

Filed on : 08/12/2022

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Decided on : 13/03/2026

Y M Ds.

Duration :

**IN THE MOTOR ACCIDENT CLAIM TRIBUNAL (AUX.-3) &
3rd ADDL.DISTRICT JUDGE, AT ANJAR.**

(Shri K.K.Shukla)

MAC PETITION NO.29/2022

Ex. __

Applicants:-

Legal heirs of decd. Narshibhai Vishrambhai Chavda:-

1. Meenaben Narshibhai Chavda,
Age: 48 years, Occu.: Home maker,
2. Gaurav Narshibhai Chavda,
Age : 25 years, Occu : Study,
3. Both Orig. House No.141, Murlidharkrupa
Society -1, Near Radhanagar Main Gate,
Vill : Meghpar Borichi, Tal : Anjar – Kachchh.

Versus

Opponents:

1. Deleted as per order below Ex.15
2. Ilakshiben Piyushbhai Vankar,
D/o. Ashokkumar Solanki
Age : 35 Years, Occu : Job,
R/o. House No.133, Murlidharkrupa society-2,
Vill : Meghpar Kumbhardi, Tal : Anjar - Kachchh.

Appearance:-

L.A. Shri V. V. Chavda for the applicants.

None for the Opponent No.2.

JUDGMENT

1. The present applicants have filed this claim petition u/s.166 of M.V. Act to get compensation in respect of accidental death of deceased namely, **Narshibhai Vishrambhai Chavda**, who is husband of applicant no.1 and father of applicant No.2.

2. The short facts leading to filing of this claim petition are as under:-

That on 31/07/2022 at about 19:45 hrs., in night, deceased was going to his house by walking and passing from Bansari Vill Society at that time, driver of Datsan Go car registered No.GJ.12.CD.5780 was driving his vehicle in rash and negligent manner with full speed and near Bansari Villa, Adipur Highway dashed with the deceased Narshibhai Vishrambhai Chavda from behind and caused accident. That in the said vehicular accident, deceased has sustained severe injuries on his various parts of body and he succumbed to the injuries.

That at the time of accident, deceased "**Narshibhai Vishrambhai Chavda**" was aged about 56 years and used to earn Rs.73,364/- p.m. by service at Polytechnic College as a Senior Clerk. That because of sudden demise of deceased present applicants have suffered permanent loss of future income as well as lost love and affection of the deceased. That if the deceased would not have died in the impugned accident, he would have lived longer and would have earned more income in future also. That as impugned accident took place because of gross negligence on the

part of driver of offending vehicle i.e. **Datson Go Car No. GJ.12.CD.5780**, present applicants have, in all, claimed compensation of Rs.60,30,000/- from the present opponents on all counts.

3. The Opponents duly served, Ld. Advocate Mr. B. H. Thacker has appeared before this tribunal but, not filed any W.S. Hence right to file the W. S. was closed by the this tribunal as per the application given by the applicant at Ex.16 and Mr. B. H. Thacker has given a pursis at Ex.40 on 08/06/2025 that, he has no any instructions on behalf of oppoent No.2.
4. I have heard the Ld. Advocate Mr. V. V. Chavda He has filed the written argument dated 11/03/2026 and argued that accident was happened and opponents are liable to pay the compensation. Notice have been issued to the opponents and opponent No.1 died and he was delted as party in this application and other opponent has not filed any W.S. hence, their right was closed vide Ex.16. Issues was framed by this tribunal. He has filed the documentary evidence Vide Ex. 21 to 39. Opponent was sole negligent in causing the accident and FIR was filed against him. Panchnama shows the fact that rash and negligent driving of opponent No.1. Deceased was died due to accident. Opponent No.1 was fled away after causing the accident. Deceased was 57 years old and earning Rs.73,364/- per month. Future prospect 10% is added and multiplier is 9 applicable. Deceased was serving in Tolani Polytechnic

College Adipur as Senior clerk and permanent job and he was payable income tax. Opponent No.1 was driving the vehicle without insurance and opponent No.2 had allowed to drive the vehicle involved in the accident without insurance since more than one year. Opponents are jointly and severally liable to pay the compensation. 9% interest rate is required to be awarded. In support of his submission, he has cited the head note of the various judgments i.e. National Ins. Co. Ltd. Vs/ Pranay Shethi and Ors. reported in 2017(4) TAC Page No.673 (Supreme Court), Sarla Verma Vs. Delhi Transport Corporation Ltd. reported in 2009 (6) SCC Page 121 (SC), Vimladevi and ors. Vs. National Ins. Co. Ltd. and Ors. reported in 2019 (2) SCC Page No.282 (Note-C) (SC), Santosh Devi Vs. National Ins. Co. Ltd. 2012 ACJ Page No.1428, Kaladevi and ors Vs. Bhagwandas Chauhan and Ors. 2014 ACJ Page 2875 (SC), Pushpabai Parshottam Udeshi & Ors. Vs. Ranjit J. & pressing Co. Ltd. AIR 1977 SC Page no.1735 (SC) and Magma General Ins. CO. Ltd. Vs. nanuram and Ors. 2018 (18) SCC Page No.130 (SC). Hence, prayed to allow the present petition.

5. Following issues have been arisen for the determination of the claim petition :-
 - (1) Whether applicants prove that the deceased died in a vehicular accident due to rash and negligent driving of the driver of the vehicles involved in this accident ?
 - (2) Whether the applicants is/are entitled for

compensation ? If yes, what amount and from whom ?

(3) What order and award ?

6. My findings on the above issues are as under :-

- (1) In Affirmative.
- (2) Partly In the affirmative.
- (3) As per final order.

:: REASONS ::

ISSUE NO.1(NEGLIGENCE):-

7. Issue no.1 is pertaining to negligence on the part of driver of offending vehicles who involved in the accident. Negligence means failure to exercise the required degree of care and caution expected from a prudent drivers. It is a settled principle of law that burden of proving negligence is on the claimants who asserts it. The claimants have to produce reasonable evidence that the accident took place due to negligence on the part of the driver of the vehicle involved in the accident. Thereafter, burden shifts upon the other side to explain the circumstances under which, the accident occurred.
8. The applicant no.1 has submitted her affidavit at Exh.18 wherein she reiterated the facts stated in the claim petition. It is further stated by her that on 31/07/2022 at about 19:45 hrs., in night, deceased was going to his house by walking and passing from Bansari Vill Society at that time, driver of Datsan Go car registered No.GJ.12.CD.5780 was driving his vehicle in rash and negligent manner with full speed and near Bansari Villa, Adipur Highway dashed with

the deceased Narshibhai Vishrambhai Chavda from behind and caused accident. That in the said vehicular accident, deceased has sustained severe injuries on his various parts of body and he succumbed to the injuries.

Further, on perusal of complaint(**Ex.21**) complaint was filed against the driver of car No. GJ.12.5780. The copy of panchnama of place of accident is produced at **Exh.22**. Inquest panchnama of deceased is at **Ex.23** which shows the cause of death and his P. M. Report is produced at **Exh.24**. Death Certificate is at Ex.25 and 26.

Nobody has appeared on behalf of the opponent to cross-examine the applicant. At Ex.42 application given by the applicant right to cross-examine the applicant was closed.

So, considering the above evidence on record, this tribunal deems fit to consider that the vehicular accident is occurred due sole negligent on the part of opponent driver of Dutson Go car No. GJ.12.CD.5780. Hence, the answer of Issue No.1 is replied partly in the Affirmative.

ISSUE No.2

QUANTUM OF COMPENSATION :-

9. The applicant has produced affidavit in the form of evidence vide Exh.18 wherein she has stated that deceased namely, Narshibhai Vishrambhai Chavda was aged about 57 years and in support of submission, she has produced School Leaving Certificate at Ex.27 and copy of Adhar Card of deceased at Ex.31 to prove the age of the

deceased. Considering the documents DOB of deceased is mentioned 02/06/1966 and the present accident was occurred on 31/07/2022. Hence, age of the deceased comes to 56 years. Hence, this tribunal seems fit to consider the age of the deceased as 56 years at the time of accident.

The applicant has stated in affidavit that his deceased husband namely, Narshibhai Vishrambhai Chavda used to earn Rs.73,364/- p.m. by doing serving at Polytechnic College as a Senior Clerk. Applicant has produced the copy of salary slip at Ex.30 issued by Tolani Foundation Gandhidham Polytechnic and it is of July, 2022 where deceased was served. Considering the receipt Ex.30 Gross salary of deceased was written as Rs.73,364/- and tax deduction was of Rs.200/- is written. Nobody was appeared on behalf of the opponent to contest or object the said document Ex.30.

Considering the facts on record, this tribunal is deems fit to consider the income of Rs.73,000/- per month of deceased is just and proper.

Deceased being the able bodily and hence, it can be said that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased where the deceased was self-employed or on a fixed salary. However, the Hon'ble Supreme Court has held in a recent Judgment delivered in Special Leave Petition(Civil) No.25590 of 2014 in a case of **National Insurance Company Ltd. Vs. Pranay Setthi and Ors.** that,

“In case the deceased was of permanent job

(salaried), an addition of 50% of established income should be the warrant where the deceased was below the age of 40 years. An addition of 30% where the deceased was between the age of 40 to 50 years and 15% where the deceased was between the age of 51 to 60 years should be regarded as the necessary method of computation. The establish income means the income minus the tax component. Thus, as per the ratio laid down by the Hon'ble Supreme Court in the case of **National Insurance Company Ltd. Vs. Pranay Setthi and Ors.(Supra)**, the future prospect should be added in the present case on hand as the deceased was having permanent job. Thus, as discussed earlier, we have assessed the monthly income of the deceased Narshibhai Vishrambhai Chavda as **Rs.73,000/-** p.m., but, as per the ratio laid down in the case of **National Insurance Company Ltd. Vs. Pranay Setthi and Ors. (Supra)**, we have to add 15% amount of monthly income of deceased i.e. **Rs.10,950/-** towards future prospects(As deceased was 56 years at the time of his death and thus, the monthly prospective income of deceased can be treated as **Rs.83,950/-** and yearly, it would come to **Rs.10,07,400/-**).

Now, we have to deduct the living expenses of the deceased, however, as per the judgment of the Hon'ble Supreme Court given in the case of **Sarla Verma v. Delhi Transport Corpn.(Supra)**, 1/3rd amount is required to be deducted as personal expenses of the deceased. Hence, 1/3rd amount i.e. **Rs.3,35,800/-** of **Rs.10,07,400/-** requires to be deducted, hence, net yearly income **@Rs.6,71,600/-** can be considered as prospective income of deceased.

Further, in the judgment given in the case of **Sarla Verma Vs. Delhi Transport Corpn.(Supra)**, the Hon'ble Supreme Court has restructured the multiplier column of Schedule-II and according to this restructured column of multiplier the person belonging to the age group of 56 to 60 is entitled for a multiplier of 9. Therefore, the claimants are entitled for a multiplier of 9 and hence, **Rs.60,44,400/- (Rs.6,71,600/- x 9 M)** can be considered as prospective loss of income to claimants because of the death of deceased. The applicants must have spent some amount for the after death ceremony, and therefore, it will be just and proper to award **Rs.44,000/-** loss of consortium to applicant No.1 wife of deceased, **Rs.16,500/-** as charges for the funeral or after death ceremony, and an amount of **Rs.16,500/-** can be awarded to applicants. Thus, present applicants are entitled for a total compensation of **Rs.61,21,400/-** for the death of the deceased **“Narshibhai Vishrambhai Chavda”**. Therefore, answer of Issue Nos.2 & 3 are replied in partly affirmative.

Thus, total compensation for the death of the deceased, under various heads as particularized below:-

Rs. 60,44,400=00	Loss of Dependency
Rs. 16,500=00	Loss to Estate.
Rs. 16,500=00	Funeral Expenses.
Rs. 44,000=00	Loss of consortium
Rs. 61,21,400=00	NET TOTAL COMPENSATION.....

Liability :-

- DL of driver of Dutson Go car Car No. GJ.12.CD.5780 is produced at Ex.28. Copy of RC Book of Car is at Ex.29

and it is in the name of Ilaxiben Solanki i.e. present opponent No.2 is the owner of the said car. No insurance policy is produced on record.

Therefore, as discussed above, driver of offending car was sole negligent in causing the accident but, as per record he was died during the pendency of this petition hence, he was deleted vide order passed below Ex.15. Hence, opponent No.2 is solely liable to pay the compensation to the applicants. Hence, issue No.2 is answered accordingly.

11. **Admissible Rate Of Interest in the case:-**

The Judgment reported in *AIR 2008 (S.C.) 2312 in the case of Dharmpal and Ors. V/s. U.P. State Road Transport Corporation*, Honourable Supreme Court has held that award of interest would normally depend upon the bank rate prevailing at relevant time. Applying this ratio, In this case accident occurred in the year of 2022 and by that year nationalize banks, on an average, are giving 6% p.a. interest on the FDR. Therefore, in the present case, end of justice would meet if awarded compensation carries interest@6% p.a. from the date of this petition till realization.

12. In the result, the following final order is passed in the interest of justice :-

:- ORDER :-

- MACP No.29/2022 is hereby partly allowed.
- The claimants are entitled to recover compensation of **Rs.61,21,400/-(Rs. Sixty One Lacs Twenty One Thousands**

Four Hundred Only), with proportionate cost & interest @6% p.a., from filing of claim petition till realization from the **Opponent No.2**.

- The **Opponent No.2** is hereby directed to deposit in the Office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any paid u/s.140 of M.V.Act, within 30 days from the date of this order.
- Deficit Court Fees stamp, if any, be recovered from the awarded amount.
- After deducting the amount of interim compensation, if any paid U/s.140 of M.V.Act, the **Opponent No.2** is hereby directed to deposit awarded amount before the Tribunal through RTGS/NEFT as per following apportionment and for that they shall follow the instructions and direction issued by the Hon'ble Apex court in the case of ***Bajaj Allianz General Insurance Co.Pvt.Ltd Vs. Union of India and Ors, passed in Writ Petition(Civil No(S) 434/2020, dated 16/11/2021.***
- Out of the total amount inclusive of interest and costs when deposited, after deducting necessary court-fee, the remaining amount be distributed among all the applicants as per the apportionment shown below :-
 - (i) 60% share shall be payable to applicant No.(1), wife of deceased.
 - (ii) 40% shares each shall be payable to applicant No.2.
- Out of the amount as apportioned above, and considering

the ratio laid down by the Honourable Apex Court in the case of A.V. Padma V/s. Venugopal, reported in 2012(1) GLH (SC) 442, and further considering the fact that 70% amount falling to the share of claimants be invested in the individual name of applicants in any nearest nationalized bank for a period of five years with condition not to withdraw the same or to create any encumbrances or to raise loan without the prior permission of this Tribunal but the bank shall pay periodical interest to the claimants. The remaining 30% of the amount be paid to the claimants by an account payee cheque/RTGS in her individual name after due verification.

- The ratio laid down by Honourable Gujarat High Court, in the case of *Smt. Hansaguti P. Ladhani v/s. The Oriental Insurance Company Ltd., reported in 2007(2) GLH 291*, is ordered to be followed strictly.
- The costs shall be borne by **Opponent No.2**.
- Award be drawn accordingly.

Pronounced in the open Court today.

Date:13/03/2026
Place:Anjar.

(K.K.Shukla)
M.A.C.Tribunal(Aux.-) &
3rd Addl.Dist.Judge,
Anjar-kachchh.
(Code: GJ00547)