

RECEIVED ON :- 30.01.2017.

REGISTERED ON :- 30.01.2017.

DECIDED ON :- 24.03.2026.

DURATION :- Y. M. DS.
09-01-22.

**BEFORE THE MOTOR ACCIDENT
CLAIMS TRIBUNAL (AUXILIARY),
MAHESANA AT VISNAGAR.**

M.A.C.P. NO. :- 9 / 2017.

EXH. NO. :- 72

CLAIMANTS :-

**LEGAL HEIRS OF THE DECEASED – PATEL
JAYKUMAR GOVINDBHAI :-**

- [1] **PATEL GOVINDBHAI VIRCHANDDAS,**
Aged about 53 years, Occ.:- Agriculture & Business.
- [2] **PATEL GEETABEN GOVINDBHAI,**
Aged about 49 years, Occ.:- House-Hold.

Originally both residing at 133, Kamaniya Paru,
Unava, Ta. Unjha, Dist. Mahesana.

Presently residing at 14, Ganesh Society, Unjha,
Ta. Unjha, Dist. Mahesana.

V/S.

OPPONENTS :-

- [1] **DRIVER OF EICHER NO.GJ-02-VV-7398 :-**

VIJAYSINH DEVENDRASINH JADEJA,
Aged about 35 years, Occ. :- Driving,

Residing at 17/B, near Bapalal Compound,
Opp. Santoshimata Temple,
Jashoda Crossing Road, GIDC Vatva,
Ahmedabad.

[2] OWNER OF EICHER NO.GJ-02-VV-7398 :-

SAMIRBHAI SAVJIBHAI MAKVANA,
Aged about adult,
Residing at 38, Jaymadi Society,
B/h. Doodh sagar dairy, Radhanpur Road,
Mahesana,
Ta. & Dist. Mahesana.

[3] INSURANCE COMPANY OF EICHER NO.GJ-02-VV-7398 :-

ROYAL SUNDARAM GENERAL INSURANCE CO. LTD.,
Highway,
Mahesana-2.

[4] INSURANCE COMPANY OF MOTORCYCLE NO.GJ-02-BM-5031 :-

NEW INDIA ASSURANCE CO. LTD., [DELETED]
Above Dr.Lalbai Hospital,
Shah Estate, Out side Gopi Nala,
Dairy Road, Mahesana – 2.

CLAIM U/S.166 OF M. V. ACT FOR SUM OF
RS.35,00,000/-.

Shri B.D.Patel, learned advocate for the claimants.
Shri M.M.Shah, learned advocate for the opponent No.1.
Shri M.K.Barad, learned advocate for the opponent No.2.
Shri N.R.Bhavsar, learned advocate for the opponent No.3.
Shri A.M.Achhava, learned advocate for the opponent No.4.

-:: JUDGMENT ::-

- [1] The legal heirs and representatives of deceased – Jaykumar Govindbhai Patel are before this Tribunal seeking compensation to the tune of Rs.35,00,000/- u/s.166 of the Motor Vehicles Act on account of death of deceased in the vehicular accident which has taken place on 19.11.2016. The claimants are parents of deceased.
- [2] In furtherance of claim petition filed by the claimants, notices came to be issued upon the opponents. The opponent No.1 appeared through learned advocate Mr.M.M.Shah and has filed reply vide Exh.11 inter alia denying all the allegations made in claim petition. It is further stated that said accident has occurred due to sole negligence on the part of driver of Motorcycle No.GJ-02-BM-5031 and at the time of accident, opponent No.1 was not driving Eicher but he was working for the owner of vehicle and has given false name in the case of accident. It is further stated that accident was caused by other person however, if the Tribunal orders the payment of compensation to claimants then the Insurance Co. shall be liable to pay the compensation as said vehicle was insured with them and submitted that the claim be dismissed. The opponent No.2 appeared through learned advocate Mr. M.K.Barad and filed reply vide Exh.16 inter alia denying all the allegations made in claim petition. It is further stated that accident took place due to sole negligence on the part of deceased / Motorcyclist. It is further stated that said vehicle insured

with Insurance Co. and if the Tribunal orders the payment of compensation to claimants then the Insurance Co. becomes liable to pay the entire amount of compensation as the vehicle was insured at the time of accident and submitted claim be dismissed. The opponent No.3 – Royal Sundaram General Insurance Co. Ltd. appeared through learned advocate Mr.N.R.Bhavsar and filed reply below Exh.25 inter alia denying all the allegations made in claim petition. It is further stated that at the relevant time of accident, Eicher No.GJ-02-VV-7398 was parked on side of the road and driver has kept parking signals but deceased was came in full speed on his Motorcycle and dashed to Eicher from behind and accident had happened wholly on account of the negligence on the part of deceased himself so, Insurance Co. should be exonerated from the liability to pay compensation and submitted claim be dismissed.

- [3] The brief facts in nut shell leading to filing of the present claim petition are as under :

That on 19.11.2016 at about 09:30 night hours, son – Jaykumar of claimants was passing by the accident spot on his Motorcycle No.GJ-02-BM-5031, at that time, driver of Eicher No.GJ-02-VV-7398 had parked the vehicle on the road without engaging parking signals or using reflector and Motorcycle of deceased dashed on the rear side of Eicher On account of dashment, deceased – Jaykumar sustained severe injuries and passed away. The claimants who are legal heirs and representatives of deceased have lost one of the bread winner of family hence, claim petition seeking

compensation. The complaint with regard to the accident came to be lodged before the Unjha Police Station being I – C.R.No.164/16 against the driver of Eicher No.GJ-02-VV-7398.

- [4] The claimants so as to substantiate the averments and contentions stated in the claim petition has stepped into witness-box through the claimant No.1 vide Exh.34. The claimants have produced the following documentary evidence on the record of the claim petition :

Sr. No.	Particulars of Document	Exh. Nos.
1.	Charge-sheet came to be filed against opponent No.1.	42
2.	Income-tax return for Assessment Year-2015-16 of deceased.	43
3.	Income-tax return for Assessment Year-2016-17 of deceased.	44
4.	F.I.R.	48
5.	Inquest Panchnama.	49
6.	Panchnama of place of incident.	50
7.	P.M.Note of deceased.	51
8.	R.C.Book of Eicher No.GJ-02-VV-7398.	52
9.	Driving license of deceased.	53
10.	School leaving certificate of deceased.	54
11.	Adhar card of claimants.	55 & 56
12.	Insurance policy of Eicher No.GJ-02-VV-7398.	68

- [5] The opponent No.3 – Royal Sundaram General Insurance Co. Ltd. has examined their witness / opponent No.1 – Vijaysinh Devendrasinh Jadeja vide Exh.65 but has not

produced any documentary evidence on the record of claim petition.

[6] Heard, learned advocate for the claimants at length and perused the written arguments submitted by learned advocate for opponent No.3 – Royal Sundaram General Insurance Co. Ltd. vide Exh.70. In support of arguments, learned advocate for the opponent No.3 has relied upon the following judgments.

[1] 2008 ACJ 1188
Renukadevi H. V. Bagalore Metropolitan Transport Corporation & Anr.

[2] 2016 (2) G.L.H.
Jagruti Shishir Banugariya (Patel) V. Rajvi Kanthan Ahir & Ors.

[7] I have considered the rival submissions made by learned advocate for the respective parties and have considered the contents of written arguments submitted by learned advocate for the opponent No.3 – Insurance Co. vide Exh.70. I have also considered oral as well as documentary evidence so adduced and produced on the record of claim petition.

[8] Following issues are framed vide Exh.28.

:-: ISSUES :-:

- (1) Whether it is proved that the deceased sustained injuries and died on account of rashness or negligence in driving on the part of driver/s of the vehicle/s involved in the accident ?

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

(3) What order and decree ?

[9] My answers on above issues are as under:

(1) In the affirmative.

(2) As per final order.

(3) As per final order.

-:: REASONS ::-

ISSUE NO.1 :-

[10] It is well settled principle by catena of judicial pronouncement that while deciding the point of negligence, it has to be born in mind that the negligence is required to be proved in claim petition u/s.166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the case of **Anita Sharma v/s. The New India Assurance Co. Ltd. & Anr.-2021-0-AIR (SC) 302.**

The claimants in support of the averments and the contentions narrated in the claim petition with regard to the facts leading to the occurrence of accident has stepped into the witness box through the claimant No.1 vide Exh.24.

The claimant No.1 is duly cross-examined by learned advocate appearing for the opponent No.3 – Insurance Co. In the cross-examination at the instance of the opponent No.3, the said claimant admitted that he was not present at the place of incident and, therefore, he is not having any personal knowledge qua the accident.

[11] The opponent No.1 – Vijaysinh Devendrasinh Jadeja – driver of Eicher No.GJ-02-VV-7398 who is in his examination-in-chief vide Exh.65 narrated that on 19.11.2016 he was going from Ahmedabad to Palanpur by driving Eicher No.GJ-02-VV-7398, at that time, Eicher parked outside the main road near petrol pump and went for natural needs. He has further submitted that at about 07:00 evening hours, the side light and brake light of Eicher were on. He has further submitted that he was not present when the Motorcycle dashed with Eicher.

The opponent No.1 is duly cross-examined by learned advocate appearing for the claimants. The said opponent in his cross-examination admitted that the incident took place in winter and it was dark. He has voluntarily stated that Eicher was parked on its side. He has denied that that Eicher was kept running. He has denied that there was no reflector behind the Eicher and accident occurred due to his negligence. He has denied that he parked Eicher on the highway and the accident occurred due to his negligence and the biker died.

[12] From the above documentary evidence, it appears that the police after due investigation, filed charge-sheet against the opponent No.1. The driver of the vehicle – Eicher No.GJ-02-VV-7398 was duty bound to take care and caution to avoid the accident. Indisputably, the accident occurred on Mahesana – Siddhpur highway. The position of Eicher in stationary condition clearly reveals from the panchnama. Indisputably, the aforesaid Eicher was lying there in

stationary condition because of opponent No.1 – driver went for natural needs and Eicher has not kept any tail light, reflectors or put parking light on upon it so that a person coming from behind can locate and notice that the Eicher is stationary and can take due care and caution to save his own vehicle as well as belonging to it. Not only that no other caution sign indicating that the Eicher was in stationary condition was placed. Thus, considering the documentary evidence produced on record, it appears that at the time of alleged accident the opponent No.1 / driver of the vehicle – Eicher No.GJ-02-VV-7398 was sole negligent for vehicular accident. Perusing the complaint, panchnama of place of occurrence, Inquest Panchnama and P.M.Note of deceased, it clearly shows that deceased sustained grievous injuries in a vehicular accident and succumbed to injuries, which was occurred upon sole negligence in driving on the part of the opponent No.1 / driver of Eicher No.GJ-02-VV-7398. Therefore, I answer issue No.1 in affirmative accordingly.

ISSUE NO.2 :-

[13] Now, the question arises about the quantum of compensation in the claim petition. The claimant No.1 having stepped into witness box vide Exh.34 has reiterated the aspects narrated in the claim petition qua the age and income of the deceased. The claimant No.1 has stated that deceased was aged 22 years and was earning Rs.2,00,962/- per month by doing job, labour work and business at Unjha Ganjbazar masonry work. The claimants have produced the Income-tax returns of the deceased vide Exhs.43 and 44, so

as to fortify the say with regard to income aspect. From the testimony of the claimant No.1 and also from perusal of documentary evidence in the nature I.T. returns, it becomes clear that the deceased was filing income-tax return. The Income-tax returns so produced vide Exh.43 and 44 fortifies the income aspect. In Exh.43 I.T. return for the Assessment Year 2015-16, total income is shown as Rs.1,75,095/- and in Exh.44 I.T. return for the Assessment Year 2016-17, total income is shown as Rs.2,00,962/-. In the present case, accident occurred on 19.11.2016 therefore, Income-tax Return of Assessment Year 2016-17 can be taken into consideration. While considering the said Income-tax Return (Exh.44) which has been filed in the individual capacity by deceased – Jay Govindlal Patel. In the said Income-tax return, gross total income is shown as Rs.2,00,962.

As per the evidence produced by the claimants vide Exh.44 i.e. Income-tax return for Assessment Year-2016-17 and Accounting Year 2015-16, the total income of deceased was Rs.2,00,962/- hence, it is considered actual income of deceased at the time of accident, the same would meet with interest of justice. The claimant No.1 has further contended that the deceased at the time of accident was aged 22 years. The claimants have produced a copy of school leaving certificate of deceased at Exh.54. From the perusal of said school leaving certificate, it transpires that date of birth of deceased is 08.01.1995 and as the accident has occurred on 19.11.2016, the deceased was aged 21 years at the time of

accident. Hence, this Tribunal deems it fit to consider the age of deceased in the age group of 21 to 25 years. Thus, multiplier of 18 would attract in present case as per the judgment of **Sarla Verma V. Delhi Transport Corporation** reported in **2009 ACJ Page 1298**. The learned advocate for the claimants has submitted that the income towards the future prospect is required to be added while computing the income of the deceased. Taking into consideration the oral evidence adduced by the claimant which substantiates the nature of work being performed by the deceased, the income towards the future prospect deserves to be added in the income of the deceased by 40% where the deceased was self employed as is held by Hon'ble Apex Court in case of **National Ins. Co. Ltd., V/s. Pranay Sethi & Ors., SLP (Civil) No. 25590/2014, dtd. 31.10.2017.** Thus, computing the said income towards the future prospect the dependency loss of claimants would come to Rs.2,00,962/- + Rs.80,384=80 Ps.. (40% of Rs.2,00,962/-) = Rs.2,81,346=80 Ps. i.e. rounded of Rs.2,81,350/- p.a. Further, looking to the facts that at the time of accident deceased aged 21 years, was a bachelor, it can be presumed that deceased might be spending substantial amount towards his personal expenses. Considering the said fact, it can be said that deceased was spending one half (1/2) amount of the total income towards his personal expenses and therefore, considering the said aspect one half (1/2) amount i.e. Rs.1,40,675/- is required to be deducted from Rs.2,81,350/-. Hence, the yearly future /

dependency loss would come to Rs.1,40,675/- and applying the multiplier of 18 years, the loss of future / dependency loss would come to Rs.1,40,675/- x 18 = **Rs.25,32,150/-**.

Further, the claimants have lost their son therefore, as is held by Hon'ble Apex Court in case of **Pranay Shetty (supra)**, the Hon'ble Supreme Court has awarded a total sum of Rs.70,000/- (Rupees Seventy Thousand only) under conventional heads, namely, loss of estate, loss of consortium and funeral expenses. It was held that the said sum should be enhanced at the rate of 10% in every three years. It was held thus: "59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively.

[14] In view of the judgment of the Hon'ble Supreme Court of India in case of **Pranay Sethi (supra)**, the Hon'ble Supreme Court has awarded a total sum of Rs.70,000/- (Rupees seventy thousand only) under conventional heads, namely, loss of estate, loss of consortium and funeral expenses. It was held that the said sum should be enhanced at the rate of 10% in every three years. It was held thus: "59.8. Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years." Hence, in all the claimants are entitled to get the following amount as compensation:

<u>Sr. No.</u>	<u>Particulars</u>	<u>Amount</u>
1.	Loss of Dependency	Rs.25,32,150=00
2.	Loss of Estate (with 20% increase)	Rs. 18,000=00
3.	Funeral Expenses (with 20% increase)	Rs. 18,000=00
4.	Filial consortium / parental consortium. (with 20% increase) (Rs.48,000 x 2)	Rs. 96,000=00
	TOTAL	Rs.26,64,150=00

Thus, the claimants are entitled to get a total sum of **Rs.26,64,150/-** as compensation under different heads.

LIABILITY :-

[15] The claimants have produced R.C.Book of vehicle – Eicher vide Exh.52 and on perusal of the same, it becomes clear that the vehicle involved in the accident is owned by the opponent No.2. The claimants have produced insurance policy of Eicher No.GJ-02-VV-7398 vide Exh.68 and from perusal of the same, it becomes clear that on the date of accident, the policy of vehicle - Eicher involved in accident was in force. Hence, the opponent Nos.1 to 3 being driver, owner and insurer of offending vehicle – Eicher No.GJ-02-VV-7398 are jointly and/or severally held liable to pay the amount of compensation to the claimants with running interest @ 9% p.a., from the date of the claim petition till realization. Hence, the point No.2 accordingly stands

answered and I pass the following final order qua the point No.3.

ORDER

1. The claim petition is hereby partly allowed.
2. The claimants are entitled to recover a sum of **Rs.26,64,150/- (Rupees Twenty Six Lakhs Sixty Four Thousand One Hundred Fifty Only)** as compensation with proportionate cost and interest at the rate of 9% p.a. from the date of the claim petition till realization from the opponent Nos.1 to 3 who are jointly and/or severally liable to pay the amount of compensation.
3. The opponents are directed to deposit the aforesaid amount with cost and interest within thirty days from the date of this judgment and award.
4. 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.
5. The opponent Nos.1 to 3 are directed to deposit the amount of compensation through RTGS/NEFT and informed the Tribunal forthwith, the particulars of Bank account for RTGS/NEFT payment are as follows:-

1	Cheque to be written in the name of	ADDITIONAL DISTRICT JUDGE, VISNAGAR(MACP)
2	e-mail ID	macp.visnagar@gmail.com
3	Name of Bank	STATE BANK OF INDIA (Collage Road, Shreeji Market, Near Bus Stand), Visnagar.
4	Account Number.	40758136544 (Current Account)

5	IFSC CODE Number	SBIN0060246
6	Branch Code.	60246
7	MICR	384002122

6. On the amount being deposited with the Tribunal, the disbursement of amount be made in equal share between the claimants. On the amount being deposited with the Tribunal, 70% amount coming to the share of claimants be deposited in FDR/FDR's in the name of the said claimants in any of the Nationalized Bank, of the choice of claimant for a period of 5 (Five) years and remaining 30% amount to be given in cash by account payee cheque to the said claimants on giving proper identification. The concerned Bank is directed not to allow any loan, advances or withdrawal against the FDR's without prior permission of this Tribunal. However, the claimants shall be entitled to withdraw periodical interest on their FDR's.
7. The opponent Nos.1 to 3 to bear their own costs and also the costs of the claimants.
8. Award be drawn accordingly.

Pronounced in open court, today on this 24th day of the month March, 2026 at Visnagar.

Date :-24.03.2026

(NASIR SAIDULLAH SIDDIQUE)
JUDGE CODE - GJ 00650
M.A.C.T. (AUXILIARY),
MAHESANA AT VISNAGAR.