

GJMH010010292022



Presented on : 15.04.2022
Registered on : 15.04.2022
Decided on : 13.03.2026
Duration : 03-10-26
YY-MM-DD
Exh. : 47

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL

(MAIN) MAHESANA.

M.A.C.P. No.60 OF 2022

APPLICANTS:-

Heirs of deceased Vadi Poojaben Nileshbhai

1. Vadi Nileshbhai Kesarbhai @ Keshabhai
Aged about 23 years,
Occupation: Driving
2. Vadi Dhruvansh Nileshbhai
Age about 3 years.
(Minor applicant No.2 through his guardian
father - applicant No.1).

All R/o. Samoda, Tal. Siddhpur, Dist. Patan.

V E R S U S

OPPONENTS:-

1. Owner of Rickshaw No.GJ-01-TE-5465
Vadi Rohitbhai Keshabhai
Aged about 35 years, Occupation: Driving,
R/o. Samoda, Thakorvas, Tal. Siddhpur, Dist. Patan.
2. Insurance Co. of Rickshaw No.GJ-01-TE-5465
Magma H.D.I. General Insurance Co.,
S/1, Sigma Oasis, Nr. H.D.F.C. Bank,
Tal. & Dist. Mahesana.

**Subject: Claim petition under Section 163-A of M.V. Act to
get compensation of Rs.18,72,590/-.**

Appearance:-

Mr. V.R. Rangwala, Learned Advocate for Applicants/claimants.
Opponent No.1 not appeared though served.
Mr. N.R. Bhavsar, Learned Advocate for opponent No.2.

J U D G E M E N T

- (1) Present claim petition has been filed under Section 163-A of M.V. Act to get compensation of Rs.18,72,590/- from the opponents in respect of death of deceased Vadi Poojaben Nileshbhai in a vehicular accident.
- (2) The facts leading to the present claim petition, in nutshell, are that on 21/08/2021 when the applicant and deceased Poojaben were travelling in a Rickshaw No.GJ-01-TE-5465 from Gozariya to Dhendhu, which was driven by the applicant and deceased was travelling

in a back seat of the rickshaw, at that time, the wife of applicant i.e. deceased Poojaben told the applicant to stop his rickshaw, and therefore, the applicant tried to side his rickshaw by applying brakes, as a result thereof, deceased fell-down from the rickshaw and sustained grievous injuries. The deceased was firstly taken to Gozariya Primary Health Centre and thereafter, taken to Lions Hospital for further treatment for some days and thereby shifted to Ahmedabad Civil Hospital on 03/09/2021, where she succumbed to her injuries on 08/09/2021. As per the applicants, the deceased was aged about 22 years and earned Rs.1,24,173/- p.a. at the relevant time of accident. As such accident was occurred and deceased died out of use of vehicle, the applicants have claimed present claim petition under Section 163(A) of the M.V. Act to get compensation from the opponents under various heads.

- (3) The opponents duly served with the process. The opponent No.1, though served with the process, neither personally nor through his learned Advocate appeared before the Tribunal, and therefore, right to file Written Statement closed by the Tribunal.
- (4) The opponent No.2 – Insurance Company, though appeared through its learned Advocate, has not filed its Written Statement to the present claim petition, and

therefore, right to file Written Statement by the opponent No.2 closed by the Tribunal.

(5) In support of present claim petition, applicants have produced the following oral as well as documentary evidence, which are as under:

(6) **Oral evidence:-**

Examination-in-chief on Affidavit of applicant No.1 produced at Exh.16.

DOCUMENTARY EVIDENCE :-

- 1) Copy of Complaint. Exh.24.
- 2) Copy of Statement of applicant given before the Police. Exh.25.
- 3) Copy of Spot Panchnama. Exh.26.
- 4) Copy of Inquest Panchnama. Exh.27.
- 5) Copy of P.M. Note. Exh.28.
- 6) Copy of R.C. Book of Rickshaw No.GJ-01-TE-5465. Exh.29.
- 7) Medicals Bills produced vide list Exh.30.
- 8) Copy of Aadhar Card of applicant No.1. Exh.40.
- 9) Copy of Pan Card of applicant No.1. Exh.41.
- 10) Copy of Aadhar Card of minor applicant No.2. Exh.42.
- 11) Copy of details showing Bank Account of applicants. Exh.43.

- 12) Copy of death certificate of deceased - Poojaben. Exh.44.
 - 13) Genealogy Register as per Gujarat Govt. Revenue Department. Exh.45.
 - 14) Copy of Aadhaar Card of deceased. Exh.32.
 - 15) Copy of Driving License of applicant No.1.Exh.33.
 - 16) Copy of Vehicle Particulars of Gujarat Motor Vehicle Department. Exh.34.
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- (7) The opponent No.2 has examined its witness Suhitkumar Rajendraprasad Suthar vide Exh.36 and produced copy of Insurance Policy of vehicle Rickshaw vide Exh.37.
 - (8) Learned Advocate for applicants has produced his Closing of Evidence Pursish vide Exh.35.
 - (9) Learned Advocate for opponent No.2 has produced his Closing of Evidence Pursish vide Exh.38.
 - (10) Heard oral arguments canvassed by the learned Advocate for the applicants. Learned Advocate for the opponent No.2 has produced his Written Arguments vide Exh.46. After considering the oral arguments canvassed by learned Advocate for the applicants and Written Arguments advanced by learned Advocate for the opponent No.2 and also considering the oral as well

as documentary evidence produced on record, the Tribunal has framed the following issues vide Exh.13 for determination of present claim petition:-

ISSUES

1. Whether claimants prove that the deceased sustained injuries and died on account of such injuries due to rashness/ negligent driving on the part of the drivers of the vehicles involved in the accident?
2. What amount, if any, claimants are entitled to, by way of compensation and from which of the opponent?
3. What order and award?

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.

REASONS

ISSUE NO.1: NEGLIGENCE:-

- (11) The claimants have filed present claim petition under the structural formula of Section 163-A of the M.V. Act and,

hence, before assigning reasons to the above issues, I would like to refer the provisions of sub-section (1) of Section 163-A of the Act.

- (12) It is settled proposition of law that the application under Section 163-A of the Motor Vehicles Act is a substantive application and award passed on the basis of such application is final. Sub-section (2) of Section 163-A of the Motor Vehicles Act provides that in any claim for compensation under Sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disability in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. Therefore, only question remains to be decided in a petition filed under Section 163-A is the involvement of vehicle and the death of the victim out of the use of involved vehicle. Hence, keeping in mind the said provisions, this claim petition is to be decided on merits.
- (13) Further, it is required to be noted that Tribunal is not required to decide point of negligence in the cases where claim petitions are preferred u/s 163A of the Act. **Hon'ble Apex Court in the case of Oriental Insurance Company Ltd v/s Meena Variyal, reported in 2007 SC 1609.** The

observation made in para No. 24 of the above referred ratio can profitably be extracted herein under...

“...Therefore, the victim of an accident or his Dependents have an option either to proceed under Section 166 of the Act or under Section 163A of the Act. Once they approach the Tribunal under Section 166 of the Act, they have necessarily to take upon themselves the burden of establishing the negligence of the driver or owner of the vehicle concerned. But if they proceed under Section 163A of the Act, the compensation will be awarded in terms of the Schedule without calling upon the victim or his dependants to establish any negligence or default on the part of the owner of the vehicle or the driver of the vehicle”.

- (14) Therefore, only question remains to be decided in a petition filed under Section 163-A is the involvement of vehicle and the death of the victim out of the use of involved vehicle. Hence, keeping in mind the said provisions, this claim petition is to be decided on merits.
- (15) Moreover, present claim petition is filed with a view that liability to make compensation U/s 163-A is on the principle of no fault and therefore the question as to who is at fault is immaterial and foreign to an inquiry U/s 163-A. In support of the claim petition, the applicant No.1 has

produced his Examination In Chief on affidavit at Exh.16 and reiterated the averments made in the claim petition. The said applicant is cross-examined by the learned Advocate for opponent No.2, wherein he has admitted that he has not produced any documents showing the age of his wife, but he ready to produce. It has been further admitted that complaint of accident was filed by him. It has been further admitted that he was driving the rickshaw and his wife was seating in back seat of the said rickshaw at the relevant time of accident. It has been further admitted that he was possessing driving license to drive rickshaw. Also, perusing the complaint produced vide Exh.24, wherein it is specifically submitted that the deceased suddenly jumped from the rickshaw and sustained head injuries. The said fact of accident has been clearly mentioned in the Inquest Panchnama produced vide Exh.27. Moreover, perusing the P.M. Note produced vide Exh.28, it clearly shows that deceased succumbed to her injuries. From the documentary evidence produced on record by the applicants, it clearly shows that deceased sustained grievous injuries and died in a vehicular accident.

- (16) So far as the question of quantum is concerned and as the petition is filed under section 163A, it would be fortified to refer judgement of Hon'ble Supreme Court rendered in

case of Sarla Verma v/s Delhi Transport Corporation, reported in Air 2009 SC 3104, it has been held in para No.17 as under;

“17.... Therefore, where the application is under section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs. 40,000/- by applying the formula : $(2/3 \times AI \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under section 163-A of MV Act.. “

- (17) From the above referred ratios, laid down by Hon'ble Apex Court, it becomes amply clear that Tribunal is not required to make calculation of compensation on the basis of application of multiplier. But Tribunal is only required to grant compensation as per Schedule-II of the Motor Vehicle Act, taking into considering the age and income of the deceased. It is the say of the applicant that deceased was 22 years old at the time of accident. In support of the age of the deceased, the applicants have produced copy of Aadhaar Card of deceased vide Exh.32, wherein the Date of Birth of the deceased has been mentioned as 04/08/2000

and accident was occurred on 21/08/2021. Thus, it transpires that deceased was aged 21 years at the relevant time of accident, which is not objected by the opponents, and therefore, the age of the deceased is considered as 21 years at the time of accident.

- (18) The claimants have pleaded that deceased was earning Rs.1,24,172/- p.a. at the relevant time of accident. However, the applicants have not produced any document, which shows that deceased was earning Rs.1,24,172/- p.a. at the relevant time of accident. Thus, applicants failed to prove source of income of the deceased. However, looking to the rate of minimum wage prevailing at the relevant time of accident, the yearly income of deceased is considered as Rs.1,06,080/- p.a. The age group of the deceased comes between 20 to 25 years and hence, multiplier of 17 is applicable as per Schedule-II of the M.V. Act referring to Section 163-A. Therefore, as per Schedule-II of the M.V. Act amount of compensation would come to Rs.18,03,360/-. This amount is required to be reduced by $\frac{1}{3}$ in consideration of expenses which the victim would have incurred towards maintaining herself had he been alive as provided in schedule II. Deducting $\frac{1}{3}$ rd of the same, his personal expenses of the same, the remaining amount comes out to **Rs.12,02,240/-** (Rs.18,03,360/- minus from Rs.6,01,120/-).

(19) The applicants are also entitled for funeral expenses, loss of consortium and loss of estate.

(20) Thus, the applicants are entitled to following amounts as compensation:-

Rs.12,02,240/- Loss of dependency benefits

Rs.2,000/- Funeral expenses

Rs.2,500/- Loss of estate

Rs.5,000/- Loss of consortium

Rs.12,11,740/- Total compensation

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Thus, the claimants are entitled to get a total sum of **Rs.12,11,740/- (Rupees Twelve Lacs Eleven Thousand Seven Hundred Forty only)** as compensation under different heads.

(21) Looking to the complaint, it is clear that alleged Rickshaw was involved in the accident. However, as the learned advocate for the opponent No.2- Insurance Co. has vehemently argued that the driver of rickshaw – applicant No.1 had borrowed the vehicle from its original owner i.e. opponent No.1. It has been further argued that the applicant No.1 was driving the rickshaw at the relevant time of accident. It has been further argued that the driver of rickshaw- applicant No.1 was not holding any kind of driving license at the relevant time of accident, and thereby breached the terms and conditions of the insurance

Policy. In such situation, present opponent No.2 is not liable to pay compensation to the applicants. The opponent No.2 has examined its witness Suhitkumar Rajendraprasad Suthar vide Exh.36, wherein it is specifically submitted that the applicants have joined the owner and insurance company of Rickshaw No.GJ-1-TE-5465 as opponents to the present claim proceedings. Learned Advocate for the applicant has cross-examined the said said witness of the opponent No.2, wherein he has admitted that insurance policy of vehicle was in force for the period from 24/05/2021 to 23/05/2022 and was in force at the relevant time of accident. The seating capacity of rickshaw is three persons. It has been further admitted that they have not disputed that driver of rickshaw had no knowledge of driving. It has been further admitted that only RTO can inform about driving license.

- (22) Per-contra, learned advocate for the claimants has submitted that the policy of Rickshaw was in force at the relevant time of accident. He has further submitted that since the deceased was travelling in the rickshaw involved in the accident and the Policy of vehicle was in force at the relevant time of accident, and therefore, the Insurance Co. cannot shirk its liability from making the payment of compensation.

- (23) This Tribunal has considered the rival submissions made by learned advocates for the respective parties.
- (24) The opponent No.2 has produced copy of insurance policy of vehicle Rickshaw involved in the accident vide Exh.37, which was in force for the period from 24/05/2021 to 23/05/2022 and accident was occurred on 21/08/2021. Thus, it is established that the insurance policy of rickshaw was in force at the relevant time of accident, which was insured by the opponent No.1 with the opponent No.2. It is undisputed fact that the applicant No.1 was driving the rickshaw at the relevant time of accident for which the applicants have produced copy of driving license of the applicant No.1. Looking to the said Driving License, the same was firstly issued on 17/07/2023 for class of vehicles LMV & MCWG, which is valid upto 31/05/2039 and accident was occurred on 21/08/2021. The said fact clearly shows that applicant No.1 was not holding any kind of driving license at the relevant time of accident. It is, however, made it clear that, when there is a violation of terms and conditions of the policy, insurance company is held to be not liable, but insurance company has to pay the awarded compensation and recover the same from the insured by initiating the proceedings before the executing Court to protect and safeguard the interests of insurance company. Even if there is any violation of terms and

conditions of the policy, the Insurance company is under an obligation to satisfy the claim of third parties; since the liability of the Insurance Company during subsistence of the liability under the policy is statutory in nature and at best, the Insurance Company has to satisfy the compensation and recover the same from the insured.

(25) Thus, keeping in view the peculiar facts and circumstances of this case, this Tribunal is of the considered view that the principle of “pay and recover” should be directed to be invoked in the present case. However, at the same time looking to the facts and circumstances of the case, it would be proper if insurance company of vehicle Rickshaw is ordered to pay the amount of compensation at the first instance with a liberty to recover the same from the owner of the Rickshaw - opponent No. 1. Therefore, opponent No.1 as being an owner and opponent No.2 as being an insurer of vehicle Rickshaw No.GJ-01-TE-5465, both are held liable to pay compensation to the applicants / claimants jointly and severally and insurance company – opponent No.2 shall pay the same at first instance with a liberty to recover the same from the owner of the vehicle Rickshaw - opponent No.1.

(26) **ISSUE NO.3.**

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

ORDER

1. Present claim petition is hereby partly allowed.
2. The applicants are entitled to get compensation of **Rs.12,11,740/- (Rupees Twelve Lacs Eleven Thousnd Seven Hundred Forty only)** from the opponents jointly and severally. The disbursement of amount in between the claimants shall be in the ratio of 40:60% respectively at the time of payment.
3. The applicants are 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. **The opponent No.2- Insurance Company is hereby directed to pay the amount of compensation at the first instance with a liberty to recover the same**

from the owner of the Rickshaw No.GJ-01-TE-5465 – Opponent No.1.

7. 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.
8. That, out of total awarded amount of compensation awarded to the applicant No.1, 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.
9. The entire amount coming to share of minor applicant No.2 be invested in any Nationalized Bank in Fixed Deposit for a period of five years or till he attain the age of majority whichever is later. The claimant No.1 will be entitled to get interest payable periodically from the said investment. However, they will not be entitled to withdraw any amount before maturity or

raise any loan from the said investment, without prior permission of this Tribunal.

10. Award be drawn accordingly.

Signed and pronounced in open Court on this 13th day of March, 2026.

Date : 13.03.2026

Place: Mahesana

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