



Exh. 58
Received on 19/12/2022
Registered on 19/12/2022
Decided on 15/05/2026
Duration Y M Days
03 04 28

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

M.A.C.P. No. 632/2022

**HEIRS OF DECEASED AMIT SURESH
MOHANIYA**

- (1) **SURESH AMRU MOHANIYA,**
Father, Aged 26, Occupation : Labourer
- (2) **SAMBHA SURESH MOHANIYA,**
Mother, Aged 25, Occupation : Household,
All R/o. Kadavad Clan Bali, Zambua,
Madhya Pradesh,
At present R/o. GIDC Zupda,
Nr. Nata Salt,
Gandhidham-Kachchh **.....Claimants**

Vs.

PARTIES TO THE DUMPER
NO.GJ-12-AU-7440

- (1) **NOT KNOWN**
- (2) **DAYALAL SHIVJI BALDANIYA,**
R/o. Momay Faliyu, Village: Baladiya,

Tal. Bhuj

(3) TATA AIG GENERAL INS.CO. LTD

Office at : 2nd Floor, Ambika Arcade,
Plot No. 300, Ward 12B,
Opp. CG High School, GandhidhamOpponents

**Claim u/s.166 of the M.V. Act for getting compensation of
Rs.10,00,000/-.**

APPEARANCE :

1. L.A. **Mr. M.R.Lakhani** for the claimants.
2. Opponent No. 1- Not known.
3. Opponent No. 2 - Ex parte
4. L.A. **Mr. A.A.Sahedani** for opponent No. 3

∴ 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. 10,00,000/- (Rupees Ten Lakh Only) for the fatal injuries sustained by the deceased, *late Amit Suresh Mohaniya*, in the vehicular accident dated 14.12.2022. They claim costs and interest at 18% 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 14.12.2022, applicant's son deceased Amit Suresh Mohaniya was proceeding on the Motor cycle No.GJ-09-N-8591 along with applicant No. 1 and due to urge of urination, he went for urination by parking the Motor cycle with due care and below the*

road side and the deceased was sitting on the Motor cycle. At that time, the opponent No. 1 i.e. driver of Dumper No.GJ-12-AU-7440 took his vehicle on reverse, without following traffic rules and dashed with deceased who was sitting on the Motor cycle and caused serious injuries and due to such injuries, he succumbed. Therefore, the claimants have filed the present claim petition for getting compensation from the opponents under Section 166 of the Motor Vehicles Act, 1988.

(2.2) Upon service of notices, the opponent No. 1 is not known. The opponent No. 2 did not appear and therefore, the present claim petition was proceeded ex-parte against him.

(2.3) The Opponent No. 3, the Insurance Company of the offending Dumper, appeared through the learned Advocate Mr. Sahedani and filed written statement at Exh. 37 wherein it is denied the fact of the accident. It is submitted that, from perusal of the police papers, on the date of an accident permit of the Dumper was not in existence. It is denied the age, income and occupation of the deceased. It is submitted that, as per P.M. report, the cause of death of deceased was cardiac respiratory arrest on account of hemorrhagic shock due to extensive intracranial injury and polytrauma. It is submitted that, minor was sitting alone on the Motor cycle and due to collusion minor had grievous fatal injuries. The accident took place due to negligence of minor's father and therefore, the opponent - Insurance Company is not liable to pay compensation.

(3) In view of the pleadings of the parties this Tribunal had framed the following issues at Exh.20.

- [1] Whether it is proved that deceased sustained injuries and died due to rash and/or negligent act of the driver of vehicle involved in the accident ?
- [2] Whether applicants are entitled to compensation from the opponents ? If yes, what amount and from whom ?
- [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
23	Affidavit filed by Suresh Amru Mohaniya under O.18, R. 4 of C.P.C

Exh.	Description of Documents
25	FIR
26	Panchanama of place of offence.
27	Inquest Panchanama
28	P.M. Report
29	Charge sheet

30	Driving Licence of opponent No. 1
31	R.C.Book of offending vehicle
32	Insurance Policy of offending vehicle
33	Birth Certificate of deceased
35	Closing pursis

The opponent - Insurance company has examined witness Dharmesh Bachubhai Baldaniya at Exh. 44 and witness Maitra Shailendrasinh Solanki at Exh. 52. L.A. for Insurance Company has produced Insurance Policy of offending vehicle at Exh. 53.

ISSUE NO.1 & 2 COLLECTIVELY :

(6) Heard Ld. Advocates for the parties and perused the record. I have considered the written arguments filed by L.A. for the Insurance Company at Exh. 57.

(7) I have heard Ld. Advocates for the parties on the point of negligence of the driver of the vehicle. The claimant, Suresh Amru Mohaniya, father of the deceased has deposed on oath *vide* Exh. 23 and stated that, on 14.12.2022, his son deceased Amit Suresh Mohaniya was proceeding on the Motor cycle No.GJ-09-N-8591 along with him and due to urge of urination, he went for urination by parking the Motor cycle with due care and below the road side and the deceased was sitting on the Motor cycle. At that time, the opponent No. 1 i.e. driver of Dumper No.GJ-12-AU-7440 took his vehicle on reverse, without following traffic rules and dashed with deceased who was sitting on the Motor cycle and caused serious injuries and due to such injuries, he succumbed.

(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. 25). It clearly establishes that the FIR was lodged against the driver of the Dumper bearing Registration No. GJ-12-AU-7440. A plain reading of the FIR reveals that the driver of the Dumper had took his vehicle on reverse side and dashed with deceased who was sitting on the Motor cycle and caused injuries which resulted into death. The claimant has relied upon the panchanama of place of an accident which is produced at Exh. 26 from which it appears that, both the vehicles were lying at the spot. The claimants have produced the Inquest Panchanama and P.M. Report at Exh. 27 and 28 from which it appears that, due to the accidental injuries, the deceased has lost his innocent life. The claimants have produced the copy of charge sheet at Exh. 29 from which it transpires that, after completion of the investigation, the Investigating Officer has filed the charge sheet against the driver of Dumper.

(9.2) At this stage, it is noteworthy that the Insurance Company of the offending vehicle has not examined the driver of the Dumper 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 of Dumper.

(9.3) In light of the aforesaid facts and circumstances, as emerging from the FIR and charge sheet, I hold that the accident occurred solely due to the negligence of the driver of the Dumper bearing Registration No. GJ-12-AU-7440. Accordingly, Issue No. 1 is decided in AFFIRMATIVE.

ISSUE NO.2 :

(10) The claimant has deposed at Exh. 23 that, at the time of the accident, the deceased was 02 years old and was studying and was brilliant in studies and if he was alive then deceased ought to have earned more than Rs. 20,000/- per month. Since, the deceased was 2 years old at the time of accident, he was non earning person. It is the case of the claimant that, at the time of accident, deceased was 2 years old and therefore, it can be safely said that, he was minor and generally, while computing the income of minor, the notional income is to be considered as per the judgment of **Kajal Vs. Jagdish Chand** reported in **2020(4) SCC 413** wherein it is held that, taking into notional income is not correct approach. Instead, the minimum wages payable to skilled workman in the concerned State has to be taken into consideration because, that would be the minimum amount which she would have earned on becoming a major.

(11) By referring the said principle, the Hon'ble Apex Court has recently delivered the judgment in **Hitesh Nagjibhai Patel Vs. Bababhai Nagjibhai Rabari and Anr** in Civil Appeal

No. 10278/2025, judgment Dtd. 08.08.2025 wherein it is held that, the computation of compensation under the head of loss of income ought to be made by adopting, at a very least, the minimum wages payable to a skilled workman as notified for the relevant period in the respective State where the cause of action arises. Herein the present case, in view of the above ratio, this Tribunal can go into the prevailing minimum wages, which for the skilled once, as in the year of accident i.e. 14.12.2022, in Gujarat would be Rs. 371.3 per day, therefore, in the interest of justice, this Tribunal deems it appropriate to determine the income of the deceased at Rs. 9653.8/- per month, rounding off **Rs. 9,650/-** per month and **Rs.1,15,800/-** per annum.

(12) So far as age of the deceased is concerned, the claimants have pleaded that age of the deceased was 2 years at the time of accident. The claimant has relied upon the P.M. Report at Exh. 28 wherein the age of the deceased is shown 2 years. In view of the latest judgment of the Hon'ble Apex court in Hitesh Nagjibhai Patel Vs. Bababhai Nagjibhai Rabari and Anr in Civil Appeal No. 10278/2025, judgment Dtd. 08.08.2025 and the judgment of the Hon'ble Apex Court in the case of Pranay Shetye and the fact that age of the deceased was 2 years and therefore, the claimants would be entitled to get compensation calculated on the basis of the multiplier of **18**.

(13) As above discussed age of the deceased at the time of death was around 2 years and as per the ratio laid down by the Hon'ble Apex Court in **Meena Pawaia and Ors Vs. Ashraf Ali**, reported in **2021 Lawsuit (SC) 746**, in case of deceased who was not serving at the time of death and had no income at the time of

death, their legal heirs are entitled to future prospects by adding future rise in income 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.46,320/-**. [**Rs. 1,15,800 x 40%**] Doing so, the amount would come to around **Rs.1,62,120/-**

(14) Since the deceased was unmarried, and therefore, as per the law laid down by the Hon'ble Supreme Court in Pranay Sethi case, 1/2 (one half) i.e. Rs.81,060/- [Rs. 1,62,120 x 1/2nd] is required to be deducted towards personal expenses of the deceased. Hence, the amount would come to **Rs.81,060/-**. Since the deceased was aged about 2 years, applying the multiplier of **18**, the amount would come to **Rs.14,59,080/-**.

(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 from 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.

(16) So far as grant of consortium to the applicants is concerned, 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** has categorically held that in addition to spouse, the children are entitled for parental consortium in case of death of a parent and Filial consortium is the right of the parents to compensation in case of death of a child and the amount to be awarded for loss of consortium will be as per the amount fixed in Pranay Sethi's case. Furthermore, the Hon'ble Apex Court has categorically given direction to the Tribunals and High Courts to award compensation for loss of consortium as a legitimate conventional head. Hence, in above view of facts and circumstances, this Tribunal is duty bound to follow the directions issued by the Hon'ble Apex Court in the above judgment.

(16.1) Hence, in this case, the applicant Nos. 1 & 2 are parents of the deceased, they are entitled to get Rs. 48,000/- each under Filial consortium. Hence, the applicants are entitled to the total amount of compensation as under :-

PATICULARS	AMOUNT
FUTURE LOSS OF DEPENDENCY	RS.14,59,080/-
LOSS TO ESTATE	RS.00,18,000/-
FUNERAL EXPENSES	RS.00,18,000/-
CONSORTIUM	RS.00,96,000/-
TOTAL AMOUNT OF COMPENSATION	RS.15,91,080/-
ROUNDED OFF	RS. 15,91,100/-

LIABILITY :

(17) As held hereinabove the accident took place due to rash and negligent driving on part of driver of Dumper No.GJ-12-AU-7440. Herein the present case, the opponent No. 1 was not known, the opponent No. 2 was the owner and opponent No. 3 is the Insurance Company of Dumper. The Insurance Company has produced the Insurance Policy of Dumper at Exh. 53. Upon perusal of the said Insurance Policy, it appears that, Insurance Policy was valid and effective at the time of accident. It is the “Commercial Vehicle Package Policy- Goods Carrying Vehicle” and risk of the claimants are covered.

(18) As against that, Ld. Advocate for the Insurance Company has argued that, on the date of the accident, permit Dumper was not in existence and thus, it is clearly breach of the provision of Section 56 and Sec. 66 of M.V.Act and hence, the Insurance Company should be exonerated from liability to pay compensation. In this regard, the Insurance Company has examined witness Dhmesh Bachubhai Baldaniya at Exh. 44. He has stated in chief examination that, Insured had never obtained the permit from the date of registration till today and therefore, no any particular of permit is shown in the history report which is produced at Exh. 45. During the cross examination recorded by by Ld. Advocate for the claimant, he has admitted that, if the Transport vehicle is used for personal work, no permit is necessary. Further, the Insurance Company has examined witness Maitra Shailendrasinh Solanki at Exh. 52. He has stated that, in the present case, the Dumper did not have any RTO permit as required under Section 66 of the M.V.Act. Due to this, as stated

in the “**Limitation as to use**” clause on page 5 of the policy, coverage is only applicable if the vehicle has a permit under Section 66. It is further stated that, an official from the RTO was examined, and according to the history report of the vehicle produced at Exh. 45, the vehicle has never had a permit issued from the date of registration until today and therefore, Insurance Company is not liable to pay any compensation. During the cross examination, he has admitted that, he was not having knowledge which documents are requested by the company when insured the vehicle. It is denied that, company demanded a permit at the time of issuing the policy and only then is the policy issued. He do not know if the vehicle owner uses it for personal use. It is admitted that, permit is not required, if a transport vehicle is used for personal use under Section 66 of the M.V.Act. It is admitted that, he did not know whether the deceased’s vehicle had a valid RTO permit prior to the accident. It is admitted that, Insurance Policy contract submitted today is between the Insurance Company and the owner of the Dumper, and all its terms are between the company and the owner. It is denied that, Insurance Company is liable to pay compensation to the third party (deceased) and then recover that amount from the driver and owner of the Dumper.

(18.1) Hence, in view of the above, it is very clear that, when the transport vehicle is used for personal use, permit is not required under Section 66 of M.V.Act. Upon perusal of the R.C.Book of offending vehicle Exh.31, it transpires that, the vehicle was Transport vehicle. Now the question arises before this Tribunal that, whether the vehicle was being used for

personal work ? Herein the present case, I have gone through the panchanama of place of an accident, no any goods or material have been recovered from the place of offence and therefore, it can be said that, the Dumper was empty for private use. It is settled principle of law that, it is the duty of the Insurance Company to prove that the vehicle was used for commercial purpose without a permit. Herein the present case, the Insurance Company has examined witness Dharmesh Bachubhai Baladaniya from RTO at Exh. 44 and he has admitted that, permit is not required, if a transport vehicle is used for personal use. Further, the Insurance Company has not led any documentary evidence to prove that, the vehicle was used for commercial purpose. Further, the Insurance Company has failed to prove the receipt of goods or bilty which were transported through the said vehicle at the time of an accident. The Insurance Policy was “Package Policy” and the contract was made between the Owner and Insurer and other parties are said to be “Third Party” and therefore the risk of third party are covered under such policy. Hence, submission made by Insurance company is not sustainable and thus, rejected. Under that circumstances, the opponent Nos. 2 & 3 are jointly and severally liable to pay compensation.

Herein the present claim petition has been filed by the applicants and claiming the compensation restricted up to Rs. 10,00,000/-. However, in view of the judgment passed by the Hon’ble Apex Court in **Nagappa Vs. Gurudayal Singh** reported in **(2003) 2 SCC 274**, it is established that, motor accident tribunals can award compensation exceeding the amount

originally claimed if justified by evidence. It ruled that tribunals must award "just compensation.

INTEREST :

(19) The claimants have prayed for interest at the rate of 18% 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 **"ALLOWED"**.
- (2) The claimants are entitled to recover the amount of **Rs.15,91,100/- [Rupees Fifteen Lakh Ninety One Thousand One Hundred Only]** from opponents No. 2 & 3 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 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.
15th May, 2026.**

Date: 15/05/2026
Place: Bhuj

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

/Rajesh Vaghela/