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**Before the
MOTOR ACCIDENT CLAIMS TRIBUNAL (Aux)
District Court Kheda at Nadiad.**

M.A.C.P. No.419 of 2019

APPLICANTS :~

**Heirs & Legal representatives of the deceased
Ramsinh Gamansinh Chavda**

- 1 Lalitaben Ramsing Chavda
Age : 38, Occupation : Household,
- 2 Parulben Ramsing Chavda,
Adult, Occupation : Study,
- 3 Gamansang Mavsang Chavda
Age : 59, Occupation : Agriculture,
- 4 Madhuben Gamansang Chavda
Age : 56, Occupation : Household,

Residence : Hariyala,
Ta. Kheda, District : Kheda.

V E R S U S

OPPONENTS :

Parties of Renault Duster being No.GJ.05.JE.7801

- 1 Rameshbhai Mohanbhai Bhandari
Adult, Occupation : Business,
Residence : 176- Gajanand Park Society-1,
Puna Simada Road, Punagam, Surat.
- 2 Nileshbhai Vinubhai Raiyani
Adult, Occupation : Business,
Residence : 184, Maruti Nandan Society,

3 Nandsa Road, Kamrej, Surat.
Royal Sundaram General Insurance Co. Ltd.,
At 3rd floor, Abhishek Colony,
Gotry Road, Vadodara.

4 **Parties of Rickshaw being No.GJ.07.AT.0297**
Mahendrasinh Pravinsinh Dayma
Adult, Occupation : Business,
Residence : Damri – Vavdi,
Ta. & District : Kheda.

APPEARANCE:	
For the Petitioners.	Ld. Advocate Shri D.K. Darji
For the opponent Nos.1-2	Ld. Advocate Shri P.M. Rohit
For the opponent No.3	Ld. Advocate Shri R.G. Dave
For the opponent No.4	Ex-party

Petition u/S. 166 of the M.V.Act.
Claim Valued at Rs.15,00,000/-.

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

1 Present claimants have claimed under Section-166 of Motor Vehicle Act, for getting compensation of Rs.15,00,000/-.

2 The present claim petition emanates from the following facts :-

2.1 That on 08.02.2019, deceased - Ramsinh Gamansinh Chavda was traveling in the Rickshaw being registration No.GJ.07.AT.0297. It is the further case of the claimants that above Rickshaw was being driven by driver of opponent No.4 in moderate speed and correct side of the road and when they reached near the place of accident, driver

of Car came driven by Renault Duster bearing registration No.GJ.05.JE.7801 in excessive speed, in rash and negligent manner, endangering to the human life and dashed with the above referred Rickshaw as a result accident occurred and in the said accident, deceased sustained serious injuries on various parts of the body and ultimately deceased succumbed to the said injuries sustained by him.

- 3 The summons of the claim petition was served upon the opponents. Opponent Nos.1-2 appeared through their Ld. Advocate and filed written statements vide Ex.16 & 17 respectively, wherein, defense of denial have been taken. Opponent No.3 – Insurance Company appeared through its Ld. Advocate and filed written statement at Ex.18, wherein, the claim of the claimants is denied in *toto*. The facts with regard to age, income and fact of the accident are denied. The opponent No.4 chose not to appear before this Tribunal.
- 4 From the above referred pleadings, the following common issues are required to be determined :-
 1. Whether the applicants prove that, deceased died due to rash and negligent driving of the driver of the vehicle involved in the vehicular accident as contended ?
 2. Whether the applicant is entitled to get compensation ? If yes, what amount and from whom ?

3. What award and order ?
- 5 My findings to the above issues are as under :
1. In the affirmative.
 2. Party in affirmative.
 3. As per final order.

~: REASONS :~

6 **Issue No.1 :-**

In order to prove negligence, the claimants have produced the following documents :-

<u>Sr. No.</u>	<u>Description of Documents</u>	<u>Exhibit/ Mark</u>
1	Copy of chief examination	22
2	Copy of complaint	24
3	Copy of Panchnama	25
4	Copy of inquest panchnama	26
5	Copy of P.M. Report	27
6	Copy of R.C. Book	28
7	Copy of Insurance Policy	29
8	Copy of R.C. Book of Rickshaw	30
9	Copy of Charge sheet	6/9

- 6.1 So far the short facts of the present case are already been narrated above. Now it is pertinent to note here that, while deciding the point of negligence, it has to be born in mind that the negligence is required to be proved in claim petition u/s 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of 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*.

- 6.2 This Tribunal have heard the Ld. Advocates for the parties and perused oral, as well as, documentary evidence produced on record. Ld. Advocate for the opponent No.3 argued that as per the copy of panchnama, accident occurred on the middle of the road and, therefore, driver of Rickshaw was also negligent for the accident. On the other hand, Ld. Advocate for the claimants has submitted that driver of Renault Duster was solely negligent for the accident.
- 6.3 Now to appreciate the rival contention raised by the Ld. Advocates, it is necessary to have look through oral, as well as, documentary evidence on record. In support of their claim petition, claimants have produced copy complaint at Ex.24. Copy of *Panchanama* is on record at Ex.25. Further copy of charge-sheet is on record at Mark-6/8 and after *fullfledge* investigation, the police has filed charge-sheet against the driver of Renault Duster bearing registration No.GJ.05.JE.7801, thus at this juncture, this Tribunal would like to refer the ratio laid down in the case of *New India Assurance Co. Ltd., Vs. Pazhaniammal, 2012 ACJ 1370*, wherein, it is observed that the filing of charge -sheet is sufficient to hold that the alleged accident was caused because of the rash and negligent driving of the driver of offending vehicle. Moreover herein the present case, driver of Renault Duster bearing registration No.GJ.05.JE.7801 has not stepped into the Witness-Box,

who is the best person to depose on oath, to rebut the above referred evidence. Thus from the above referred discussion, it clearly appears that at the time of accident, the said Renault Duster bearing registration No.GJ.05.JE.7801 was plied by its driver in rash and negligent manner and, therefore, the accident in question occurred. Thus, all these facts prove the rash and negligent driving of the driver of the said Renault Duster bearing registration No.GJ.05.JE.7801. At this juncture, I would like to note that owner and Insurance Company of the said vehicle have not examined the driver of the alleged offending vehicle to lead evidence in rebuttal. Therefore, as per the decision of the Hon'ble Gujarat High Court reported in *2001 (2) GCD 1448 (Guj.) Ahmedabad Municipal Transport Service Vs. Hansaben Natvarlal Dabgar.*, an adverse inference is required to be drawn against the said driver and owner. Now considering the above referred facts and circumstances of the case and in absence of any evidence in rebuttal by the opponent No.3 to the effect that there was also negligence on part of the driver of Rickshaw and all the police papers positively support the case of the claimants and the same are not rebutted by the other side by cogent evidence, hence this Tribunal have no reason to disbelieve the oral, as well as, documentary evidence produced by the claimants. Therefore, this Tribunal hold that the driver of Renault Duster bearing registration No.GJ.05.JE.7801 was solely negligent in causing the above referred accident. In view

of the above referred discussions, I decide issue No.1 in affirmative.

ISSUE No. 2 :

7 It is the case of the claimants that at the time of accident, deceased was performing his duty in Almighty Plus Security Agency as a Security and was earning Rs.10,000/- per month. To prove their case, claimants have produced a income certificate at Ex.41, issued by Almighty Plus Security Agency and to prove the said certificate, concerned person from Almighty Plus Security Agency is cross examined by the opponent No.3 vide Ex.40 but said witness is failed to prove the case of the claimants by cogent evidence. It is cardinal principle of law that Tribunal cannot expect from the poor labourer or small time vendor to maintain his/her books of account with respect to his/her monthly income and expenditure. Thus considering the month & year of the accident i.e. February 2019, the deceased is considered as unskilled category, his minimum wages income is assessed of Basic Rs.212/- and monthly Rs.8,118/-.

8 It is averred by the claimants that, at the time of accident, deceased was aged about 40 years. Claimants have not taken care to produced any evidence to show the age of the deceased, however copy of P.M. Report is on record at Ex.27, wherein, age of the deceased is mentioned as 40 years, thus relying on the said document, his age is considered as 40 years at the time of accident, therefore,

claimants are entitled to get multiplier of '15' as held by the Hon'ble Apex Court in **“Sarla Verma & Ors. V/s. Delhi Transport Corporation & Anr.”** reported in “2009 A.C.J. 1298” Further 25% prospective amount is required to be added, as per the latest decision of the Hon'ble Apex Court in case of **“National Insurance Company Limited V/s. Pranay Sethi and Ors.,”** in Special Leave Petition (Civil) No.25590 of 2014 decided on 31.10.2017”, therefore, monthly income of the deceased, for the purpose of calculation compensation comes to Rs.10,147/-.

9 It is not in dispute that the deceased was married and present claim petition was filed by 4 applicants at the time of filing. Thus considering the particular facts of the present case, 1/4 amount is required to be deducted as personal expenditure of the deceased as held by the Hon'ble Apex Court in **“Sarla Verma & Ors. V/s. Delhi Transport Corporation & Anr.”** reported in “2009 A.C.J. 1298”. 1/4 amount from Rs.10,147/-, comes to Rs.2,536/- and net amount which falls in the share of claimants, comes to Rs.7,611/- p.m. In view of the above referred discussion, claimants are entitled for following amount under the head of future loss of income : (Rs.7,611/- x 12 months x 15 multiplier)= Rs.13,69,980/-.

10 In view of the above as held by the Hon'ble Apex Court in **“National Insurance Company Limited V/s. Pranay Sethi and Ors.,”** in Special Leave Petition (Civil) No.25590 of 2014 decided on 31.10.2017”, wherein, it is held that

Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. But it is pertinent to note here that as per the judgment of the Hon'ble Apex Court decided on 31.10.2017 in the case of **Pranay Sethi**,(supra) the Hon'ble Apex Court held that the aforesaid amounts should be enhanced at the rate of 10% in every three years. As Six years have been passed from the date of the pronouncement of the Pranay Sethi's case, hence this Tribunal deem it fit to enhance the amount to be paid under the conventional head at the rate of 20%. Therefore, as per the directions of the Hon'ble Supreme Court in Pranay Sheti's case, claimants are entitled of Rs.48,000/- loss of consortium, Rs.18,000/- under the head of loss of estate and Rs.18,000/- under the head of funeral expenses.

- 11 Further as per the judgment of the Hon'ble Apex Court in the case of **United India Insurance Co. Ltd., Vs. Satinder Kaur & Ors. reported in 2020 ACJ Page - 2131**, claimant No.2 is the child of the deceased, hence she is entitled of Rs.40,000/- for loss of parental consortium as per judgment of Hon'ble Apex Court. This Tribunal have gone through the judgment of the Hon'ble Apex Court in the case of Satinder Kaur,(supra), in that the Hon'ble Apex Court has awarded loss of parental consortium to the children, who loss the care and protection of their parents in motor vehicle accident. And looking to the Judgment, if the child is dependent on the parents in that situation the

children are entitled for parental consortium. Herein the present case claimant No.2 was minor aged at the time of incident, she is fully dependent on the income of their parents. Hence considering the Judgment of the Hon'ble Apex Court, the applicant No.2 is entitled for the loss of parental consortium of Rs.48,000/-.

- 12 Further Ld. Advocate for the applicants Mr. D.K. Darji has relied upon the judgment of the Hon'ble Apex Court in the case of Magma General Insurance Co.Ltd., Vs. Nanu Ram @ Chuhru Ram & Ors. in Civil Appeal No.9581 of 2018 and submitted that as in the present case, claimants No.3 & 4 are the parents of the deceased, hence they are entitled for Filial Consortium as per judgment of Hon'ble Apex Court. In the present case, it is an admitted position that the deceased was a married person and the claim petition has been preferred by the widow, his daughter and parents of the deceased and the judgment of the Hon'ble Apex Court in the case of Magma General Insurance Co.Ltd.,(supra) the Hon'ble Apex Court held that "***In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium***". So in the present case, deceased was a married person and the spouse is already been given loss of consortium as per the judgment of the Hon'ble Apex Court in case of Pranay Sethi (supra), the Filial Consortium cannot be awarded as the deceased was a married person, hence the said authority is not applicable to the present case on hand. In

view of the above referred discussions, claimants are entitled for the following amount as compensation:-.

Rs.	13,69,980/-	Future loss of dependency.
Rs.	48,000/-	Consortium
Rs.	18,000/-	Loss of estate
Rs.	18,000/-	Funeral
Rs.	48,000/-	Loss of Parental Consortium
Rs	15,01,980/-	Total Compensation.

13 **Liability** :~ So far the liability is concerned, as discussed above, the driver of Renault Duster bearing registration No.GJ.05.JE.7801 was solely negligent for the occurrence, hence owner is vicariously liable to pay compensation and as at the time of accident the insurance of the said Renault Duster bearing registration No.GJ.05.JE.7801 was in force, there are no technical defenses which can be said to be breach of policy, therefore, the Insurance Company is liable to indemnify the owner, hence present opponents No.1, 2, & 3 are jointly and severally liable to pay awarded compensation amount to the claimants. The opponent No. 4 is hereby exonerated. Hence, this Tribunal decide issues No.2 partly in affirmative.

14 **INTEREST**:~ The awarded amount shall carry interest at the rate of 7.5% per annum from the date of the application till realization, hence following is the order in the interest of justice.

~: O R D E R :~

1 The claim petition is allowed.

- 2 The claimants are entitled to recover Rs.15,01,980/- (Rupees Fifteen Lac, One Thousand, Nine Hundred and Eighty Only) from the present opponents No.1, 2 & 3, who are jointly and severally liable to pay awarded amount to the claimants with the proportionate cost and with interest at the rate of 7.5% per annum, from the date of the claim petitions till realization. The opponent No.4 is hereby exonerated.
- 3 The opponents are hereby directed to deposit awarded amount within 30 days of 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 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-courtke@gujarat.gov.in as per the purshis.
- 5 Deficit court fees stamp, if any, be recovered from the awarded amount and interim amount if paid be adjusted.
- 6 Thereafter, 40% amount be given to the claimant No.1- wife of the deceased, 30% amount be given to the claimant No.2- daughter of the deceased and remaining 30% amount be equally distributed to the claimants No.3

& 4 – parent of the deceased.

- 7 Thereafter, amount coming to the share of the claimants, 60% amount be invested as fixed deposit in any nationalized bank for initial period of five years. The remaining 40% amount be paid to the applicants by account payee cheque/s forthwith.
- 8 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 claimants.
- 9 Award be drawn accordingly in the above petition.
- Signed and pronounced in the open Court today.

Date : 11-03-2026.

Nadiad.

(Pinky Maratkumar Trivedi)
2nd Additional District Judge,
M.A.C.T.(AUX)
Kheda at Nadiad
Code No.GJ01600.