



Exh. 33
Received on 23/05/2023
Registered on 23/05/2023
Decided on 22/04/2026
Duration Y M Days
02 11 05

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(AUX) & 6TH ADDITIONAL DISTRICT JUDGE,
KACHCHH – BHUJ.

M.A.C.P. No. 267/2023

**HEIRS OF DECEASED PRATAPSIKH BHAGUBHA
RATHOD**

- (1) **INDRABA BAGUBHA RATHOD,**
Mother, Aged 45, Occupation : Household,
 - (2) **BHAGUBHA @ BHAGUJI RAMSANGJI RATHOD,**
Father, Aged 60, Occupation : Retired,
 - (3) **JAMKORBA BHAGUBHA RATHOD,**
Sister Aged 22, Occupation : Household,
 - (4) **DIPENDRASINH @ BHAGIRATHSINH
RATHOD,**
Brother, Aged: 21, Occu. Study,
R/o. Village: Koriyani,
Tal. Lakhpat-Kachchh
-Claimants

Vs.

- (1) **JOGARAM KISHANRAM,**
Aged: Adult, Occu. Driving,
R/o. Muknekatala Lilasar,

Barmed, Rajasthan

- (2) **NANDLAL TRIKAMBHAI VARCHAND,**
Aged: Adult, Occu. Transport,
R/o. House No. 520, Ratnal,
Anjar-Kachchh
- (3) **UNITED INDIA INS.CO.LTD**
Office at : Plot No. 323,
Ward 12B, Over Croma Center,
Gandhidham-Kachchh
- (4) **NODAL OFFICER,**
UNITED INDIA INS.CO.LTD
Office at : Plot No. 323,
Ward 12B, Over Croma Center,
Gandhidham-Kachchh
-Opponents

**Claim u/s.166 of the M.V. Act for getting compensation of
Rs.77,00,000/-.**

A P P E A R A N C E :

1. L.A. **Mr. G.N.Zaveri** for the claimants.
2. Served but remained absent for opponents No. 1 & 2
4. L.A. **Mr. A.A.Sahedani** for opponents No. 3 & 4

∴ J U D G M E N T ∴-

(1) The claimants have filed the present claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs. 77,00,000/- (Rupees Seventy Seven Lakh Only) for the fatal injuries sustained by the deceased, *late Pratapsinh Bhagubha Rathod*, in the vehicular accident dated 18.04.2023. They claim costs and interest at 12% per annum

from the date of filing the petition until realization, against the opponents.

(2) *The brief facts of the present claim petition are that* on 18.04.2023, the deceased, **Pratapsinh Bhagubha Rathod** was riding his Motor cycle bearing Registration No. GJ-12-DN-0317 at a moderate and controllable speed. It is further submitted that, when he reached the place of the accident at about 8.40 hours in night, Opponent No. 1 came from the opposite direction driving a Truck bearing Registration No. GJ-12-BZ-3419 at high speed in a rash and negligent manner, dashed against the deceased's motorcycle, and thereby caused the accident. Consequently, the deceased sustained serious injuries and succumbed to it. The claimants have therefore filed the present claim petition against the opponents under Section 166 of the Motor Vehicles Act, 1988.

(2.2) Upon service of notices, the opponents No. 1 & 2 did not appear nor filed written statement.

(2.3) Opponent No. 3 & 4, the Insurance Company of the offending Truck, appeared through the learned Advocate Mr. Sahedani and filed a written statement at Exh. 27, *inter alia* denying the factum of the accident. It also denied the age, income, and occupation of the deceased at the time of the accident. The Insurance Company submitted that in fact the deceased was riding the motorcycle in a rash and negligent manner, and therefore the accident occurred due to his own negligence. It further submitted that the driver of the offending

vehicle did not hold a valid and effective driving licence, constituting a clear breach of the insurance policy terms and conditions, entitling the Insurance Company to exoneration on this ground. Additionally, it submitted that the rider/deceased was not wearing protective headgear, and thus the accident occurred due to his contributory negligence. It therefore prayed that the Insurance Company be exonerated from liability to pay compensation

(3) In view of the pleadings of the parties this Tribunal had framed the following issues at Exh.10.

- [1] Whether it is proved that alleged death due to the use of Motor vehicle ?
- [2] Whether petitioners prove that they are entitled for any compensation from the opponents ? If yes, what amount of compensation should be allowed ?
- [3] What is order ?
- (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.

:- REASONS :-

(5) To prove the pleading of the claim petition and disprove the contents of the claim petition, claimants and opponents have produced following oral and documentary evidence on record:

Exh.	Particulars
15	Affidavit filed by Indraba Bhagubha Rathod under O.18, R. 4 of C.P.C

Exh.	Description of Documents
16	FIR
17	Panchanama of place of offence.
18	Inquest Panchanama
19	P.M. Report of deceased
20	Driving Licence of opponent No. 1
21	R.C.Book of offending vehicle
22 & 23	Insurance Policy of offending vehicle
24	Statement of Koriyani Milk Product Mandli from 01.02.2023 to 30.04.2023
28	Closing pursis

The opponent No. 3- Insurance Company has not produced any oral or documentary evidence, produced the closing pursis at Exh. 29.

ISSUE NO.1 & 2 COLLECTIVELY :

(6) Heard Ld. Advocates for the parties and perused the record.

(7) I have heard Ld. Advocates for the parties on the point of negligence of the driver of the vehicle. The claimant, Indraba Bhagubha Rathod, mother of the deceased has deposed on oath *vide* Exh. 15 and stated that, on 18.04.2023, the deceased, ***Pratapsinh Bhagubha Rathod*** was riding his Motor cycle bearing Registration No. GJ-12-DN-0317 at a moderate and controllable speed. It is further stated that, when he reached the

place of the accident at about 8.40 hours in night, Opponent No. 1 came from the opposite direction driving a Truck bearing Registration No. GJ-12-BZ-3419 at high speed in a rash and negligent manner, dashed against the deceased's motorcycle, and thereby caused the accident. Consequently, the deceased sustained serious injuries and succumbed to it. During the cross examination, she has admitted that, she was not personally present at the place of accident. She was not aware about the negligence. She has admitted that, she came to know about the fact of accident from elsewhere.

(8) While determining the issue of negligence, it must be borne in mind that negligence need only be established in a claim petition under Section 166 of the Act on the touchstone of preponderance of probabilities, and not beyond reasonable doubt. The aforementioned principle has been laid down by the Hon'ble Apex Court in *Bimla Devi v. H.R.T.C., AIR 2009 SC 2819, and Parmeshwari Devi v. Amir Chand, (2011) 11 SCC 635.*

(9) I have carefully examined the FIR (Exh. 16). It clearly establishes that the FIR was lodged against the driver of the Truck bearing Registration No. GJ-12-BZ-3419. A plain reading of the FIR reveals that the driver of the Truck came from the opposite direction at high speed in a rash and negligent manner, collided with the deceased's motorcycle, resulting in the accident. Consequently, the deceased sustained serious injuries, leading to his untimely demise. Additionally, the claimant has produced the panchanama of the accident site (Exh. 17), which reflects that both vehicles were found at the scene in a damaged

condition. Furthermore, the claimants have produced the Inquest Panchanama and Post-Mortem Report of the deceased (Exh. 18 & 19 respectively), which establish that the deceased succumbed to the injuries sustained in the accident.

(9.2) At this stage, it is noteworthy that the Insurance Company of the offending vehicle has not examined the driver of the Truck to lead evidence in rebuttal. Therefore, in accordance with 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 must be drawn against the driver and the owner.

(9.3) In light of the aforesaid facts and circumstances, as emerging from the FIR and the panchanama of the accident site, I hold that the accident occurred solely due to the negligence of the driver of the Truck bearing Registration No. GJ-12-BZ-3419. Accordingly, Issue No. 1 is decided in affirmative.

The Learned Advocate for the Insurance Company has submitted that the deceased was himself negligent, contending that this is a case of contributory negligence on the part of the deceased also. However, a perusal of the FIR and panchanama of place of offence clearly indicates that the driver of Truck No. GJ-12-BZ-3419 came from the opposite direction and collided with the deceased's motorcycle. Consequently, no negligence is attributable to the deceased. The aforesaid submission by the Learned Advocate for the Insurance Company is therefore untenable and is rejected.

ISSUE NO.2 :

(10) The claimant has pleaded that the deceased was earning Rs. 35,000/- per month from private service, animal husbandry and selling manure and husk. She has produced wage slip/ Leave Card for the month of December 2022, January, 2023, February 2023 and March 2023 however, the same were not exhibited nor any signature was shown on these documents. She has produced the statement in respect of selling milk in Mandali from 01.02.2023 to 30.04.2023 at Exh. 24 however, no seal or signature of the Chairman or Secretary is reflected. During the cross examination, she has admitted that, she has not produced document to prove that they holds milch cattle in respect of receiving income from animal husbandry work. She has admitted that they holds three cow. She has admitted that, the milk came from the milch cattle were used for home and rest of the milk were sold and the amount were incurred for manure and husk and maintenance of cattle. Hence, in absence of any cogent documentary evidence in respect of the income of deceased, the accident occurred on 18.04.2023 and considering the minimum wages in the year of 2023, it would be around Rs. 11,400/-per month. Therefore, I assess monthly income of the deceased as **Rs.11,400/-** and **Rs.1,36,800/-** per annum is just and proper while deciding the quantum of compensation.

(11) So far as age of the deceased is concerned, the claimants have pleaded that age of the deceased was 25 years. To which, the claimant has produced the copy of P.M. Report of deceased at Exh. 19 wherein the age of the deceased is shown 26

years which supported by the Inquest Panchanama at Exh. 18. Therefore, it is clear that, at the time of accident, the age of the deceased was 26 years. Hence, the deceased would fall under the age group 26 to 30 and, therefore, the claimants would be entitled to get compensation calculated on the basis of the multiplier of 17.

(12) As above discussed age of the deceased at the time of death was around 26 years and he was not salaried person and 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 increased by 40% i.e. **Rs.54,720/-**. [**Rs. 1,36,800/- x 40%**] Doing so, the amount would come to around **Rs.1,91,520/-**.

(13) Herein the present case, the claimant has stated that, the present claim petition is filed by parents as well as other younger siblings. The deceased was unmarried person. Therefore, in accordance with the law laid down by the Hon'ble Supreme Court in Pranay Sethi, one-third (1/3rd) of the annual income, i.e., Rs. 63,840/- [Rs. 1,91,520 × 1/3rd], stands deducted towards the deceased's personal expenses, leaving a balance of Rs. 1,27,680/-. Considering the deceased's age of approximately 26 years, the multiplier of 17 applies, yielding a total of Rs. 21,70,560/-.

(14) As this Tribunal is deciding the claim petition in the year 2026, the Hon'ble Supreme Court in Pranay Sethi [Para 61(viii)]

has held that, reasonable figures under conventional heads namely, loss of estate (Rs. 15,000/-), loss of consortium (Rs. 40,000/-), and funeral expenses (Rs. 15,000/-) should be enhanced by 10% every three years. Six years having elapsed since the pronouncement of Pranay Sethi, enhancement at 20% is appropriate. Accordingly, the petitioners are entitled to **Rs. 18,000/- towards loss of estate and Rs. 18,000/- towards funeral expenses.**

(15) Regarding the grant of consortium to the applicants, the Hon'ble Apex Court has categorically held in *Magma General Insurance Co. Ltd. v. Nanu Ram @ Churhu Ram, (2018) 18 SCC 130*; *United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur, 2020 SCC OnLine SC 410 (FB)*; and *New India Assurance Co. Ltd. v. Smt. Somwati, (2020) 9 SCC 644*, that in addition to the spouse, children are entitled to parental consortium upon the death of a parent. Filial consortium represents the parents' right to compensation upon the death of a child, with the amount fixed as per Pranay Sethi. The Hon'ble Apex Court has directed Tribunals and High Courts to uniformly award compensation under loss of consortium as a legitimate conventional head.

(15.2) In the present case, Applicant No. 1, being the mother, applicant No. 2 being the father of the deceased, they are entitled to get consortium Rs. 48,000/- each. The applicant Nos. 3 & 4 are sister and brother of the deceased, they are not entitled to get any consortium. Hence, the applicants are entitled to the total compensation as detailed below:

PATICULARS	AMOUNT
FUTURE LOSS OF DEPENDENCY	RS.21,70,560/-
LOSS TO ESTATE	RS.00,18,000/-
FUNERAL EXPENSES	RS.00,18,000/-
CONSORTIUM	RS.00,96,000/-
TOTAL AMOUNT OF COMPENSATION	RS.23,02,560/-

LIABILITY :

(16) As held hereinabove the accident took place due to rash and negligent driving on part of driver of Truck No.GJ-12-BZ-3419. Herein the present case, the opponent No. 1 was the driver, opponent No. 2 was the owner and opponent No.3 is the Insurance Company and opponent No. 4 is the Nodal officer of offending vehicle Truck. The claimants have produced the Insurance Policy of the offending vehicle at Exh. 23 from which it transpires that, the Insurance Policy of the offending vehicle was valid and effective at the time of the accident. It also appears that, the Insured had taken the Insurance Policy of “ **GCV Public Carrier Other Than Three Wheeler - Package Policy**” wherein the risk of the deceased being third party was covered. Hence, the opponent Nos. 1 to 4 are jointly and severally liable to pay compensation to the claimants.

INTEREST :

(17) The claimants have prayed for interest at the rate of 12% per annum. Therefore, I have gone through the judgment delivered by the Hon’ble Apex Court in the case of **Hanumantharaju B (Dead) By Lr Vs. M. Akram Pasha and Anr** reported in **2025 INSC 682** wherein Tribunal had awarded 9% interest which was reduced by the Hon’ble High Court to 6%

and the Hon'ble Supreme Court granted rate of 7% may be more appropriate to ensure fairness. Hence, considering the above judicial pronouncement, the claimant is entitled to get an interest @ 7% p.a., from the date of filling of the present claim petition. The Issue No.2, is, therefore, answered accordingly and the following final order is passed in the interest of justice.

-: ORDER :-

- (1) The present Motor Accident Claim Petition is “**PARTLY ALLOWED**”.
- (2) The claimants are entitled to recover the amount of **Rs.23,02,560/- [Rupees Twenty Three Lakh Two Thousand Five Hundred Sixty Only]** from opponents No. 1 to 4 are jointly and/ or severally, along with proportionate costs and interest at the rate of 07% (Seven Percentage) per annum from the date of filing the claim petition, till the amount is realized.
- (3) The aforesaid opponents are directed to deposit the awarded amount within 30 days. Out of the amount deposited in the office of this Tribunal, deficit Court Fees, if any, and the amount of interim relief, if any, awarded under Section 140 of the M.V.Act be deducted first from the amount.
- (4) The amount of compensation shall be disbursed among the applicants in the proportion that the applicant No. 1 and 2

shall get 30%-30% whereas the applicant Nos. 3 & 4 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 claimants for a period of Five years and remaining 40% amount be paid by way of Account Payee cheque to the said claimants.
- (6) The claimants shall not be entitled to get any loan, advance or withdrawal or can create any encumbrances on the aforesaid FDR without prior permission of this Tribunal. However, interest accrued from time to time on the said FDR may be paid in cash to the claimants.
- (7) 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.

Award be drawn accordingly.

Signed and pronounced in the open Court today i.e. 22nd April, 2026.

Date: 22/04/2026
Place: Bhuj

[Veerat Ashok Buddha]
JUDGE
M.A.C. Tribunal (Aux.) &
6TH Additional District Judge,
Bhuj.
(GJ00702)

/Rajesh Vaghela/