

GJMH010019882022



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Decided on : 28.04.2026

YY-MM-DD : 03-09-21

Exh. : 45

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL

(MAIN) MAHESANA

M.A.C.P. No.138 OF 2022

Applicants:-

Heirs of deceased Savan Ghanshyambhai Prajapati

1. Prajapati Ghaynshyambhai Jayrambhai
Aged about 50 years,
Occupation: Driving,
2. Prajapati Shardaben Ghanshyambhai
Aged about 48 years,
Occupation: Housework.

Both residing at: 18, Akshar Residency,
Karannagar Road, Tal. Kadi, Dist. Mahesana.
Original resident of: Dabhsar,
Tal. Detroj, Dist. Ahmedabad.

VERSUS

OPPONENTS:-

1. Driver of Car No.GJ-2Z-2285
Roy Puntu Indrasinh
Aged about 24 years,
Occupation: Driving,

R/o. 64, Shivshakti Society, Nr. Bhimnath Mahadev,
Tal. Kadi, Dist. Mahesana.

2. Owner of Car No.GJ-2Z-2285
Roy Indrasinh Manrupsinh
Aged about 50 years,
Occupation: Driving,
R/o. 64, Shivshakti Society, Nr. Bhimnath Mahadev,
Tal. Kadi, Dist. Mahesana.
3. Insurance Co. of Car No.GJ-2Z-2285
Reliance General Insurance Co. Ltd.,
Shop No.6 & 7, 1st Floor, Wide Angel,
Ahmedabad- Mahesana Highway, Mahesana.

Subject: Claim petition under Section 166 of the Motor Vehicles
Act to get compensation of Rs.1.00 Crore.

Appearance:-

Mr. J.S. Ojha, Ld. Advocate for applicants.
Mr. P.M. Rangwala, Ld. Advocate for opponent Nos.1 & 2.
Mr. N.R. Bhavsar, Ld. Advocate for opponent No.3.

J U D G E M E N T

1. The applicants/claimants have filed present claim petition under Section 166 of M.V. Act to get compensation of Rs.1.00 Crore from the opponents in respect of death of Savan in a vehicular accident.
2. That, brief facts leading to the present claim petition are that; on 09/05/2022, when the deceased Savan was passing on his motorcycle in a moderate speed and observing traffic rules, at that time near M.G. Desai Warehouse, the driver of one Car No.GJ-2Z-2285 came in excessive

speed, rash and negligent manner and dashed with rear side of the motorcycle of the deceased, as a result thereof, deceased sustained grievous injuries over his body. The deceased was taken to Bhagyoday Hospital, where he succumbed to his injuries. As such, accident was occurred upon sole negligence on the part of driver of car – opponent No.1 involved in the accident, the applicants have preferred present claim petition to get compensation from the opponents under various heads.

3. The opponent Nos.1 & 2, though appeared through their learned Advocate, have not filed their Written Statement to the present claim petition, and therefore, right to file Written Statement closed by the Tribunal.
4. The opponent No.3 – Insurance Co. has filed its Written Statement vide Exh.30 and submitted that deceased was rider of motorcycle and at the time of accident, he was not wearing of protective headgear and thereby he has committed breach of provisions of Section 129 of M.V. Act and due to non-wearing of headgear caused his injuries/ death. Thus, deceased himself was negligent and not abiding by the law hence, prayed to considered contributory negligence of deceased while apportioning the liability. It has been further submitted that the driver of vehicle No.GJ-2Z-2285 was not holding valid and effective driving license on the date of accident and fitness and permit of vehicle was also not valid hence, this opponent is not liable for the claim or any part thereof. In

alternative, it is submitted that at the relevant time of the accident vehicle No.GJ-2Z-2285 was driven with slow speed and on the correct side of the road and driver was quite careful in driving the said vehicle, but deceased himself was going full speed on his motorcycle and dashed with vehicle Car and thus the said accident happened wholly on account of the negligence on the part of deceased himself, despite every care being exercised by driver of the car to aver the accident and hence, deceased himself was responsible for the accident. Thus, it is prayed to dismiss the claim petition with cost.

5. That, the applicant has 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 No.1 filed under Order 18 Rule 4 of C.P.C.	16
2	Copy of FIR.	21
3	Copy of Spot Panchnama.	22
4	Copy of Inquest Panchnama.	23
5	Copy of P.M. Note.	24
6	Copy of Driving License of opponent No.1.	25
7	Copy of document showing status of fitness and tax validity of the vehicle.	26
8	Copy of Insurance Policy of vehicle Car.	31
9	Copy of School Leaving Certificate of deceased.	27
10	Copy of PAN Card of deceased.	28
11	Copy of Income Tax return for the assessment year 2021-22.	33

6. Learned Advocate for the applicants has produced his Closing of Evidence pursis vide Exh.34.
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.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?
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.

REASONS

ISSUE NO.1: NEGLIGENCE:

9. So far as the negligence is concerned, the applicants have produced copy of FIR vide Exh.21 against the driver of

vehicle No.GJ-02Z-2285, wherein it is specifically submitted that the driver of the vehicle Pickup-Dala No.GJ-02-Z-2285 collided with the motorcycle of the deceased from the rear side, as a result thereof, deceased sustained grievous injuries, who thereafter succumbed to his injuries during the treatment. It has been further submitted that the driver of said vehicle Pickup-Dala fled away from the place of accident with his vehicle. The applicants have also produced copy of Spot Panchnama vide Exh.22 from which it transpires that the motorcycle involved in the accident was lying at the place of accident and rear side of the said motorcycle damaged in the accident. Moreover, perusing the Inquest Panchnama Exh.23 and P.M. Note produced at Exh.24, it also appears that deceased sustained grievous injuries in a vehicular accident and died during the treatment. The opponent No.1 – driver of vehicle Car (Pickup Dala), though appeared through his learned Advocate, has not filed his Written Statement to the present claim petition and also not examined the applicant to disprove his negligence. 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 claimants who assert it. The claimants have 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**.

Here, in the present case, the driver of the vehicle Car (Pickup-Dala) has not been examined by the opponents. Further, applicants have produced various documents like copy of FIR, Spot Panchnama, Inquest Panchnama and P.M. Note to prove the negligence of offending vehicle and from such material available on record, it appears that the applicants have proved that the accident was occurred due to negligence on the part of the driver of the vehicle Car (Pickup-Dala) involved in the accident. Moreover, the driver of the vehicle Car (Pickup-Dala) involved in the accident neither stepped into witness box to disprove his negligence nor cross-examined the applicant, and therefore, adverse inference shall have to be drawn against the driver of the truck. 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 Car (Pickup-Dala) 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 Car (Pickup-Dala) – opponent No.1 was driving in a rash and negligent manner. Perusing the documentary evidence produced on record, it clearly shows that the applicants sustained grievous injuries and died in a vehicular accident, which was occurred **upon sole negligence in driving on the part of driver of Car (Pickup-Dala) – opponent No.1** and hence, I answer Issue No.1 in affirmative accordingly.

ISSUE NO. 2 : QUANTUM OF COMPENSATION:-

10. **Age & Multiplier:-** So far as age of the deceased is concerned, the applicants have produced copy of School Leaving Certificate of the deceased vide Exh.27, wherein the date of birth of the deceased has been mentioned as 08/12/1997 and accident was occurred on 09/05/2022, which shows that deceased was aged 25 years at the relevant time of accident, and therefore, the age of the deceased is considered as 25 years at the relevant time of accident. Thus, considering age of the deceased as 25

years, claimant is entitled to get multiplier of '18', 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 No.1 has produced his Examination In Chief on affidavit at Exh.16 and submitted that deceased was serving in Astha Paper Mill and thereby earning Rs.40,000/- per month. Learned Advocate for the opponent No.3 has cross-examined the applicant, wherein it is admitted that he has not produced any document showing that his son was serving in Astha Paper Mill at the relevant time of accident. It has been further admitted that his son was unmarried. The applicants have only produced copy of Income Tax return of the deceased for the assessment year 2021-22 vide Exh.33, wherein the total income of the deceased has been mentioned as Rs.3,17,560/- out of which, an amount of Rs.3,378/- towards income tax is required to be deducted, which comes to Rs.3,14,182/-, and therefore, the same is considered as yearly income of the deceased at the relevant time of accident.
12. In the present claim petition, the deceased was aged 25 years, and therefore, claimants are 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 claimants have 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.1,25,673/- is required to be included in the yearly income and the net dependency loss would come to Rs.4,39,855/- (Rs.3,14,182/- + Rs.1,25,673/-) per year.

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 applicants are the parents of the deceased and not dependent on the income of the deceased. Thus, looking to the reported judgment of the Hon'ble Apex Court, 50% amount is liable to be deducted towards personal and living expenses of the deceased. Thus, after deducting 1/2 amount of Rs.2,19,927/- (1/2 of Rs.4,39,855/-), the net dependency loss would come to Rs.2,19,928/-, which can be considered as yearly loss of dependency. As discussed above, after applying multiplier of 18, the amount would

come to **Rs.39,58,704/-** (Rs.2,19,928/- X 18 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, each claimants are entitled to get Rs.48,400/- under the head of filial consortium (i.e. **Rs.96,800/-**), **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:

1	For loss of dependency	Rs.39,58,704.00
2	Loss of consortium	Rs.96,800.00
3	Loss of estate	Rs.18,150.00
4	Towards funeral expenses	Rs.18,150.00
	Total...	Rs.40,91,804.00

Thus, applicants are entitled to get compensation of **Rs.40,91,804/- (Rupees Forty Lakh Ninety One Thousand Eight Hundred Four only)** under all heads.

15. **Interest:**~

In the present claim petition, the applicant has 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. **Liability:**

So far as the liability is concerned, the applicants have produced copy of Insurance policy of vehicle Pickup No.GJ-02-Z-2285 vide Exh.31, which was in force for the period from 19/01/2022 to 18/01/2023 and accident was occurred on 09/05/2022, which shows that insurance policy of the vehicle Pickup was in force at the relevant time of accident and the same was insured by the opponent No.2 with the opponent No.3. Thus, opponent No.1 as being driver, opponent No.2 as being an owner and opponent No.3 as being an insurer of Pickup No.GJ-02-Z-2285, all are held liable to pay compensation to the applicants jointly and severally.

17. **ISSUE NO.3.**

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

ORDER

- Present claim petition is hereby partly allowed.
- The applicants are entitled to get compensation of **Rs.40,91,804/- (Rupees Forty Lakh Ninety One Thousand Eight Hundred Four 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.
- 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.
- 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.*
- The opponents are hereby ordered and directed, by this Tribunal, to deposit the said amount within one month from the date of this award.
- 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.

- That, out of total awarded amount of compensation awarded to the applicants, 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.
- Award be drawn accordingly.

Signed and pronounced in open Court on this 28th day of April, 2026.

Date :28.04.2026
Place: Mahesana

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