority.

[24] The petitioners will not be entitled to get any loan, advance or withdrawal or can create any in 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.

[25] Copy of this judgment and award be placed in R & P., of MACP No.389/2021, 390/2021, 484/2021 and 485/2021.

[26] Award be drawn accordingly.

Signed and pronounced in the open Court on 24th Day of March, 2026

Date:24/03/2026

Place: Nadiad

(MUKESHKUMAR JAYANTILAL BRAHMBHATT)

4th M.A.C.T. (Aux.)

Kheda at Nadiad

Code No.GJ00754