Exh.
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BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUX.) & 8TH ADDITIONAL DISTRICT JUDGE, KACHCHH – BHUJ.

M.A.C.P. No. 202/2024

LEGAL HEIR OF DEVABHAI KARSANBHAI RABARI,

1. **JIVIBEN DEVABHAI RABARI,**
   Wife, Aged: 66 years, Occu. Retired,
   R/o. D.P. Chowk, Janta Nagari,
   Camp Area, Bhuj-Kachchh

2. **RANABHAI DEVABHAI RABARI,**
   Son, Aged: 36 years, Occu. Household,

3. **RAVABHAI DEVABHAI RABARI,**
   Son, Aged: 35 years, Occu. Labourer,

4. **RAJABHAI DEVABHAI RABARI,**
   Son, Aged: 32 years, Occu. Driving,

5. **VERSHI DEVABHAI RABARI,**
   Son, Aged: 26 years, Occu.NIL **....Applicants**

   Applicant No. 2 to 5 are residing at
   Village: Nandgam, Nani Charai,
   Tal. Bhauchau-Kachchh

Vs.

1. **NOT KNOWN**
(Driver of Car No.GJ-03-HR-6590)

2. **MOHIT ENTERPRISE,**
(Owner of Car No.GJ-03-HR-6590)
Aged: Adult, Occu. Owner of vehicle,
R/o.Shop No. 250, Ambecy Tower,
Nr. Jubilee Garden, Zavahar Road,
Rajkot

3. **UNITED INDIA INSURANCE CO. LTD,**
(Ins. Co. of Car No.GJ-03-HR-6590)
Office at : Gandhidham

4. **NODAL OFFICER,**
UNITED INDIA INSURANCE CO. LTD,
(Ins. Co. of Car No.GJ-03-HR-6590)
Office at : Gandhidham **….Opponents**

Claim u/s.166 of the M.V. Act for getting
compensation of Rs.37,00,000/-

A P P E A R A N C E :

1. L.A. **Mr. M.A.Saiyed** for claimants.
2. Not Known for opponent No. 1.
3. L.A. **Mr. M.D.Buch** for opponent No. 2
4. L.A. **Mr. G.R.Prajapti** for opponent No. 3 & 4

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

1. The present claim petition is filed by the legal heirs of the deceased, Devabhai Karsanbhai Rabari, under Section 166 of the Motor Vehicles Act, 1988 ('the M V Act') arising out of a vehicular accident dated 09.01.2024, along with the costs and interest at the rate of 18% per annum from the date of petition till realization, against the opponents.

2. Brief facts of the present claim petition is that, deceased Devabhai Karsanbhai Rabari was crossing the road with due care, at that point of time, the opponent No. 1 came by driving the Car bearing registration No.GJ-03-HR-6590 in full speed, rash and negligent manner and due to over speed, he lost control over the steering, dashed with deceased and crushed deceased, as a result, he sustained serious injuries and has succumbed due to it. Therefore, the claimants have filed the claim petition for getting compensation from the opponents.

2.1 The opponent No. 1 not known in claim petition. The opponents No. 2 in claim petition, though duly served with the notice, has filed a written arguments at Exh. 17 interalia denied the factum of the accident. It is submitted that, this Tribunal does not having proper jurisdiction to proceed the claim petition and thus, on this ground, the present claim petition is requires to be dismissed. It is submitted that, no parties of opponent No. 2 has joined in the present claim petition. It is submitted that, in the present claim petition, opponent No. 1 is not known however, at the time of the accident, the vehicle was being driven by Maheshbhai B. Makwana and he was holding the driving licence to drive the said vehicle. It is denied the age, income and occupation of the deceased at the relevant time of an accident. It is submitted that, if any negligence would determine upon the owner, he had taken the Insurance from the Insurance

Company and therefore, Insurance Company is liable to pay compensation to the claimants.

2.2 The opponents No. 3 & 4 - Insurance Company and Nodal Officer of Car appeared through Ld. Advocate filed a written statements *interalia* denied the factum of the accident. It is submitted that, the accident took place on 09.01.2024 whereas the FIR came to be lodged on 15.01.2024 i.e. after 6 days however, no satisfactory explanation is given by the complainant for delay the FIR. It is submitted that, Police had not recorded the statement of eye witness. It is denied the age, income and occupation of the deceased. It is submitted that, accident took place due to negligence on the part of the deceased himself and therefore, contributory negligence of 50% should be held. On these grounds, it is prayed to exonerate the Insurance Company.

3. In view of the pleadings of the parties, Ld. Tribunal had framed the following issues at Exh. 19 :-

(1) Whether the applicant/applicants proves that, deceased died due to rash and/or negligent act of the driver of vehicle involved in the accident ?

(2) Whether applicants are entitled to get compensation from the opponents or any of them? If yes, what amount and from whom?

(3) What Award ?

4. My findings to the above Issues are as under:-

(1) In the affirmative.

(2) As per the final order.

(3) As per the final order.

-: R E A S O N S :-

5. To prove the pleading of the claim petition and disprove the contents of the claim petition, the parties have produced the following oral and documentary evidence on record:

Exh. No.	Particulars
	Oral Evidence
29	Affidavit of exam. in Chief of Vershi Devabhai Rabari
	Documentary Evidence
33	FIR
34	Panchanama of place of accident
35	Inquest Panchanama
36	P.M. Report of deceased
37	Final Report
38	Vehicle Particular
39	Statement of Medical Bills (Rs. 1,23,714)
40	Closing pursis

Ld. Advocate for the Insurance company did not produce any oral as well as documentary evidence to prove their defence. They have produced the closing pursis at Exh. 42.

ISSUE NO.1 & 2 COLLECTIVELY :

6. Heard Ld. Advocates for the parties and perused the record. Ld. Advocate for the claimants has produced the written arguments at Exh. 43 whereas the Insurance Company has filed written arguments at Exh. 47 which are duly considered by this Tribunal. This Tribunal has also duly considered the judgments cited by the parties.

7. So far as the negligence is concerned, claimants have relied upon the FIR, Panchnama of the scene of offence and charge sheet. Upon perusal of the FIR (Exh. 33), it transpires that, the same was came to be lodged by one Rajabhai Devabhai Rabari, who is claimant against the Driver of Car bearing Registration No.GJ-03-HR-6590. The deposition of the claimant is recorded *vide* Exh.29 and in his chief examinations, he has reiterated the facts as per his case. During the cross examination, he has admitted the fact that, he was not present at the time of the accident, he was not having personal knowledge that who is negligent for an accident. He has admitted that, the FIR filed after six days from the date of accident. He has admitted that, his father were crossing the road and accident took place. He has denied the fact that, the accident took place due to negligence of his father, the driver of the Car has not negligent for an accident.

8. At this stage it is worthy to note that, while deciding the point of negligence, it has to be borne 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 **Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819 and Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.**

9. I have perused the copy of the FIR (Exh. 33) which was laid against the driver of Car bearing registration No. GJ-03-HR-6590. It also appears from the FIR that, driver of the car was being driven the said Car in full speed and negligent manner and dashed the said car to complainant's father who were crossing the road sustained serious injuries which resulted into death. To substantiate the said fact, the claimants have relied upon the P.M. reports of the deceased from which it transpires that, due to the injuries sustained in the accident, he lost his innocent life. Further, the claimant has relied upon the panchanama of place of accident at Exh. 34 from which it transpires that, the offending Car was lying at the place however, no any remarkable marks were found from the spot. Further, the claimant has relied upon the charge sheet from which it transpires that, after completion of the investigation, the Investigating Officer has filed the charge sheet against the driver of offending vehicle i.e. Car.

10. At this juncture, it is required to be noted that, Insurance Company has not examined the driver 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 driver of Car. Therefore, considering the FIR and Panchnama of place of accident and charge sheet, it is proved that, the accident took place due to negligent driving by driver of Car no.GJ-03-HR-6590. Therefore, this Tribunal decide Issue No.1 accordingly.

ISSUE NO.2 :

11. It is pleaded by the claimant that, deceased was earning more than Rs. 1,000/- per day from mason work and thereby earning more than Rs.30,000/- per month. However, to prove actual income from said work, the claimant has failed to produced any documentary evidence nor examined any witness. The said fact has been admitted by the claimant in his cross examination (Exh. 29) taken by the Ld. Advocate for the Insurance Company. Hence, in absence of any cogent evidence in respect of the income of the deceased, this Tribunal has gone through the Minimum wage of skilled labourer for determining the income of deceased. The accident took place on 09.01.2024 and considering the minimum wage for skilled labourer, the income of deceased is taken at Rs. 12,500/- per month and thus, annual income comes **Rs.1,50,000/-**

12. So far as age of the deceased is concerned, the claimants have pleaded that age of the deceased was 54 years. To which, the claimant has relied upon the copy of P.M. Report at Exh. 36 wherein the age of the deceased is mentioned 54. While considering the record of the case, applicant side has not produced any evidence relating to the age of the deceased and they are only relied upon the P.M. Report, wherein the age of the deceasd is shown as 54. On perusal of the claim petition and other document, it appears that vide list of Ex. 7 Aadhar Card of the applicant Rabari Jiviben is produced wherein her date of birth is shown as 22/7/1957 and as such, she was around 66 years at the time of accident. From her photograph in the Adhar Card as well as in the claim petition it can be said that the age shown in the Adhar Card is just and proper. In this case, Adhar Card of the other applicants are also produced but the Ld. Advocate for the applicant and applicants have not produced the Adhar Card of the deceased and it shows that they want to hide the actual age of the deceased from the Court. When the applicant No. 1 wife is having the Adhar Card deceased should have his Adhar Card but the applicant side has not produced it. Moreover, in the Gujarat the bridegroom is elder than the bride in most of the cases. In the society we came across the cases, wherein bridegroom is 5 to 10 years older than the bride but in this present case, the applicant are coming with totally reverse case, wherein they are saying that the deceased was 54 years of age and her wife (applicant No. 1) is aged 66 years and the same does not appears genuine and bonafide. When the wife is having the Adhar Card, deceased should also have the Adhar Card and the lead taken by the Male person to prepare such documents and when the applicant side has not produced the Adhar Card of the deceased, it appears to be deliberate non disclosure. In this case, the applicant side has not produced any evidence to support the age of the deceased and even they have not produce the Adhar Card. In this regard, it would just to refer Section 114(g) of the Indian Evidence Act, which allows courts to presume that evidence withheld by a party, which could have been produced, would be unfavorable to them if produced. This principle of adverse inference is applied when a party deliberately withholds crucial documents or witnesses. In this applicant side has not produced Adhar Card of the deceased and have not produced any other evidence, and if any such document was produced the real of the deceased might have came on record and hence, adverse inference is requires to be drawn against the applicants.

12.1 In addition thereto, the applicantVershi Devabhai has tendered his ocular evidence vide Ex. 29 and during his cross examination he has admitted that at the time of the incident age of his mother was 67 years and age of his elder brother was 36 years. Minimum age of marriage as per the law for the male is 21 years and if the minimum age is added to the age of the elder son it would be 58 years. It cannot be presumed at the minimum age deceased has married and immediately they have been begotten with the child. The applicant has not produced any other evidence and they have not tendered the evidence of the wife. Therefore, when the age of the wife is 66 years, the age of husband would be more than that and accoridngly, age of the deceased is requires to be considered.

12.2 Considering the available evidences on record, wherein the age of the wife of the deceased is 66 years and her Adhar Card is there, her photographs also suggsest that she would be around 66 years, the age of the deceased would be more than 66 years. In addition thereto, the claimant himself has admitted the fact in cross examination that, her mother's age was 67 years. In view of foregoing discussions, it can safely be said that, at the time of the accident, the deceased would be more than 66 years old. Hence, the deceased would fall under the age group 66 to 70 and, therefore, the claimants would be entitled to get compensation calculated on the basis of the multiplier of **5.**

12.1 Ld. Adv. for the applicant has relied upon decisions reported in (1) 2015 ACJ 1606, Majera Bibi Vs. Oriental Insu. Co. Ltd. (2) 2024 ACJ 269 C. Sarasu and others Vs. S. Muthusamy and another (3) 2021 ACJ 611, Liberty General Insurance Co. Ltd. Vs. Haseena and others to say that age of the deceased in the P.M. report should be considered. Having considered the facts of the present matter, wife of the deceased has not come before the Court to depose before this Court and explain about the age. Moreover, the applicants have produce Adhar Card of all the applicants including the wife of the Deceased, who is aged around 66 years but they have not produced Adhar Card of the deceased, the photograph of the applicant wife in the Adhaar Card and in the claim petition clearly suggest that she is aged more than 66 years. The applicants are residing in Gujarat and generally in Gujarat bridegroom is elder than the bride and when the applicants are saying contrary to they must produce some evidence. Non production of the Adhar Card of the deceased is a vital factor to draw adverse inference. In view of the peculiar facts of the present matter, the authorities cited by the applicant are not helpful to their case.

13. As above discussed age of the deceased at the time of death was around 66 years, as per the ratio laid down by the Larger Bench of the Hon'ble Supreme Court rendered in the case of **National Insurance Company vs. Pranay Sethi, 2017 (16) SCC 680,** income of the deceased shall be not be increased.

14. Since the present claim petition is filed by wife, sons of the deceased. Ld. Advocate for the applicant has vehemently argued that, the present claim petition is filed by the wife and sons of the deceased, 1/4th is required to be deducted towards personal expenses of the deceased. He has relied upon the ratio of laid down in Sarla Varma Vs. Delhi Transport Corporation, 2009 ACJ 1298(SC), wherein it is held that, all the claimants were depends upon the income of the deceased. He has further submitted that, as per the arguments of Insurance Company that, applicant Nos. 2 to 5 were not depends upon the income of deceased, 1/3rd is required to be deducted towards personal expenses. It is further argued by the Ld. Advocate for the claimant that, even major and married sons of deceased being Lrs have right to apply for compensation in case of motor accident death and therefore, 1/4th is required to be deducted. However, in the present case, applicant No. 5 himself has admitted in cross examination that, Ranabhai, Ravabhai and Rajabhai were doing their separate business and earning separate income at the time of accident and they had given such income to family and therefore, in this peculiar facts, only applicant No. 1 and applicant No. 5 were depends upon the income. Therefore, as per the law laid down by the Hon'ble Supreme Court in Pranay Sethi case, i.e. Rs.50,000/- [Rs. 1,50,000 x 1/3rd] is required to be deducted towards personal expenses of the deceased. Hence, the amount would come to around **Rs.1,00,000**/-. Since the deceased was aged about 66 years, applying the multiplier of **5**, the amount would come to **Rs.5,00,000/-.**

15. As this Tribunal is deciding the claim petition in the year 2026, as held in para No.61(viii) of the Pranay Sethi's case 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. The aforesaid amounts should be enhanced at the rate of 10% in every three years. As six years have been passed form the date of the pronouncement of the pranay Sethi's case, I 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 Hon’ble Supreme

Court in Pranay Sethi's case, petitioners are entitled for **Rs.18,000/-** towards loss to estate and **Rs.18,000/-** towards funeral expenses.

15.1 The claimant has produced the statements of medical bills at Exh. 39 at Rs. 1,23,714/-. As against the Insurance Company has not produced any rebuttal evidenced. Further, the medical bills are exhibited and in consonance with the treatment taken by the deceased. Hence, the claimants are entitled to get **Rs. 1,23,714/-** under medical expenses. Having considered the medical expenses, it would be just and proper to grant an amount of Rs. 15,000/- towards pain, shock and suffering.

15.2 Hence, in this case, the applicant No. 1 is the wife and applicant Nos. 2 to 5 are the sons of deceased, they are entitled to get Rs. 48,000/- each under consortium in view of the ratio laid down by the Hon'ble Apex Court in the latest judgment in case of **Magma General Insurance Com. Ltd. V/s. Nanu Ram @ Churhu Ram, 2018 (18) SCC 130 and United India Insurance Co. Ltd. V. Satinder Kaur @ Satwinder Kaur, 2020 SCC Online 410 (SC) (FB) and N.I.A Com. V/s. Smt. Somwati, 2020 (9) SCC 644.**. Hence, the applicants are entitled to the total amount of compensation as under :

PARTICULARS	**AMOUNT**
FUTURE LOSS OF DEPENDENCY	RS.5,00,000/-
LOSS TO ESTATE	RS.0,18,000/-
FUNERAL EXPENSES	RS.0,18,000/-
MEDICAL BILLS	RS.1,23,714/-
PAIN, SHOCK AND SUFFERING	RS. 0,15,000/-

CONSORTIUM	RS.2,40,000/-
TOTAL AMOUNT OF COMPENSATION	**RS.9,14,714/-**
ROUNDED OFF	**RS.9,14,700/-**

LIABILITY :

22. As held hereinabove the accident took place due to rash and negligent driving on part of driver of Car bearing registration No.GJ-03-HR-6590. Herein the claim petition, the opponent No. 1 is not on the record, the opponent No. 2 is owner and opponent No. 3 is the Insurance Company of offending vehicle Car whereas the opponent No. 4 is the Nodal officer of Insurance Company. The Insurance Company has produced the Insurance Policy at Mark 18/3 from which it transpires that, the Insurance Policy was valid and effective at the time of the accident and it was ***" Private Car Package Policy "***. Hence, the opponent No. 2 to 4 are jointly and severally liable to pay compensation to the claimants. Hence, I answer the said issue accordingly.

INTEREST :

23. The claimant has prayed for interest at the rate of 18% per annum. On the other hand, Ld. Adv. for the opponent has argued to award interest at the rate of 6% per annum. Tribunal has a power to deal with rate of the interest. Considering the prevailing rate of interest in the Nationalized Banks, current trend of economy, date of occurrence, this Court is of the considered view that it would be just and proper to award interest at the rate of 7% per annum. Hence, it is held that the petitioner-claimant is entitled to interest at the rate of 7% on the amount of compensation, from the date of filling of the present claim petition till its realization. Therefore, the Issue No.2, is answered accordingly and the following final order is passed in the interest of justice in respect of Issue No. 3.

-: O R D E R :-

1. The claim petition No. 202/2024 filed under Section 166 of the M.V. Act is **"Partly Allowed"** accordingly in **the following terms.**

Sr. No.	**Claim Case Number**	**Amount**
(1)	**MACP NO.202/2024**	**Rs.9,14,700/-**
	(Rupees Nine Lakh Fourteen Thousand Seven Hundred Only)	

2. The opponents No. 2 to 4 are held jointly and severally liable to pay the above amount of compensation to the applicants and they are directed to deposit the said amount with 07% p.a. interest from the date of institution of claim petition until the said amount is realized with proportionate costs within one month from the date of the order.

3. The aforesaid opponents are directed to deposit the awarded amount within one month from today in this Tribunal.

4. On such deposit being made, first of all deficit Court Fees and the amount of interim compensation paid to the claimants, if any, shall be deducted from the awarded amount.

In this claim petition, the awarding amount shall be disbursed as the applicant 1 shall get 40% whereas the applicant Nos. 2 to 5 shall get equally.

5. Out of the deposited amount, 60% shall be invested in Fixed Deposit Scheme in any Nationalized Bank in the name of major claimants for a period of Five years and remaining 40% amount be paid by way of Account Payee cheque to the said claimants.

5.2 The concerned Bank is directed not to grant any loan, advances or withdrawal against the said F.D.R. without obtaining prior permission of this Tribunal.

5.3 However, the claimants will be entitled to draw quarterly interest on the amount of deposit in the F.D.Rs.

6. In compliance with Circular No. 9182/2021, which was issued pursuant to the directions of the Hon'ble Supreme Court in Writ Petition (Civil) No. 534/2020 dated 16.11.2021, the opponent is required to deposit the amount as directed.

7. Interest awarded in motor accident claim cases by tribunals or appellate courts is compensation, not taxable income, so no tax should be deducted at source under Section 194A of the Income Tax Act; insurance companies and vehicle owners must deposit the full awarded amount—including interest—without deducting TDS, as confirmed by the Gujarat High Court in The Oriental Insurance Co. Ltd. v. Chief Commissioner of Income Tax (TDS) in Regular

Special Application No. 4800 of 2021, Dtd. 05.04.2022.

8. Award shall be drawn accordingly.

Signed and pronounced in the open Court today i.e. 5th day of May, 2026.

Dtd. 05.05.2026
Place: Bhuj

(Tushar N. Khandhadiya)
8th Additional District Judge &
M.A.C. Tribunal (Auxi),
Bhuj-Kachchh
Code No. GJ-00953

/Rajesh Vaghela/