GJMH010004132021

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Registered on	:	05.02.2021
Decided on	:	06.04.2026
YY-MM-DD	:	05-02-01
Exh.	:	23

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL

(MAIN) MAHESANA

MOTOR ACCIDENT CLAIM PETITION No.41 OF 2021

Applicant:-

Legal heir of deceased Patel Jigneshbhai Ramabhai Bhikhabhai
Patel Shardaben Ramabhai Bhikhabhai
Aged about 60 years,
Occupation: Housework,
R/o. Hasnapur (Gerita),
Tal. Vijapur, Dist. Mahesana.

VERSUS

OPPONENTS:-

1. Driver of Tractor No.GJ-01-RG-9535
Chauhan Rakeshji Ganuji
R/o. Gerita, Tal. Vijapur, Dist. Mahesana.

2. Owner of Tractor No.GJ-01-RG-9535
Patel Dashrathbhai Shivabhai
Adult, R/o. Hasnapur (Gerita),
Tal. Vijapur, Dist. Mahesana.

Subject: Claim petition under Section 166 of the M.V. Act to get compensation of Rs.50.00 Lakh.

Appearance:-

Mr. A.H. Parmar, Ld. Advocate for applicant.
Mr. J.H. Makavana, Ld. Advocate for opponents.

JUDGEMENT

(1) The applicant / claimant has preferred present claim petition under Section 166 of M.V. Act to get compensation of Rs.50.00 Lakh from the opponents in respect of death of Jignesh Ramabhai in a vehicular accident.

(2) That, brief facts leading to the present claim petition are that; 23/04/2020 at about 6:30 p.m., the son of applicant, named, Jignesh was passing on his motorcycle No.GJ-18-CC-7870 and when he reached at the place of accident, the driver of Tractor No.GJ-01-RG-9535 came in excessive speed and endangering the human life and dashed with the motorcycle of the deceased, as a result thereof, deceased sustained grievous injuries and died during the treatment. As such, accident was occurred upon sole negligence in driving on the part of the driver of the vehicle Tractor No.GJ-01-RG-9535 involved in the accident, the applicants has preferred present claim petition to get compensation from the opponents under various heads.

(3) Notice duly served to the opponents. The opponents appeared through their learned Advocate and filed Written Statement vide Exh.8 denying the facts of claim petition. The opponents have averred that the opponent No.1 was driving the tractor in a moderate speed and on the correct side of the road, but the deceased himself came in excessive speed and endangering the human life and dashed the Tractor of opponent No.1, and therefore, impugned accident was occurred. The complaint was filed against the unknown vehicle. The applicant has not specifically averred that how the accident was happened. There was no fault on the part of opponent No.1 in causing the accident. Thus, it is prayed to dismiss the claim petition with cost.

(4) That the applicants have produced the following oral as well as documentary evidence, which are as under:

Sr. No.	**DOCUMENT**	**Exh.**
1	Examination in chief on affidavit of applicant filed under Order 18 Rule 4 of C.P.C.	16
2	Copy of FIR.	17
3	Copy of Spot Panchnama.	18
4	Copy of Inquest Panchnama.	19
5	Copy of P.M. Note.	20
6	Copy of R.C. Book of Tractor.	21

(5) Ld. Advocate for the applicants has submitted his closing of evidence pursis vide Exh.22.

(6) Heard oral arguments canvassed by the learned Advocates appearing on behalf of the parties, which are considered by this Tribunal.

(7) After considering the oral arguments canvassed by learned Advocates for respective parties and also considering the oral as well as documentary evidence produced on record, the Tribunal has framed the following issues vide Exh.9 for determination of present claim petition:-

ISSUES

(1) Whether claimant proves that the deceased sustained injuries and died on account of rashness or negligent driving on the part of the driver of the vehicle involved in the accident?

(2) What amount, if any, the claimant is entitled to, by way of compensation and from which of the opponent?

(3) What order and award?

(8) My findings to above issues in both the claim petitions are as under:-

(1) In affirmative.

(2) As per final order.

(3) As per final order.

R E A S O N S

(9) **ISSUE NO.1: NEGLIGENCE:**

To prove the negligence, the applicants have produced copy of FIR vide Exh.17, which was filed against the driver of unknown vehicle. It is pertinent to note here that the opponents have filed their Written Statement to the present claim petition vide Exh.8, wherein the opponents have admitted the fact of accident through their Tractor. However, the opponents have submitted that impugned accident was occurred upon sole negligence in driving on the part of the driver of motorcycle i.e. deceased himself. Thus, from the admission on the part of the opponents, the involvement of vehicle is proved. Moreover, perusing the spot Panchnama produced vide Exh.18, it clearly transpires that vehicle motorcycle was lying at the place of accident in damaged condition. Thus, perusing the Spot Panchnama, it clearly shows that deceased died in a vehicular accident. Moreover, perusing the Inquest Panchnama and P.M. Note produced on record, it clearly shows that deceased sustained grievous injuries and died during the treatment due to vehicular accident.

Negligence means failure to exercise the required degree of care and caution expected from a prudent driver. It is a settled principle of law that burden of proving negligence is on the claimant who assert it. The claimants has to produce reasonable evidence that the accident took place due to negligence on the part of the driver / owner of the vehicle involved in the accident. Thereafter, burden shifts upon the other side to explain the circumstances under which the accident occurred. In these proceedings under the Motor Vehicles Act, strict proof of negligence is not necessary. Negligence can be established even on the basis of preponderance of probability. It is true that some times direct evidence for proof of negligence is not available and therefore, the principle of *res ipsa loquitur* i.e. 'things speak for themselves' is also required to be kept in mind at the time of deciding negligence. This settled principle of law has been very lucidly and exhaustively discussed by the Hon'ble High Court of Gujarat in the case of ***Gujarat State Road Transport Corporation Vs. Kamlaben Valjibhai Vora***, reported in **2001 (3) G.L.R. 2528**.

Further, applicants have produced various documents like copy of complaint, Spot Panchnama, Inquest Panchnama and P.M. Note and from such material available on record, it appears that the applicant has proved that the accident was occurred due to negligence on the part of the driver of the vehicle Tractor involved in the accident. Moreover, the driver of the vehicle Tractor – opponent No.1 involved in the accident not stepped into witness box to disprove his negligence, and therefore, adverse inference shall have to be drawn against the driver of the Tractor. My view is fortified by the judgment rendered by Hon’ble Gujarat High Court in case of **Bajaj Allianz General Insurance Ltd v/s Bhikhabhai Manilal Patel 2011 0 ACJ 810.** Here in the case on hand, the driver of vehicle Tractor not stepped into the witness box for his cross-examination. Therefore, adverse inference should have to be drawn against him. Considering the documentary evidence produced on record, it clearly shows that at the time of alleged accident, the driver of vehicle Tractor – opponent No.1 was driving in a rash and negligent manner. Perusing the documentary evidence produced on record, it clearly shows that the deceased sustained grievous injuries and died in a vehicular accident, which was occurred **upon sole negligence in driving on the part of driver of Tractor No.GJ-01-RG-**9535 **– opponent No.1** and hence, I answer Issue No.1 in affirmative accordingly.

(10) ISSUE NO. 2 : QUANTUM OF COMPENSATION:-

Age & Multiplier:- So far as age of the deceased is concerned, the applicant has not produced any document showing the age of the deceased. However, perusing the P.M. Note produced vide Exh.20, wherein the age of the deceased has been mentioned as 30 years, which is not objected or challenged by the opponents, and therefore, the age of deceased is considered as 30 years at the relevant time of accident in absence of any cogent documentary evidence regarding age of the deceased. Thus, considering age of the deceased between 26 to 30 years at the time of accident, claimants are entitled to get multiplier of **'17'**, as held by the Hon'ble Apex Court in "*National Insurance*

Co. Ltd. Vs. Pranay Sethi & Ors., reported in 2017 SC – 1050.

(11) Income:-

So far as source of income of the deceased is concerned, the applicant has filed her Examination In Chief on Affidavit produced vide Exh.16, wherein she has stated that deceased Jignesh was earning Rs.30,000/- per month by doing business and also earning Rs.1.00 Lakh p.a. from agriculture. The deceased was breadwinner of her family. The applicant was dependent family member of the deceased. Learned Advocate for the opponents has cross-examined the applicant, wherein she has admitted that she has not produced any document showing source of income of the deceased. Thus, applicant failed to establish source of income of the deceased. It is also cardinal principle of law that when there is no proof of income of victim of the motor accident, his/her monthly income can be assessed on the basis of minimum wage prevailing at the relevant time of accident. Since, the applicant failed to prove monthly income of the deceased, and therefore, considering the rate of minim wage prevailing at the relevant time of accident, the notional income Rs.8,840/- is required to be considered as monthly income of the deceased.

(12) In the present claim petition, the deceased was aged 30 years and unmarried, and therefore, claimant is entitled for future prospective income as per the ratio laid down by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd. Vs. Pranay Sethi & Ors., reported in 2017 SC – 1050. The claimant has not produced any document showing that the deceased had a permanent job and therefore, deceased can be said as self employed person. Considering the fact that deceased was below the age of 40 years self employed person, and therefore, 40% amount i.e. Rs.3,536/- is required to be included in the monthly income and the net dependency loss would comes to Rs.12,376/- (Rs.8,840/- + Rs.3,536/-) per month.

(13) So far as the deduction for personal and living expenses is concerned, the Hon’ble Apex Court in case of Sarla Verma held that; "Where the deceased was a bachelor and the claimants are the parents, the deduction follows a different principle. In regard to bachelors, normally, 50% is deducted as personal and living expenses, because it is assumed that a bachelor would tend to spend more on himself. Even otherwise, there is also the possibility of his getting married in a short time, in which event the contribution to the parent(s) and siblings is likely to be cut drastically. In the present case, the deceased was bachelor and applicant is the mother of the deceased and dependent on the income of the deceased. Thus, looking to the reported judgment of the

Hon'ble Apex Court, ½ amount is liable to be deducted towards personal and living expenses of the deceased. Thus, after deducting 1/2 amount of Rs.6,188/- (1/2 of Rs.12,376/-), the net dependency loss would comes to Rs.6,188/-, which can be considered as monthly loss of dependency. As discussed above, after applying multiplier of 17, the amount would come to **Rs.12,62,352/-** (Rs.6,188 X 12 months x 17 multiplier), which can be awarded as loss of dependency to the claimant.

(14) Further, as per decision of Hon'ble Apex Court in case of ***Magma General Insurance Co. Ltd. V/s. Nanu Ram***, reported in 2018 **ACJ 2782 (SC)**, and in the case of ***National Insurance Co. Ltd. V/s. Pranay Sethi***, reported in **2017 ACJ 2700**, the claimant is entitled to get **Rs.48,400/-** under the head of filial consortium, **Rs.18,150/-** under the head of loss of estate and **Rs.18,150/-** towards funeral expenses. As a result the amount of compensation would come as under, which is just and reasonable and I award the same.

For loss of dependency	Rs.12,62,352.00
Loss of consortium	Rs.48,400.00
Loss of estate	Rs.18,150.00
For funeral expenses	Rs.18,150.00
Total...	**Rs.13,47,052.00**

Thus, applicant is entitled to get compensation of **Rs.13,47,052/- (Rupees Thirteen Lakh Forty Seven Thousand Fifty Two only)** under all heads.

(15) <u>Interest:</u>~

In the present claim petition, the applicants have claimed interest with cost of petition. However, in view of the reported judgment of the Hon'ble Apex Court in the case of ***Savitha Vs. Cholamandalam MS General Insurance Co. Ltd., & Ors., reported in 2020 ACJ 2157***, wherein the Hon'ble Apex Court has held that, the claimant is entitled to get interest at the rate of 6% per annum, but but looking to the peculiar circumstances, the claimant would be entitled to get interest at the rate of 7% on the amount of compensation from the date of filing of the claim petition till its realization. Hence, I award interest at the rate of 7**%** p.a. on the amount of compensation accordingly.

(16) <u>Liability</u>:

So far as the liability is concerned, as discussed in Issue No.1 that the opponents have not denied the accident and involvement of the vehicle Tractor in the accident. Moreover, the opponents not stepped into witness box to rebut the involvement of vehicle, and therefore, this Tribunal has held that accident was occurred upon sole negligence on the part of driver of the vehicle Tractor No.GJ-01-RG-9535 involved in the accident, and therefore, the opponent No.1 as being driver and opponent

No.2 as being an owner of vehicle Tractor, both are held liable to pay compensation to the applicant jointly and severally.

(17) <u>ISSUE NO.3.</u>

In view of the above findings of issues Nos. 1 and 2, I pass the following order:

<u>ORDER</u>

1. Present claim petition is hereby partly allowed.
2. The applicant is entitled to get compensation of **Rs.13,47,052/- (Rupees Thirteen Lakh Forty Seven Thousand Fifty Two only)** from the opponents jointly and severally.
3. The applicant is hereby entitled to recover the above compensation amount from the opponents with proportionate cost and with simple interest there on @ 7% per annum from the date application till its realization, along with cost of litigation.
4. The opponents are directed to deposit the awarded amount with cost and interest as per the directions given by Hon'ble the Apex Court in Writ Petition (C) No.534 of 2020 in the case of *Bajaj Allianz General Insurance Company Ltd. V/s. Union of India and Ors*.
5. The opponents are hereby ordered and directed, by this Tribunal, to deposit the said amount within one month from the date of this award.

6. Interim amount, if any, paid to the claimant/s be adjusted at the time of final disbursement. The deficit court fees, if any, be deducted from the awarded amount.
7. That, out of total awarded amount of compensation awarded to the applicant, 70% amount is to be kept in fixed deposit in any nationalized bank or in a post office for a period of five years with a direction to the Bank or Post Office not to grant any loan or advance on the said F.D.R. without prior permission of this Tribunal. However, claimant/s shall be at liberty to withdraw the periodical interest on the said F.D.R. as per rules of the Bank or Post Office, and the remaining 30% amount shall be paid to the claimant/s by A/c. payee cheque, after due verification.
8. Award be drawn accordingly.

Signed and pronounced in open Court on this 6th day of April, 2026.

Date :06.04.2026
Place: Mahesana

[AMBRISH LALJIBHAI VYAS]
MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN) MAHESANA
UIC NO. GJ00508