

GJMH010032432019



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**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL  
(MAIN) MAHESANA, AT MAHESANA**

COMMON JUDGMENT PASSED IN  
MOTOR ACCIDENT CLAIM PETITION NO. 286 & 295 of 2019.  
Exh.81

**( MAIN M.A.C.P.NO.286 of 2019)**

**Applicants Of M.A.C.P. NO. 286 of 2019 :-**

**Legal Heirs of Deceased Patel Vaibhav Ghanshyambhai**

(1) — ~~Patel Ghanshyambhai Manilal~~

(As the applicant No.1 has passed away during the proceedings, he was deleted as per order below Exh. 64)

(1) Patel Maharshibhai Ghanshyambhai

Age : 28, Occupation : Labor,

(2) Patel Chetnaben Ghanshyambhai

Age: 42 Years, Occupation: Household

Both Resi. Motap, Ta. Bechraji, Dist. Mehsana.

**VERSUS**

**Opponents :**

(1) Owner of Tempo No. GJ-21-W-9680

Aditya Teem Pack Pvt. Ltd.

Address: Block No. 61/Pi, Gandavi Road, At.  
Valoti, Ta. Gandevi, Di. Navsari.

- (2) Insurer of Tempo No. GJ-21-W-9680  
Cholamandalam M S General Insurance Co Ltd  
Address : Ketul Chambers, Near Samarpan, Building,  
Near Kokila Trading, Near, Icici Bankm Highway Road,  
Mahesana
- (3) Owner of Tata Indigo Manza Car No.GJ-05-0289  
Ankit Jagdishchandra Gandhi  
Age : Adult, Occupation : Not known  
Address : A-6, Ayushi Avas, Near Reliance Tower, Nand  
Park Pimplo, At.Ta.Di., Surat
- (4) Insurer of Tata Indigo Manza Car No.GJ-05-0289  
The New India Insurance Co. Ltd.  
Address : Above Dr. Lalbhai Hospital, Near Gopinala,  
Mahesana.

**Subject :-** Claim Petition For Rs.30,00,000/- U/S.166 Of M. V. Act.

**Applicants Of M.A.C.P. NO. 295 of 2019 :-**

**Legal Heirs of Deceased Meet Vinodbhai Patel**

- (1) Patel Vinodbhai Bhagwanbhai  
Age : 40, Occupation : Business,
- (2) Patel Heenaben Vinodbhai  
Age : 39, Occupation : Household,  
Both Resi. Motidau, Ta.Dist. Mahesana.  
Resi. At present : 34/Adhasthan Society,  
Bavaniyu Neliyu, Radhanpur Road, Mahesana.

**VERSUS**

**Opponents :**

- (1) Driver of Tata Indigo Manza Car No.GJ-05-0289  
(He has died )
- (2) Owner of Tata Indigo Manza Car No.GJ-05-0289  
Ankit Jagdishchandra Gandhi  
Age : Adult, Occupation : Not known  
Address : A-6, Ayushi Avas, Near Reliance Tower,  
Nand Park Pimplo, At.Ta.Di., Surat.
- (3) Insurer of Tata Indigo Manza Car No.GJ-05-0289  
The New India Insurance Co. Ltd.  
Address : Upon Dr. Lalbhai Hospital, Near Gopinala,  
Mahesana.
- (4) Driver of Eicer Tempo No. GJ-21-W-9680  
Baliram Buddhukuvar Jayswal  
Resi. Aditya Timber, At post Devsar, Kapdai Faliyu,  
Ta. Gandevi, Dist. Navsari
- (5) Owner of Tempo No. GJ-21-W-9680  
Aditya Teem Pack Pvt. Ltd.  
Address: Block No. 61/Pi, Gandavi Road, At.  
Valoti, Ta. Gandevi, Di. Navsari.
- (6) Insurer of Tempo No. GJ-21-W-9680  
Cholamandalam M S General Insurance Co Ltd  
Address : Ketul Chambers, Near Samarpan, Building,  
Near Kokila Trading, Near, Icici Bankm Highway Road,  
Mahesana.

**Subject :- Claim Petition For Rs. 25,00,000/- U/S.166 Of M. V. Act.**

**APPEARANCE**

Mr.B.G.Patel : Learned advocate for the applicants.  
Mr.R.K.Soni : Learned advocate for opponent No.1  
Mr.N.R.Bhavsar : Learned advocate for opponent No.2.  
Mr.P.C.Thakor : Learned advocate for opponent No.4

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**-:: COMMON JUDGMENT ::-**

- [1] Both petitions have arisen out of the common incident, and hence Ld. advocate of applicants have produced application vide Exh.26 to consolidate both the petitions. Therefore order has been passed to consolidate both petitions and record the evidence in claim petition No.286 of 2019 considering as main claim petition and tried together for convenience of the Court as well as parties.
- [2] The claim petition No.286 of 2019 and 295 of 2019 have been filed by the respective claimants u/s 166 of the Motor Vehicle Act to recover amount of Rs.30,00,000/- and Rs.25,00,000/- respectively for compensation along with 24% and 12% rate of interest respectively on account of an accident occurred on date 05.06.2019.
- [3] The case of the claimants can be summarized as under :-  
It is the case of the applicants that, as per the records, the accident occurred on 05/06/2019 at approximately 18:30 hours. The deceased were traveling in a Tata Indigo Manza Car (No. GJ-05-CN-0289) near the north end of the Kharel Overbridge on National Highway No. 48, proceeding from Mumbai toward Surat. It is alleged that the driver of the Tata Indigo car lost control of the steering due to excessive speed, causing the vehicle to jump the divider and enter the opposite track (Surat to Mumbai). Simultaneously, an Eicher Tempo (No. GJ-21-W-9680) was traveling on its correct side from Surat toward Mumbai. A head-on

collision occurred between two vehicles, resulting in fatal injuries to occupants of car, including Patel Vaibhav Ghanshyambhai.

[4] Opponents were duly served with notices. The opponents were appeared with their respective learned advocates and filed their reply. The opponent No.4 and 5 has submitted written statement in MACP No. 295/2019 vide Exh.14. The opponent No.5 has appeared through its learned advocate and filed written statement vide Exh.16. The opponent No.3 has also appeared and filed its reply vide Exh.17. In their reply, all the opponent denied most of the fact of the case and taken main defence that it is driver of Tata Indigo Car who drove his vehicle rash and negligence manner and lost control over his vehicle. Therefore there is no liability for any type of compensation for the driver's negligence. And with that they pray to dismiss the present claim petition with costs.

[5] In the light of rival pleadings and contentions, the following issues have been framed at Exh.25 in both claim petitions.

**-:: ISSUES ::-**

- (1) Whether claimants proves that the deceased sustained injuries and died on account of such injuries due to rashness/negligent driving on the part of driver of the vehicle involved in the accident ?
- (2) What amount, if the claimant is entitled to, by way of compensation and from which of the opponent ?
- (3) What order and decree ?

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

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

**-:: REASONS ::-**

- [7] Claimant of M.A.C.P. No. 286 of 2019 – Patel Ghanshyam Manilal has filed an affidavit in the form of deposition, for claim of compensation vide Exh.27. The claimant has reiterated the facts of the claim petition. Opponent No.1 and 3 were absent at the time of recording of evidence therefore their right to cross-examine witness is closed. Opponent No.2 and 3 has cross-examined the witness.
- [8] The claimant of M.A.C.P. No. 295 of 2019 – Patel Vinodbhai Bhagwanbhai has filed an affidavit in the form of deposition, for claim of compensation vide Exh.28. The claimant has reiterated the facts of the claim petition. Opponent No.1 and 3 were absent at the time of recording of evidence therefore their right to cross-examine witness is closed. Opponent No.2 and 3 has cross-examined the witness.
- [9] The learned advocate of insurance company of Tata Indigo Manza Car i.e. New India Assurance Company has filed its written argument vide Exh.80. I have peruse the oral arguments advanced by the learned advocates of the both the sides. Before I proceed to appreciate the evidence, the following documents are required to be referred to since they have been taken into consideration for determination of just and adequate compensation.
- [10] **Consolidated documentary evidences.**

Sr No	Particulars	Exh
MACP No. 286/2019		
1	Certified Copy of FIR	31
2	Panchnama of the Scene of Offense	32
3	Inquest Panchnama of the Deceased	33
4	Post-Mortem (P.M.) Note of the Deceased	34
5	Death certificate of deceased Vaibhav	35

6	Copy of Pedigree	36
7	RC Book/Smart Card of Tempo No. GJ-21-W-9680	76
8	Insurance Policy of Tempo No. GJ-21-W-9680	37
9	RC Book of Tata Indigo Manza No. GJ-05-CN-0289	38
10	Insurance Policy of Tata Indigo No. GJ-05-CN-0289	77
11	School Leaving Certificate of the Deceased	39
MACP No. 295/2019		
1	Certified Copy of FIR	69
2	Panchnama of the Scene of Offense	70
3	Inquest Panchnama of the Deceased Meet	40
4	Post-Mortem (P.M.) Note of the Deceased	41
5	Certificate of cause of death	42
6	Death certificate of deceased	43
7	R.C.book Tata Indigo Manza No. GJ-05-CN-0289	71
8	Insurance Policy of Tata Indigo No. GJ-05-CN-0289	72
9	R.C.book Eicer Tempo No. GJ-21-W-9680	73
10	Insurance Policy of Tempo No. GJ-21-W-9680	74
11	School Leaving Certificate of the Deceased	44
12	Copy of marksheet of 10 std. Of deceased	45
13	Copy of marksheet of first semester of deceased	46
14	Copy of minimum wages act	54

### **ISSUE NO.1 :-**

[11] Issue No.1 is regarding negligence of vehicle. In both claim petitions, issue No.1 remain the same that who is negligence in causing the accident therefore issue No.1 is herewith discussed together for both claim petitions.

Adverting to the issue of negligence, the Tribunal has primarily relied upon the FIR at Exh. 31 and the Panchnama of the Scene of Offence at Exh. 32. A perusal of the Panchnama reveals that the accident occurred on the Kharel Overbridge of National Highway No. 48. The Tata Indigo Manza Car (No. GJ-05-CN-0289) was traveling from Mumbai toward Surat. The panchnama clearly indicates that the driver of the said car was driving at an excessive and uncontrollable speed. Due to such high momentum, the Tata

Indigo Manza Car (No. GJ-05-CN-0289) was traveling at such a high and reckless speed that upon losing control, it did not merely graze the median but violently uprooted and damaged the trees planted on the road divider before jumping onto the opposite track. The extensive damage to the plantation on the divider serves as ocular evidence of the extreme momentum and uncontrollable speed of the car. Furthermore, the Panchnama records that the interior of the Tata Indigo Manza was heavily blood-stained, and the vehicle itself was found in a total loss state on the wrong side of the highway, having collided head-on with the Eicher Tempo (No. **GJ-21-W-9680**). The presence of these bloodstains and the wreckage in the opposite corridor confirms the high-impact nature of the collision caused solely by the car's trajectory.

At this juncture, the Eicher Tempo (No. GJ-21-W-9680), which was plying on its correct side of the road, was struck head-on by the flying Tata Indigo car. The fact that the car crossed over a physical divider and entered the wrong side of a National Highway is a classic case of *Res Ipsa Loquitur* (the thing speaks for itself). The driver of the Tata Indigo car owed a duty of care to other motorists to maintain his lane; by jumping the divider, he committed a gross breach of traffic safety norms. Furthermore, the Abated Final Report (Summary) filed under Section 173 of the Cr.P.C. corroborates that the police investigation found the car driver solely responsible for the accident. Since the driver of the Eicher Tempo was traveling on his designated path and could not have anticipated a vehicle falling from the sky/divider into his path, no contributory negligence can be attributed to him. Consequently, this Tribunal holds that the accident

was the result of the sole and exclusive negligence of the driver of the Tata Indigo Manza Car No. GJ-05-CN-0289.

[12] **ISSUE NO.2 :- Quantum of Compensation :**

To decide the quantum of compensation in both the petition this tribunal needs to decide the age and income of the deceased. As both the deceased persons were student and were studying in their respective field the income of both the deceased remains the same and the income of both deceased shall be discuss and determined together.

The learned advocate Mr.B.G.Patel appearing on behalf of claimant had produced following citation.

1. *2023 ACJ 1653 in the case of Kandasami and Ors. v/s Linda Briyal and Anr.* In the cited case deceased was a bachelor and aged of 28 years and he was B-Tech graduate working in a company, therefore, income of Rs.25,000/- per month was calculated. In the present case the deceased was studying in diploma Engineering. The deceased Meet was studying in Diploma Electrical Engineering in Second Semester therefore income of Rs.25,000/- cannot be considered.
2. The learned advocate of the applicant is also relied upon the citation i.e. *R/First Appeal No. 2664 of 2022 in the case of The New India Assurance Co. Ltd. v/s Urmilaben Wd./o Deceased Manojsinh Thakor Alias Gohil & Ors.* In the cited case deceased as holding B.Ed degree and involved in the tuition class. Therefore Hon'ble High Court has assessed income of the deceased of Rs.15,000/- per month. In the present case deceased Meet was studying in first year second semester in

Diploma Electrical Engineering and deceased Vaibhav has taken admission in Diploma Computer Engineering therefore the income of deceased Rs.15,000/- cannot be considered.

3. The learned advocate of the applicant is also relied upon the citation of *2022 ACJ 528 in the case of Meena Pawaia and Ors. v/s Ashraf Ali and Ors.* In the cited case deceased was bachelor and age of 21 years and student of B.E. third year and employed in the construction company. In the cited case, Hon'ble Apex Court has fixed Rs.10,000/- per month. In the present case, deceased Meet was studying in Diploma Electrical Engineering Second Semester while Vaibhav had taken admission in computer Engineering first year Diploma.

[13] **Income of both the deceased :**

Now considering the study of both the deceased, they passed 12<sup>th</sup> Standard examination thereafter deceased Meet has taken admission in Electrical Engineering in Diploma as he studied in Second Semester and deceased Vaibhav had taken admission in Computer Engineering First Year. Therefore considering the educational qualification deceased would have better prospect and bright future and accident occurred in 2019 minimum wage act is of Rs.8398/-. In such circumstances, both the deceased was studying in Diploma Engineering. In such circumstances Rs.10,000/- is awarding for future economical loss to the claimants because of labor were getting Rs.8398/- per month as per Minimum Wage prevailed in the year of 2019. The deceased can be considered more than skilled labor, therefore fairly considered the income of both

the deceased by considering their educational qualification as  
**Rs.10,000/- per month for both deceased.**

[14] Age of Deceased Vaibhav (M.A.C.P.No.286 of 2019)

For determining the quantum of compensation, it is pertinent to assess the age and income of the deceased at the time of accident. It is submission of the learned advocate for the petitioner that the deceased Vaibhav was aged of 19 years at the time of accident. The applicant has submitted the copy of school leaving certificate of deceased vide Exh.39. On perusal of which, the date of birth has mentioned as 19.07.2001. The accident took place on 05.04.2019. Thus the age of the applicant is determined as 17 years, 8 months and 17 days. Therefore, this tribunal consider the age of the deceased as **18 years** at the time of accident.

Age of Deceased Vaibhav (M.A.C.P.No.286 of 2019)

For determining the quantum of compensation, it is pertinent to assess the age and income of the deceased at the time of accident. It is submission of the learned advocate for the petitioner that the deceased Meet was aged of 17 years at the time of accident. The applicant has submitted the copy of school leaving certificate of deceased vide Exh.44. On perusal of which, the date of birth has mentioned as 10.08.2002. The accident took place on 05.04.2019. Thus the age of the applicant is determined as 16 years, 7 months and 26 days. Therefore, this tribunal consider the age of the deceased as **17 years** at the time of accident.

[15] **Prospective Income and Multiplier :**

At the time of accident, age of both the deceased were 18 years and therefore, considering the law laid down by Honourable Supreme

Court of India in the case of **NATIONAL INSURANCE CO. LTD. VS. PRANAY SETHI & ORS SLP(CIVIL) No.25590/2014 dtd.31.10.2017**, 40% prospective income should be considered and in that manner compensation should be awarded.

Moreover, It is an undisputed fact on record that both the deceased were aged about 18 years at the time of the accident. The law governing the selection of the multiplier is well-settled by the Hon'ble Supreme Court in the case of **Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr. [(2009) 6 SCC 121]**, which was subsequently affirmed by the Constitution Bench in the **Pranay Sethi** (supra) matter. According to the structured formula provided in the **Sarla Verma** judgment, for both deceased persons falling within the age bracket of **15 to 20 years**, the applicable **multiplier is 18 (Eighteen)**.

[16] Considering the law laid down by the Honourable Supreme Court of India in the above referred case, both the deceased were below 40 years at the time of accident and hence for the calculation of prospective income of both the deceased, 40% amount of their actual income is added and thus prospective income of both the deceased is considered as Rs.14,000/- per month (Rs.10,000/- p.m. + 40% amount of Rs.10,000/- i.e. Rs.4,000/- = Rs.14,000/-).

[17] As discussed here-in-above, at the time of accident prospective income of both the deceased was Rs.14,000/-. It is on record that both the deceased was unmarried therefore, it is just and reasonable to deduct 1/2<sup>th</sup> amount towards their personal expenses and so principle laid down by the Honourable Supreme Court of India in Sarla Verma's case is adopted in the present case. Considering the

said analogy dependency lost would come to Rs.7,000/- p.m. (Rs.14,000/- minus Rs.7,000/- = Rs.7,000/-) and on applying multiplier of 18 petitioners are entitled for Rs.7,000/- x 12 x 18 = **Rs.15,12,000/- towards dependency loss.** At the time of accident both the deceased was about 18 years old and therefore, considering the age of the deceased, applicants of both the claim petitions are entitled for the compensation of Rs.18,150/- towards loss of estate, Rs.96,800/- towards the loss of consortium and Rs.18,150/- towards funeral ceremony and hence I award the same.

- [18] Thus, the applicants of both the claim petitions are entitled to get an amount of the compensation under the different heads as under for each claim petitions separately:-

Amount	Details of compensation For both claim petitions
Rs.15,12,000/-	Dependency loss
Rs.18,150/-	Loss of Estate
Rs.96,800/-	Loss of Consortium
Rs.18,150/-	Funeral ceremony.
<b>Rs.16,45,100/-</b>	<b>Total amount of compensation</b>

- [19] Coming to the aspect of apportionment, it is noted that in **M.A.C.P. No. 286/2019**, the deceased Vaibhav was a student. During the pendency of the proceedings, the original Applicant No. 1 (father) passed away. Consequently, the younger brother of the deceased, aged approximately 28 years, was impleaded as a legal representative. Amount of compensation shall apportioned as under;

The applicant No.2 (mother of deceased Vaibhav) : 90%

The applicant No.3 (brother of deceased Vaibhav) : 10%

In **M.A.C.P. No. 295/2019**, involving the deceased Meet, the applicants are the father and mother. Following the same principle

that both parents are equally entitled to the estate of their deceased son, the total compensation amount, inclusive of interest and costs, shall be distributed equally, i.e., 50% to the Father and 50% to the Mother of the deceased. The amount of compensation shall be apportioned as under;

The applicant No.1 (Father of deceased Meet) : 50%

The applicant No.2 (Mother of deceased Meet) :50%

[20] In the present petition, the petitioners of MACP No.286/2019 have prayed for 24% interest and petitioners of MACP No.295/2019 have prayed for 12% interest along with costs of the petition but in view of the latest judgments of the Hon'ble Apex Court, **Savitha Vs. Cholamandalam MS General Ins.Co.Ltd. And others reported in 2020 ACJ 2157**, in which Hon'ble Court Apex has held that, the petitioner would be entitled to get interest at the rate of 6% per annum, but looking to the peculiar circumstances petitioner would be entitled to get interest at the rate of **7%** on the amount of compensation, from the date of petition till its realization and as the claim petition has been partly allowed, the petitioner is entitled to get proportionate costs only.

[21] So far as the point of liability is concerned, in both claim petitions, it is already held that the accident occurred due to the sole and exclusive negligence of the driver of the Tata Indigo Manza Car (No. GJ-05-CN-0289). As a necessary corollary, the owner and the insurer of the said vehicle are primarily liable to indemnify the claimants for the loss sustained. It is a matter of record that the driver of the said offending car succumbed to his injuries in the same accident. In this context, the Applicants have relied upon the police investigation papers, which reveal that a Summary Report

(Abated) was filed by the investigating agency under the relevant provisions of the Code of Criminal Procedure. The filing of the abatement summary against the deceased driver of the Tata Indigo Manza Car further fortifies the conclusion that the police investigation also found him solely at fault for the occurrence of the accident.

The Applicants have produced the Insurance Policy of the offending Tata Indigo Manza Car at Exh. 78. On perusal of the said policy, it is observed that the risk was covered for the period from 29/05/2019 to 28/05/2020. As the accident took place on 05/06/2019, the offending vehicle was undisputedly covered by a valid and subsisting insurance policy issued by Opponent No. 4 The New India Assurance Co. Ltd. at the material time. There is no evidence on record to suggest any breach of the terms and conditions of the policy or the provisions of the Motor Vehicles Act by the owner or driver of the car.

Conversely, since this Tribunal has arrived at a categorical finding that there was no negligence on the part of the driver of the Eicher Tempo (No. GJ-21-W-9680), no liability can be fastened upon the driver, owner (Opponent No. 1), or the insurer (Opponent No. 2) of the said Tempo. In view of the above, Opponent No. 3 (Owner) and Opponent No. 4 (Insurance Company) of the Tata Indigo Manza Car (No. GJ-05-CN-0289) are held jointly and severally liable to pay the entire compensation amount to claimants. Opponents No. 1 and 2 are hereby exonerated from all liabilities arising out of these petitions. The claim petitions against the driver, owner, and insurer of Tempo No. GJ-21-W-9680 stand dismissed.

Accordingly, liability to pay the awarded compensation to the

applicants of both claim petitions shall be fastened upon owner and insurance company of Tata Indigo Manza Car No.GJ-05-CN-0289. The owner and insurer shall be jointly and severally liable towards the claimant. In view of the same, the following order is passed.

**:: O R D E R ::**

1. The Claim Petition **No.286 of 2019** and Claim Petition **No.295 of 2019** are partly allowed to the extent of **Rs.16,45,100/-** (Rupees Sixteen Lakh Forty Five Thousand One Hundred Only) **to each Claim petition** together with proportionate costs and interest at the rate of 7% per anum from the date of the petition, till its realization.
2. Opponents have to pay aforesaid awarded amounts, to petitioners, along with interest and proportionate costs in both claim petitions within 30 days from the receipt of the judgment and award.
3. The opponents of the claim petition are hereby directed to deposit the said amount by RTGS/NEFT in the account maintained by the District and Session Court, Mahesana.
4. On depositing aforesaid amount in this Tribunal, amount of interim compensation, if any paid to petitioners of both cases, be deducted.
5. Office is directed to deduct requisite court-fees before petitioners are permitted to withdraw the amount of compensation, unless the petitioner produces certificate in terms of court-fee relaxation.
6. Out of total compensation amount comes in the share of respective applicants of both claim petition, 30% amount shall be paid by way of account payee cheque to petitioners and remaining 70% amount shall be invested in fixed deposit in the respective names of claimants for a period of five years with any Nationalized Bank of choice of petitioners.

7. Petitioner shall be entitled to withdraw periodical interest on the above said FDRs, which shall accrue from time to time, however petitioner shall not be entitled to encase the FDR without prior permission of this Tribunal.
8. The necessary intimation be given by letter to the concerned Bank with direction to the Bank not to flow any loan or credits over the above said FDR.
9. Opponents to bear their own costs.
10. Award be drawn accordingly.
11. Copy of this Judgment be kept in M.A.C.P. No. 295 of 2019.

Pronounced in open court today, on 9<sup>th</sup> March, 2026.

Date : 09-03-2026.

Place : Mahesana.

**[Ambrish Laljibhai Vyas ]**  
Principal District Judge &  
Motor Accident Claim Tribunal  
(Main), Mahesana.  
Code No.GJ00508.