

RECEIVED ON :- 16.12.2020.

REGISTERED ON :- 16.12.2020.

DECIDED ON :- 24.03.2026.

DURATION :- Y. M. DS.  
05-03-08.

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

M.A.C.P. NO. :- 35 / 2020.

EXH. NO. :- 51

**CLAIMANT :-**

**LEGAL HEIRS OF THE DECEASED – SUTHAR  
BABALDAS NARAYANDAS :-**

**SUTHAR BIPINCHANDRA BABALDAS,**  
Aged about 56 years, Occ.:- Labour ( Carpenter ),  
Residing at Shivkrupa Society, Near Navjivan School, Unjha,  
Ta. Unjha, Dist. Mahesana.

**V/S.**

**OPPONENTS :-**

**[1] DRIVER OF S.T.BUS NO.GJ-18-Y-4990 :-**

**BHATI RAMSINH PRAVINSINH,**  
Residing at 101, Solsanda, Po. Jitpur,  
Ta. Danta, Dist. Banaskantha.

**[2] OWNER OF S.T.BUS NO.GJ-18-Y-4990 :-**

**THE GUJARAT STATE ROAD TRANSPORT  
CORPORATION,**  
Ranip, Ahmedabad,  
( summons to be served Mahesana Division Office,

Modhera Cross Road, Mahesana).

**CLAIM U/S.166 OF M. V. ACT FOR SUM OF  
RS.20,00,000/-.**

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Shri B.D.Patel, learned advocate for the claimant.  
Shri V.M.Goswami, learned advocate for the opponent No.2.  
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**-:: JUDGMENT ::-**

- [1] The legal heir and representative of deceased – Babaldas Narayandas Suthar is before this Tribunal seeking compensation u/s.166 of the Motor Vehicles Act to the tune of Rs.20,00,000/- on account of death of deceased in the vehicular accident which has taken place on 08.04.2018. The claimant is the son of deceased.
- [2] In furtherance of claim petition filed by the claimant, notice came to be issued upon the opponents. The opponent No.2 – S.T.Corporation appeared through learned advocate Mr.V.M.Goswami and filed any reply below Exh.26 inter alia denied negligence, involvement of the alleged motor vehicle in the accident, age and income of deceased and, therefore, challenged the entitlement of claimant for the amount claimed in the petition from him and submitted that the claim be dismissed.
- [3] The brief facts in nut shell leading to filing of the present claim petition are as under :-

That on 08.04.2018 at about 04:15 hours, father – Suthar Babaldas Narayandas (deceased) of claimant was going towards Siddhpur on his Activa No.GJ-02-CN-1154

on the correct side of road with moderate speed and when he reached at Gandhinagar – Ambaji road, opponent No.1 – driver of S.T.Bus No.GJ-18-Y-4990 came in rash and negligent manner with excessive speed and dashed with deceased from behind. As a result of which, deceased fell on the road with a heavy blow and the tire of S.T.Bus rolled over his head, causing him to die on the spot. The FIR qua the accident in question came to be lodged before the Unjha Police Station being I – C.R.No.41/2018 against the opponent No.1 - driver of S.T.Bus No.GJ-18-Y-4990. The claimant who has lost the bread winner of the family, is before this Tribunal seeking compensation.

- [4] In order to prove his case, the claimant has produced the following oral and documentary evidence on the record of claim petition :

**ORAL EVIDENCE :-**

<b>Sr. No.</b>	<b>Particulars</b>	<b>Exh. No.</b>
1.	Deposition of claimant.	29

**DOCUMENTARY EVIDENCE :-**

<b>Sr. No.</b>	<b>Particulars of Document</b>	<b>Exh. Nos.</b>
1.	Copy of FIR.	36
2.	Panchnama of place of occurrence.	37
3.	Inquest panchnama of deceased.	38
4.	P.M.Note of deceased.	39
5.	Statement of conductor of S.T.Bus No.GJ-18-Y-4990 before Police. Visnagar.	40
6.	Driving license of opponent No.1.	41

7.	R.C.Book of S.T.Bus.	42
8.	Copy of log sheet of S.T.Bus.	43
9.	Charge-sheet came to be filed against opponent No.1.	44
9.	Income-tax return of deceased for the assessment year 2015-16.	45
10.	Income-tax return of deceased for the assessment year 2017-18.	46
11.	Income-tax return of deceased for the assessment year 2016-17.	47

- [5] The opponent No.2 – S.T.Corporation has examined their witness / opponent No.1 – Bhati Ramsinh Pravinsinh vide Exh.49 but has not produced any documentary evidence on the record of claim petition.
- [6] Heard, learned advocate for the respective parties at length. I have considered oral as well as documentary evidence so adduced and produced on the record of claim petition.
- [7] Following issues have been framed vide Exh.10 :

**-:: ISSUES ::-**

- (1) Whether it is proved that the deceased sustained injuries and died on account of rashness or negligence 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 award ?
- [8] My answer on above issues are as under:

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

**-:: REASONS ::-**

**ISSUE NO.1 :-**

[9] 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.** reported in **2021-0-AIR (SC) 302.**

The claimant has stepped into the witness box vide Exh.29 and has reiterated the averments and contentions narrated in the claim petition with regard to the occurrence of accident. The claimant is duly cross-examined by learned advocate appearing for the opponent No.2 – S.T.Corporation. In the cross-examination at the instance of the opponent No.2 – S.T.Corporation, the said claimant has admitted that on the day of incident, his father was driving his Aactiva. He has denied that his father did not have a license at the time of accident. He has admitted that driving license of his father was not produced on record of claim petition. He has admitted that Aactiva was not insured at the time of accident. He has further voluntarily stated that it was a new Aactiva so it was not insured. He has admitted

that driver and owner of Aactiva are not added as parties. He has admitted that he was not witnessed the accident. He has admitted that at the time of accident, his father was 80 years old and was living a retired life. He has denied that many FDs were deposited in the bank in his father's name. He has admitted that no documentary evidence has been produced to prove that his father was engaged in furniture making. He has voluntarily stated that his father used to file Income-tax return.

[10] The opponent No.2, in support of his defence has examined the witness / opponent No.1 – Bhati Ramsinh Pravinsinh vide Exh.49 who is in his examination-in-chief narrated that on 08.04.2018, he was going from Gandhinagar to Ambaji by driving S.T.Bus No.GJ-18-Y-4990 on the correct side of road at normal speed. Meanwhile, he was going towards Siddhpur, the deceased was driving his Aactiva at full speed and in a manner that endangered human life, while overtaking S.T.Bus on wrong side, deceased could not control his vehicle and due to falling, he dashed the empty side of S.T.Bus, resulting in an accident. He has further submitted that accident has occurred due to negligence, carelessness and reckless driving of the deceased himself.

The said witness / opponent No.1 in his cross-examination admitted that after due investigation, charge-sheet filed against him.

So far as issue of negligence is concerned, the applicants have produced copy of FIR at Exh.36 wherein it has been stated how the accident occurred. Moreover, the

police after due investigation, filed charge-sheet against opponent No.1 / driver – S.T.Bus No.GJ-18-Y-4990. The driver of the vehicle – S.T.Bus No.GJ-18-Y-4990 was duty bound to take care and caution to avoid the accident. Thus, considering the documentary evidence produced on record, it appears that at the time of alleged accident the driver of the vehicle - S.T.Bus No.GJ-18-Y-4990 was driving in a rash and negligent manner. Perusing the complaint, panchnama of place of occurrence, inquest panchnama and P.M.Note, it clearly shows that deceased sustained grievous injuries and succumbed to the injuries during treatment in a vehicular accident, which was occurred upon sole negligence in driving on the part of the driver of the S.T.Bus No.GJ-18-Y-4990. Therefore, I answer issue No.1 in affirmative accordingly.

**ISSUE NO.2 :-**

[11] Now, the question arises about the quantum of compensation in the claim petition. The claimants have contended in the claim petition that at the time of accident, deceased was physically healthy and free from addiction and earning an income Rs.25,000/- per month by doing carpentry work and having a contract for making furniture and deceased was filing income-tax return every year. The claimant has produced the Income-tax returns of the deceased vide Exhs.45 to 47, so as to fortify the say with regard to income aspect. From the testimony of the claimant and also from perusal of documentary evidence in the nature I.T. returns, it becomes clear that the deceased was filing

income-tax return under his signature. The Income-tax returns so produced vide Exh.45 to 47 fortifies the income aspect. In Exh.45 I.T. return for the assessment year 2015-16, total income is shown as Rs.2,53,242/-, in Exh.47 I.T. return for the assessment year 2016-17, total income is shown as Rs.2,80,442/-, in Exh.46 I.T. return for the assessment year 2017-18, total income is shown as Rs.2,87,754/-. In the present case, accident occurred on 08.04.2018 therefore, Income-tax Return of assessment year 2017-18 can be taken into consideration. While considering the said Income-tax Return (Exh.46) which has been filed in the individual capacity by deceased – Babadlas Narayandas Suthar. In the said Income-tax return, total income is shown as Rs.2,85,590/- and in the column No.9 refund of Rs.2,700/- is being shown hence, his gross total income is shown as Rs.2,87,754/-.

As per the evidence produced by the claimant vide Exh.46 i.e. Income-tax return for assessment year-2017-18 and accounting year 2016-17, the gross total income of deceased was Rs.2,87,754/- hence, it is considered actual income of deceased at the time of accident. The claimant has further contended that the deceased at the time of accident was aged 79 years. The claimant has produced a copy of driving license of deceased at Exh.35. From the perusal of said driving license, it transpires that date of birth of deceased is 15.12.1937 and as the accident has occurred on 08.04.2018, the deceased was aged 80 years at the time of accident. Thus, multiplier of 5 would attract in present

case as per the judgment of **Sarla Verma V. Delhi Transport Corporation** reported in **2009 ACJ Page 1298**. The deceased was aged about 80 years old at the time of accident hence, future prospect is not required to be added while computing the income of the deceased. Further, looking to the facts that at the time of accident deceased had left behind him one heir and legal representative, it can be presumed that deceased might be spending very meager amount towards his personal expenses. Considering the said fact, it can be said that deceased was spending 1/3rd amount of the total income towards his personal expenses and, therefore, considering the said aspect 1/3rd amount i.e. Rs.95,918/- is required to be deducted from Rs.2,87,754/-. Hence, the yearly dependency amount comes to Rs.1,91,836/- and applying the multiplier of 5 years, the loss of dependency would come to Rs.1,91,836/- x 5 = **Rs.9,59,180/-**.

So far as the question regarding compensation under the head of loss of consortium, loss of estate and funeral expenses is concerned, the deceased was married at the time of the accident and having left one dependent who was depend upon the income of deceased hence, claimant is entitled to get an amount under the head of consortium.

For which, this Court has relied on the judgment rendered by the Hon'ble Apex Court in the case of the **New India Insurance Company Vs. Smt. Somvati and Others in Civil Appeal No. 3039/2020, (Arising Out of SLP(C) No. 23478 of 2019), judgment passed on dated**

**07/09/2020** wherein the Hon'ble Court has ordered to pay consortium to the relative of deceased.

Further, the claimant has lost her husband 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.

[12] 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.</u> <u>No.</u>	<u>Particulars</u>	<u>Amount</u>
1.	Loss of Dependency	Rs. 9,59,180=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. (with 20% increase)	Rs. 48,000=00
	<b>Grand Total</b>	<b>Rs.10,43,180=00</b>

Thus, the claimant is entitled to get a total sum of **Rs.10,43,180/-** as compensation under different heads.

**LIABILITY :-**

[13] The claimant has produced the driving license of opponent No.1 - driver of S.T.Bus No.GJ-18-Y-1154 vide Exh.41 and from perusal of the same, it become clear that opponent No.1 - driver of S.T.Bus was holding valid and effective driving license to drive Motorcycle on the date of accident. The claimant has produced the R.C.Book of vehicle – S.T.Bus No.GJ-18-Y-1154 vide Exh.42 and from perusal of the same, it becomes clear that the vehicle - S.T.Bus No.GJ-18-Y-1154 involved in the accident is owned by the opponent No.2. Hence, the opponents being driver and owner of offending vehicle – S.T.Bus No.GJ-18-Y-1154 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 opponents are hereby ordered to pay jointly and/or severally a sum of **Rs.10,43,180/- ( Rupees Ten Lakhs Forty Three Thousand One Hundred Eighty Only )** as compensation with cost and interest at the rate of 9% p.a. from the date of the petition till realization to the claimant.
- [3] The opponents are directed to deposit the aforesaid amount with cost and interest within thirty days.
- [4] Interim compensation, if any, awarded and paid, be deducted or adjusted from the aforesaid awarded amount. The deficit court fees, if any, be deducted from the awarded amount.
- [5] The opponents 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	<a href="mailto:macp.visnagar@gmail.com">macp.visnagar@gmail.com</a>
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, after deducting necessary Court Fees on the awarded amount, if any, remaining 70% amount coming to the share of the claimant be deposited in FDR/FDR's in the name of the claimant 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 to the claimant on giving proper identification. The concerned Bank is directed not to allow any loan, advances or withdrawal against the FDRs. without prior permission of this Tribunal. However, the claimant shall be entitled to withdraw periodical interest on his FDRs.
- [7] The opponents to bear their own costs and also the costs of the claimant.
- [8] Award be drawn accordingly.
- Pronounced in open Tribunal, today on this 24<sup>th</sup> day of the March, 2026 at Visnagar.

Date :- 24.03.2026

**( NASIR SAIDULLAH SIDDIQUE )**

JUDGE CODE - GJ 00650

M.A.C.T. (AUXILIARY),

MAHESANA AT VISNAGAR.