

Ex.74

Received on	30/11/2016
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Decided on	12/05/2026
Duration	Y.09 M.05 D.12

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

M.A.C.P. No.1199/2016

PETITIONER:~**Legal Heirs of****Deceased Tosifsha Yakubsha Diwan**

- (1) Yakubsha Kalusha Diwan
Age: 37 Yrs., Occup.: Agriculture,
- (2) Bilkisbanu Yakubsha Diwan
Age: 34 Yrs., Occup.: Household,
Both Residence: Nr. Masjid, Mu.: Visnoli,
Ta.: Petlad, Dist.: Anand.

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

- (1) **(Driver of Motor Truck No. GJ.3.AT.4104)**
Pruthvirajsinh Makhubha Parmar
Age: Adult, Occup.: Driving,
Residence: Kukada, Ta.: Muli,
Dist.: Surendranagar.
- (2) **(Owner of Motor Truck No. GJ.3.AT.4104)**
Maganbhai Harajibhai Dholakiya
Age: Adult, Occup.: Business,
Residence: Shri Chamunda Krupa,
Shubham Duplex, Opp. Aalapgreen City,
Shantiniketan Street, Raiya Road, Rajkor.
- (3) **(Insurance Co. of Motor Truck No. GJ.3.AT.4104)**
United India Insurance Company Ltd.
Address: 2nd Floor, Santosh Building,
Santram Road, Nadiad.
- (4) **(Owner of Motorcycle No.GJ.23.AQ.0098)**
Mafatbhai Jitsinh Parmar
Age: Adult, Occup.: Business,

Residence: Prajapatino Tekro,
Nr. Masjid, Mu.: Khambholaj, Ta.Dist.: Anand.

- (5) **(Insurance Co. of Motorcycle No.GJ.23.AQ.0098)**
National Insurance Company Ltd.
Address: 1st Floor, C.C. Shah Chambers,
Opp. Sardar Bhavan, Mu.: Nadiad.

<u>APPEARANCE:-</u>	
For the Petitioners	Ld.Advocate Mr. O.G. Mansuri
Opponent Nos.1 & 2	Absent
For the Opponent No.3	Ld.Advocate Ms. H.C. Kandoi
Opponent No.4	Absent.
For the Opponent No.5	Ld.Advocate Mr. P.M. Jani

Petition u/S. 166 of the M.V.Act.
Claim Valued at Rs.5,00,000/-.

~: 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.5,00,000/-**.
- (2) The case of the petitioner in brief is that :-
- (2.1) That on 29/07/2014, at about 8.45, at night, deceased Tosifsha was travelling on the Motorcycle bearing registration No.GJ.23.AQ.0098 and driver of the said Motorcycle was driving his vehicle on the left hand side of the road, with light and at slow speed and when they were passing through the place of incident i.e. on Vasad- Borsad Road, Nr. Railway Bridge, at that point of time, driver of the Motor Truck No.GJ.3.AT.4104 came driven in excessive speed, in rash and negligent manner and endangering to the human life and hit the Motorcycle, as a result serious accident occurred, in which deceased sustained serious injuries and he died.

- (3) The notices were duly served upon the opponents. Opponent Nos.1, 2 & 4 chose not to appear before this Tribunal.

Opponent No.3 appeared through its Ld.Advocate and filed its reply vide Exh.39, wherein, the claim of the petitioner is denied in *toto*. The facts with regard to age, income and fact of the accident are denied. Opponent No.3 has stated that driver of the Motorcycle came driven from the wrong side with five seated persons and dashed with the Truck and serious accident occurred hence, there was no any negligence on the part of the driver of the Motor Truck hence, Opponent No.3, Insurance Company is not liable to pay compensation to the claimants.

Opponent No.5 appeared through its Ld.Advocate and filed its written statement vide Exh.47 wherein, the claim of the petitioner is denied in *toto*. The facts with regard to age, income and fact of the accident are denied. Opponent No.5 has stated that due to sole negligence on the part of the driver of the Motor Truck the said accident occurred. He has also stated that the person driving the Motorcycle was not holding valid and effective driving licence at the time of accident.

- (4) My Ld. Predecessor has framed following issues vide Exh.30:-

Issues

(1)	Whether the applicant(s) prove(s) that the deceased died on account of the rash and negligent driving on the part of the driver of the vehicle/vehicles involved in the accident?
(2)	Whether, the applicants are entitled to get

	compensation? If yes, what amount and from whom?
(3)	What order and award?

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

Findings

- (1) In the affirmative.
 - (2) As per final order.
 - (3) As per final order.
- (6) The evidence produced by the petitioners are as follows.

Oral Evidence:-

Exh.42: Examination in chief by Affidavit of Yakubsha Kalusha Diwan, Petitioner No.1.

Documentary Evidence

Sr. No.	Description of Documents	Exh. Mark
1	Copy of Complaint (Dt.29/07/2014)	55,57
2	Copy of Panchnama of the place of incident (Dt.30/07/2014)	48,58
3	Copy of Inquest Panchnama of the deceased Tosifsha (Dt.30/07/2014)	49,60
4	Copy of Charge-sheet (Dt.07/09/2014)	59
5	Copy of P.M. Note of the deceased Tosifsha (Dt.30/07/2014)	61
6	Copy of driving licence of the driver of the Motor Truck i.e. opponent No.1	50
7	Copy of R.C. Book of Motor Truck No.GJ.3.AT.4104	51
8	Copy of Insurance Policy of Motor Truck No.GJ.03.AT.4104	52
9	Copy of R.C.Book of Motorcycle No.GJ.23.AQ.0098	56

The Ld.Advocate for the petitioner has closed his evidence by producing closing purshis vide Exh.62.

(6-B) The evidence produced by the Opponents are as follows.

Oral Evidence:-

Exh.65: Deposition of Opponent No.5' witness, Mr. Manojbhai Kishorbhai Prajapati, Motor Vehicle Inspector, R.T.O. Anand.

Exh.68: An Affidavit of Chief examination opponent No.5's witness of Vijukanta M. Dekate, Officer of National Insurance Co. Ltd.

Documentary Evidence

Sr. No.	Description of Documents	Exh. Mark
1	A copy of R.C.Book of the Motorcycle No.G.J.23.AQ.0098	66
2	A copy of Letter regarding driving licence of the driver of the Motorcycle No.GJ.23.AQ.0098	67
3	A copy of Insurance Policy of the Motorcycle No. GJ.23.AQ.0098	69

Ld.Advocate for the Opponent No.5 has filed closing purshis vide Exh.71.

(7) Ld.Advocate for the claimant has produced his written arguments vide Exh.72, wherein he argued regarding injury, income and negligence of the drivers of the vehicles as well as relied on the various judgments of the Hon'ble High Court of Gujarat as well as Hon'ble Supreme Court of India.

(8) Ld.Advocate for the opponent No.3 has orally argued that due to sole negligence on the part of the driver of the Motorcycle the said accident occurred as driver of the Motorcycle came driven from the wrong side with five seated persons and dashed with the Truck and serious accident occurred hence, there was no any negligence on the part of the driver of the Motor Truck hence, Opponent

No.3, Insurance Company is not liable to pay compensation to the claimant. In support of her argument she has produced Judgment of Hon'ble High Court of Gujarat reported in 1997(1) GLR 403 in case of *Pankajbhai Chandulal Patel V/s. Bharat Transport Co. & Anr.*

- (8.1) Ld.Advocate for the opponent No.5 has orally argued that due to sole negligence on the part of the driver of the Motor Truck the said accident occurred as he came driven with full speed, rashly with endangering human life. He has further argued that the driver of the Motorcycle was not holding valid and effective driving licence at the time of accident hence, owner has breached the terms and conditions of the policy hence, Insurance company is not liable to pay compensation to the claimant.
- (9) Heard. Read the petition, written statement, evidence produced, written argument of the petitioner. On the basis of the evidence produced and arguments advanced the reasons for which are as under :

(10) **REASONS**

Issue No.1

"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."

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 petitioner that on 29/07/2014, at about 8.45, at night, deceased Tosifsha was travelling on the Motorcycle bearing registration No.GJ.23.AQ.0098 and driver of the said Motorcycle was driving his vehicle on the left hand side of the road, with light and at slow speed and when they were passing through the place of incident i.e. on Vasad- Borsad Road, Nr. Railway Bridge, at that point of time, driver of the Motor Truck No.GJ.3.AT.4104 came driven in excessive speed, in rash and negligent manner and endangering to the human life and hit the Motorcycle, as a result serious accident occurred, in which deceased sustained serious injuries and he died.

(10.1) The father of the deceased Yakubsha i.e. petitioner No.1 has produced his examination in chief at Exh.42, wherein he has stated whole facts as mentioned in his claim petition. He was cross-examined by the Ld.Advocate for the Opponent No.3, wherein he has stated that he has no knowledge regarding the accident and he can not say that due to whose negligence the said accident occurred. He has stated that it is true that his son was died on the spot. He was also cross-examined by the Ld.Advocate for the Opponent No.5, wherein he has stated that the accident

occurred on the correct side of the Motorcycle and Truck came from the wrong side and hit the Motorcycle. He has also stated that after accident he went to the place of incident and his son was travelling on the said Motorcycle with other four passengers and he has also stated that due to sole negligence on the part of the driver of the Truck the said accident occurred.

(10.2) Copy of Complaint has been produced at Exh.55, which is lodged by Kabhaibhai Ambalal Dodiya, wherein he has stated that on the day of incident he received message from his brother in law Mafatbhai regarding accident of his nephew Samir Mafatbhai Parmar, Bismillasha Idrisha Diwan, Sajidsha, Javedsha and Bismillasha's nephew Taushif Yakub Diwan all went at Vasad for watching movie on the Motorcycle of Samir Mafatbhai Parmar and he has stated whole facts regarding accident as mentioned in the complaint and he has lodged complaint against the Truck driver.

(10.3) Copy of Panchnama of the place of incident has been produced at Exh.48, wherein place of incident has been mentioned and mentioned that on the Vasad Railway bridge on the Borsad side, which is double lane road and due to traffic no any marks have been obtained. Further, Truck No.G.J.3.A.T.4104 was loading with bananas and its front glass has been came out and its another glass was broken and driver side's bumper was damaged. Further, Motorcycle No.GJ.23.AQ.0098 was lying on the place of incident and its front side, right side steering, engine and

middle part was damaged and its seat was also damaged and its side glasses were also damaged.

Further, looking to the charge-sheet produced at Exh.59, which is lodged against the driver of the Truck No.GJ.3.AT.4104.

(10.4) Ld.Advocate for the Opponent No.3 and Opponent No.5 have not examined driver of the Truck to rebut the say of the petitioners and driver of the Motorcycle was died in the said accident hence, adverse inference is required to be drawn against them. Driver of the vehicle, who is the best person to depose on oath, has also not stepped in to the witness-box, therefore, adverse inference will have to be drawn as per decision of the Hon'ble Gujarat High Court reported in **2001 (2) GCD 1448 (Guj.) Ahmedabad Municipal Transport Service Vs. Hansaben Natvarlal Dabgar**. Hence, adverse inference is required to be drawn against them.

(10.5) Hence looking to the evidence on record, it appears that due to excessive speed of the Motor Truck No.GJ.03.AT.4104 the said accident occurred as he came driven from the wrong direction and negligently dashed his Truck to the Motorcycle. Further, petitioner in M.A.C.P. No.1200/2016 as the sole eye witness of the said accident he has stated in his cross-examination before this Tribunal that "it is true that driver of the Motorcycle was driving his Motorcycle on the correct side of the road and at slow speed and after applying horn and break. He has also stated that it is true that accident occurred on the beginning of the bridge and driver of the Truck came in

excessive speed from the opposite side in wrong direction and dashed with the Motorcycle and accident occurred due to negligence on the part of the driver of the Truck".

Further, looking to the Panchnama Motorcycle was not only damaged from the front side but its middle part was also damaged and its seat was also damaged which clearly indicates that driver of the Truck came from the wrong direction in excessive speed and hit the Motorcycle, as a result serious accident occurred. It appears that the care expected to a quick running vehicle commensurate with the situation and conditions of the road, which was not maintained by the driver of the Truck. The driver always be conscious of the motto "*expect the unexpected*". It is cardinal principle of law that one has to drive his vehicle in such a fashion that it may not cause any damage/injury to any property/person but driver of the Truck failed to exercise his duty. Thus considering the oral, as well as, documentary evidence, this Tribunal of the opinion that, due to sole negligence on the part of the driver of the Truck No. GJ.3.AT.4104 the said accident occurred. As the citation produced by the Ld.Advocate for the opponent No.3 to prove the point of negligence 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, hence, present citation is not helpful at this stage. In view of the above referred discussions, Hence, issue No.1 is answered in affirmative.

Issue Nos.2 & 3**(11) Quantum of Compensation:-**

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

(11.1) Income:-

So, far as the issue of compensation is concerned the Deceased Tosifsha was minor at the time of accident hence, his father has narrated the facts as mentioned in the present claim petition; where from it appears that at the time of accident, deceased Tosifsha was aged about 10 years; i.e. minor aged person and therefore, this Tribunal thinks it fit to consider his annual notional income of minor as Rs.25,000/- P.A. as per the second schedule of the M.V. Act 163-A.

(11.2) Age:-

As the deceased Tosifsha was minor at the time of accident as 10 years old and Ld.Advocate for the petitioner has not produced any evidence to prove the age of the deceased hence, looking to the P.M. Note at Exh.61, wherein age of the deceased has been mentioned about 10 Yrs. hence, at the time of accident the deceased was aged about 10 years, hence, considering the minor age of the deceased Tosifsha and he was 11 years old at the time 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 '15' would be applicable.

(11.3) Future Prospective Income:-

As the deceased Toshifsha was aged about 10 years, hence, 40% is required to be added towards the prospective income, and hence the yearly amount comes to **Rs.25,000 + Rs.10,000=35,000/-**.

(11.4) Dependency Loss :

It is not in dispute that the deceased was unmarried and present petition filed by 2 members 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.35,000/-, comes to Rs.17,500/- and net amount which falls in the share of Petitioner, comes to Rs.17,500/- p.a. In view of the above referred discussion, claimant is entitled for following amount under the head of **Future Loss of Income : (Rs.17,500 x 15 multiplier) = Rs.2,62,500/-**.

(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. 2,62,500/-
Loss of estate	Rs. 18,000/-
Funeral	Rs. 18,000/-
Total Amount of Compensation	Rs. 2,98,500/-

(13) Liability:~

Ld.Advocate for the opponent No.5 has argued that driver of the Motorcycle was not holding driving licence at the time of accident and in support of his say he has examined Motor Vehicle Inspector, R.T.O. Anand, vide Exh.65 and Officer of National Insurance Co. Ltd. vide Exh.68 but as discussed in point of negligence as there was no any negligence on the part of the driver of the Motorcycle so all above discussion is not required at this stage.

As discussed above, the incident occurred for the reason of negligence of driver of Motor Truck bearing registration No.GJ.07.AT.4104 and in view of the Insurance Policy at Exh.52, at the time of accident the insurance of the Motor Truck bearing registration No. GJ.07.AT.4104 was in force therefore, Insurance Company of said vehicle is liable to indemnify the owner. Opponent Nos. 4 & 5 are hereby exonerated from the liability. Thus, the present opponent Nos. 1 to 3 are jointly and severally liable to pay awarded compensation amount to the petitioner. Hence, issues No.2 is answered as per final order.

(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.2 &

3 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.2,98,500/- (Rupees Two Lakhs Ninety Eight Thousand Five Hundred only)** from the present opponents Nos.1 to 3, 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 its realization. Opponent Nos.4 & 5 are hereby exonerated.
- [3] The opponent Nos.1 to 3 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 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.
- [5] Deficit court fees stamp, if any, be recovered from the awarded amount and interim amount, if paid, be adjusted.
- [6] Thereafter, the awarded amount be equally distributed between the claimant Nos.1 & 2.
- [7] Thereafter, from the amount coming to the shares of the petitioners, 70% amount be invested as fixed deposit in any nationalized bank for initial period of five years, and the remaining 30% amount be paid to the petitioners.

- Signed and pronounced in the open Court on 12th
Day of May, 2026.

Date:12/05/2026 (MUKESHKUMAR JAYANTILAL BRAHMBHATT)
Place: Nadiad 4th M.A.C.T. (Aux.)
Kheda at Nadiad
Code No.GJ00754