

Exh.	:	59
Received On	:	30.01.2012
Registered On	:	30.01.2012
Decided On	:	06.07.2021
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**BEFORE THE 4<sup>th</sup> MOTOR ACCIDENT CLAIM TRIBUNAL**

**(AUXI.) MAHESANA AT VISNSGAR.**

**M.A.C.P. No.1511 OF 2012 (Main)**

**(OLD MACP NO.68 OF 2012)**

**&**

**M.A.C.P.NO.1517 OF 2012**

**(OLD MACP NO.83 OF 2012)**

**Applicants of M.A.C.P. No.1511 OF 2012**

Heir of deceased Ashifbhai Hanifbhai Sipai

1. Jamilaben Ashifbhai Sipai  
Aged about 20 years,  
Occupation: Housework.
2. Hanifbhai Sherubhai Sipai  
Aged about 49 years,  
Occupation: Agriculture.
3. Nasimben Hanifbhai Sipai  
Aged about 48 years,  
Occupation: Housework/ Labour.
4. Moin Hanifbhai Sipai  
Aged about 19 years,

Occupation: Labour.

5. Simranben Hanifbhai Sipai  
Age about 14 years,  
Occupation: Study.
6. Muzfar Hanifbhai Sipai  
Age about 9 years,  
Occupation: Study.

Minor Applicant Nos.5 & 6 through  
Their guardian-father applicant No.2.

All residing at: Juna Delvada,  
Tal. Kheralu, Dist. Mahesana.

**Claim : Rs.15,00,000/-**

**Applicant of M.A.C.P. No.1517 OF 2012**

Allaudin Misribhai Sipai (Kaji)  
Aged about 48 years,  
Occupation: Service,  
Residing at: Juna Delvada,  
Tal. Kheralu, Dist. Mahesana.

**Claim : Rs.3,00,000/-**

**V E R S U S**

**Opponents of MACP No.1511 of 2012:**

1. Driver of Tractor No.GJ-02-AG-1291 &  
Trolley No.GJ-2-Y-2128  
Thakor Viramji Ajmalji

Aged about 29 years,  
Occupation: Driving,  
Residing at: Chotiya,  
Tal. Kheralu, Dist. Mahesana.

2. Owner of Tractor No.GJ-02-AG-1291 &  
Trolley No.GJ-2-Y-2128  
Usmanbhai Kalubhai Sindhi  
Residing at: Nanivada,  
Tal. Kheralu, Dist. Mahesana.
3. Insurance Co. of Tractor No.GJ-02-AG-1291 &  
Trolley No.GJ-2-Y-2128  
United India Insurance Co. Ltd.,  
Above Avani Hospital,  
Opp. Hanumanji Temple,  
Outside Gopinala, Mahesana.
4. Insurance Co. of Jeep No.GJ-6-K-5281  
United India Insurance Co. Ltd.,  
Above Avani Hospital,  
Opp. Hanumanji Temple,  
Outside Gopinala, Mahesana.

**Opponents of MACP No.1517 of 2012:**

1. Driver of Tractor No.GJ-02-AG-1291 &  
Trolley No.GJ-2-Y-2128  
Thakor Viramji Ajmalji  
Aged about 29 years,  
Occupation: Driving,  
Residing at: Chotiya,  
Tal. Kheralu, Dist. Mahesana.
2. Owner of Tractor No.GJ-02-AG-1291 &  
Trolley No.GJ-2-Y-2128  
Usmanbhai Kalubhai Sindhi  
Residing at: Nanivada,  
Tal. Kheralu, Dist. Mahesana.
3. Insurance Co. of Tractor No.GJ-02-AG-1291 &  
Trolley No.GJ-2-Y-2128

United India Insurance Co. Ltd.,  
Above Avani Hospital,  
Opp. Hanumanji Temple,  
Outside Gopinala, Mahesana.

4. Owner of Jeep No.GJ-6-K-5281  
Hanifbhai Sherubhai Sipai,  
Aged about 49 years,  
Occupation: Juna Delvada,  
Tal. Kheralu, Dist. Mahesana.
5. Insurance Co. of Jeep No.GJ-6-K-5281  
United India Insurance Co. Ltd.,  
Above Avani Hospital,  
Opp. Hanumanji Temple,  
Outside Gopinala, Mahesana.

Appearance :

S.P. Soni, L.A. for applicants.

Opponent Nos.1 & 2 not appeared.

N.R. Bhavsar, L.A. for United India Insurance  
Co. Ltd.- opponent No.3 & 4.

**Subject: Claim Petitions under Section 166 of  
the M.V. Act.**

**C O M M O N    J U D G E M E N T**

- (1) That, both the claim petitions arisen out of one accident, and hence, both the claim petitions are ordered to be consolidated and disposed of by way of common judgment. As both claim petitions are ordered to be

consolidated, the evidences are led in main MACP No.1511 of 2012.

- (2) The short facts of the claim petitions are that; on 02/12/2011 at about 6 O'clock in the evening, when the deceased Ashifbhai Hanifbhai Sipai was passing in his Jeep No.GJ-6-K-5281 in a moderate speed, at that time, one Tractor attached with Trolley came without light, in a full speed, rashly and endangering the human life and dashed with Jeep of the deceased. Deceased Ashifbhai sustained grievous injuries and died on the spot, whereas applicant of MACP No.1517 of 2012 sustained grievous injuries in the impugned accident. As the impugned accident was occurred upon gross negligence in driving on the part of the driver of the Tractor/Trolley- opponent No.1, the applicants have filed the present claim petitions to get compensation from the opponents on various heads.

- (3) Notice duly served upon the opponents. The opponent Nos.1 & 2 though served with the process, not appeared before the Tribunal, and therefore, present claim petitions proceeded ex-parte against the said opponents.
- (4) The opponent No.3 & 4 appeared and filed its Written Statement in both the claim petitions. The opponent has filed its Written Statement vide Exh.26 in MACP No.1511 of 2012 and submitted that deceased Asifbhai Sipai was driving the vehicle Jeep and as per statement of applicant, this vehicle is borrowed from his father, so deceased was not paid driver and he was driving as an owner, but the insurance policy only covers the risk with respect of death of or bodily injury or damage to any property of a third party and not the insured himself, as per the Sect. 147 of M.V. Act deceased is not third party but the

insured himself so in this case when the insured himself meets with an accident then risk is not covered by the insurance policy and also as per Section 149 of M.V. Act the insurer has to satisfy the award against the vehicle insured with respect of third party risk only. But insured is not third party so the insurance company is not liable for compensation and hence application may be rejected. It has been further submitted that at the time of accident deceased himself was driving the vehicle as borrower owner and deceased himself was negligent for accident. So driver cannot take advantage of his own wrong and cannot claim for his own wrongful act. It has been submitted that, the driver of Tractor-Trolley was not holding valid and effective driving license at the time of accident. The opponent has also denied the age and income of the deceased / injured at the time of accident. Alternatively, it is submitted that, at the relevant time of the

accident Tractor was driven with slow speed and on the correct side of the road and driver was quite careful in driving the said vehicle but driver of Jeep was came in full speed and in wrong side and dashed with the Tractor and the accident was happened wholly on account of negligence on the part of the driver of Jeep, despite every care being exercised by the driver of Tractor to avert the accident and hence the driver of Jeep was responsible for the accident. Alternatively it is submitted that, the deceased was unmarried son so out of his total future loss of income 50% of the income is required to be deducted for his own expenses.

The opponent has submitted its Written Statement vide Exh.28 in MACP No.1517 of 2012 and submitted that, as per the contract of insurance, the insured has obtained the policy from the replying opponent pertaining to vehicle Jeep which is liability / Act

only Policy, which does not cover the risk of the passenger/ occupant carried therein. Therefore, as per M.V. Act and also as per the terms and conditions of the Policy, the risk of the passenger of the said vehicle is not covered and hence no liability can be saddled on the replying opponent whatsoever. It has been further submitted that, insured vehicle Jeep and as per the terms and conditions of the policy, the vehicle is insured only for use of social, domestic and pleasure purpose and for insured's own business, but it was being used as a taxi to carry passengers for hire and reward. As per FIR, Panchnama and petition of the applicant, applicant was not authorized person or relative of owner and vehicle was used for commercial purpose and person travelling in the said vehicle was travelling as unauthorized person. So it is clear that, there is a breach of Policy terms and conditions. It has been submitted

that, the drivers of Tractor and Jeep were not holding valid and effective driving license at the time of accident. The opponent has denied the age and income of the applicant. Thus, it is prayed to dismiss the claim petitions with cost.

- (5) That, the applicants have produced the following oral as well as documentary evidence, which are as under:

**MACP No.1511 of 2012:-**

**Oral evidence:-**

Examination-in-chief on Affidavit of applicant No.2 produced at Exh.14.

**DOCUMENTARY EVIDENCE :-**

- 1) Certified copy of complaint at Exh.36.
- 2) Certified copy of Panchnama at Exh.37.
- 3) Copy of R.C. Book of Jeep at Exh.38.
- 4) Copy of R.C. Book of Tractor at Exh.39.

- 5) Copy of P.M. Note of deceased Asifbhai at Exh.40.

**MACP No.1517 of 2012:-**

**Oral evidence:-**

Examination-in-chief on Affidavit of applicant produced at Exh.14.

Examination In chief of witness of applicant produced at Exh.31.

**DOCUMENTARY EVIDENCE :-**

- 1) Injury Certificate produced at Exh.41.
- 2) Disability Certificate at Exh.42.
- 3) Medical Bills produced vide list Exh.43.

Learned Advocate for the opponent Nos.3 & 4 has produced Examination In Chief of one Hareshkumar Jashwantlal Pancholi in both the claim petitions vide Exh.47 and 48 respectively. The opponent Nos.3 & 4 have also produced copy of Insurance Policy of Jeep at Exh.49. Id. Adv. for the opponent Nos.3 & 4 has submitted judgments vide

Exh.58. In this case, the same insurance company is United India Insurance Co. Ltd. for both the vehicles

(6) Learned Advocate for the applicants has produced his Written Arguments at Exh.53 & 54 in both the claim petitions, whereas Learned Advocate for the opponent Nos.3 & 4 has produced his Written Arguments in both the claim petitions at Exh.55 & 57 respectively.

(7) That, to decide the MACPs, the following issues have been framed for my determination.

**ISSUES**

(1) Whether it is proved that the deceased sustained injuries 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?

(7) My findings to above issues are as under:-

(1) In affirmative.

(2) As per final order.

(3) As per the final order.

### R E A S O N S

#### ISSUE NO.1: NEGLIGENCE:

So far as negligence is concerned, one Jituji Ishwarji Thakor has lodged complaint produced at Exh.36, wherein it has been clearly mentioned that, the driver of Tractor came in a full speed and without light and dashed with the Jeep. Due to said collision, the jeep fell down from the road and the passengers were sustained grievous injuries. In the impugned judgment the

driver of the Jeep succumbed to the injuries. After the incident, the driver of the Tractor fled away from the scene of the accident. Despite of the service of Notice to the driver and owner of the Tractor, neither the driver nor owner of the Tractor remained present to disprove their negligence. However, perusing the Panchnama and P.M. Note, it transpires that, the impugned accident was occurred on the date and place mentioned in the complaint and the deceased died in a vehicular accident. The applicants have not produced driving license any of the drivers of respective vehicles involved in the accident. Perusing, the documentary evidence produced by the applicant, it is not proved that upon whose negligence the impugned accident was occurred, but it is proved that, the deceased sustained grievous injuries in the impugned accident. As such impugned accident occurred and applicants sustained grievous

injuries in a vehicular accident and alleged accident took place because of negligence of drivers of both the vehicles is to be attributed to the extent according as composite negligence, and therefore, negligence on the part of driver of Tractor No.GJ-2-AG-1291 and Trolley No.GJ-2-Y-2128 is held at 80% and negligence on the part of driver of the Jeep No.GJ-6-K-5281 i.e. deceased himself is held at 20% and hence I answer issue No. 1 in affirmative accordingly.

**ISSUE NO. 2 : QUANTUM OF COMPENSATION.**

That so far as question of compensation is concerned, both the claim petitions are dealt with individually.

**M.A.C.P. No.1511 of 2012**

That so far as question of quantum of compensation is concerned, the applicant No.2- Hanifbhai Sherubhai Sipai has produced his Examination In Chief on affidavit at

Exh.14, who is father of the deceased. The applicant has stated that, the deceased was earning Rs.12,000/- p.m. by driving the Jeep. The applicant is cross-examined by the learned Advocate for the opponent Nos.3 & 4, wherein he has admitted that, his son was driving the Jeep at the time of accident. It has also been admitted that, his son was the owner of the Jeep. It has also been admitted that, his son was servicing in Surat Municipal Corporation. The applicant has stated that, he has not produced any documentary evidence showing that, his son was servicing in Surat Municipal Corporation. It has been also admitted that, he has not produced driving license of his son. The applicant has not produced any documentary evidence showing age and income of the deceased. However, perusing the P.M. Note produced at Exh.40, wherein the age of the deceased has been mentioned about 22 years, and therefore, the age of the

deceased is considered as 22 years at the time of accident in absence of any cogent documentary evidence regarding age of the deceased. In support of the income of the deceased, the applicant has not produced any documentary evidence showing income of the deceased and when the applicant failed to prove monthly income of the deceased at the time of accident, notional income should require to be consider and considering the accident occurred in the year 2011 and also considering the economy of the year 2011, notional income of Rs.3,000/- p.m. is required to be considered as monthly income of the deceased at the time of accident.

In view of the judgment reported in **2017 (3) GLH-536 in case of National Insurance Company Limited Versus Pranay Sethi and others**, it has been held that, **while determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the**

*deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax. In case of deceased was self - employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*

In view of the reported judgment as above, the deceased was 22 years old, 40% amount be added as future prospects of the deceased. As stated above, the deceased was 22 years

old at the time of accident and hence for the calculation of prospective income of the deceased 40% amount of his actual income is to be added and thus prospective income of the deceased is considered as Rs.58,800/- p.a. (Rs.36,000/- + 40% (Rs.14,400/-) = Rs.50,400/- p.a.).

So far as the deduction for personal and living expenses is concerned, the Hon'ble Apex Court in case of **Sarla Verma held that; .....** **we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased, should be one-third (1/3) where the number of dependent family members is 2 to 3, one-fourth (1/4) where the number of dependant family members is 4 to 6.....** Here, looking to the cause title of the claim petition, the applicant No.1 is the widow of the deceased, whereas the applicant Nos.2 & 3 are the parents and applicant Nos.4 to 6

are the brothers and sister of the deceased. It has been also observed that, **"Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.** Thus, the applicant No.1 is the only dependent family member of the deceased. Thus, looking to the dependant family members, 1/3 amount is liable to be deducted towards personal and living expenses of the deceased, which come to Rs.33,600/- p.a. (Rs.50,400.00-Rs.16,800.00), which can be considered as yearly loss of deceased.

In Smt Sarla Verma & Ors. versus Delhi Transport Corporation & Anr. Reported as AIR

2009 SC 3014, the Hon'ble Supreme Court of India in para 42 held that;

"42. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years, and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years."

Considering the age of the deceased as 22 years at the time of accident, multiplier of 18 will be just and proper. Thus, applicants are entitled to **Rs. 6,04,800/-** (Rs.33,600/- X 18) under the head of future loss of income. In view of the judgment reported in **2017 (3)**

**GLH-536 of the Hon'ble Supreme Court of India in case of National Insurance Company Versus Pranay Sethi & Ors**, the applicants are also entitled for 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. Therefore, the applicants are entitled for various amount of compensation as follows:

Rs.6,04,800.00	towards loss of dependency.
Rs.40,000.00	towards loss of consortium.
Rs.15,000.00	towards loss of estate.
Rs.15,000.00	towards funeral expenses.
<b><u>Rs.6,74,800.00</u></b>	<b>total compensation under all</b>

heads.

As discussed above, the deceased himself was negligent in driving the Jeep without and the Tribunal has assessed negligence of the deceased as 20%, and therefore, 20% amount be deducted from the total awarded amount of compensation, which comes to  
 Rs.6,74,800.00 - Rs.1,34,960= Rs.5,39,840/-  
 Thus, the applicant No.1 is entitled to get

compensation of **Rs.5,39,840/-** (Rupees Five Lacs Thirty Nine Thousand Eight Hundred Forty only) under all heads from the opponents.

So far as the rate of interest is concerned, in my opinion Bank rate prevailing at present is 9%, and hence in the interest of justice, it will be just and proper, applicant is awarded interest at the rate of 9 % P.A.

**M.A.C.P. No.1517 of 2012**

That so far as question of quantum of compensation is concerned, the applicant has filed his Examination In Chief on affidavit at Exh.14, wherein he has stated that, the applicant was 48 years old and earned Rs.18,650/- p.m. by doing service as a Driver in S.T. Department. In the cross-examination of the applicant by the learned Advocate for the opponent Nos.3 & 5, the applicant has admitted that, he has been

reverted as Helper in his department upon his request. It has been also admitted that, he has not produced any document showing that, he is unfit to work as Driver. The applicant has produced Examination In Chief of his witness, named, Kapilkumar Premjibhai Chauhan, Depo Manager, Kheralu at Exh.31. In the cross-examination of the said witness by the learned Advocate for the opponent Nos.3 & 4, he has admitted that, the salary of the applicant has been increased after occurrence of accident. As such, the applicant has not suffered any financial loss due to the impugned accident, and therefore, the applicant is not entitled for future loss of income, but is entitled for actual loss of income. The applicant has produced Medical Bills vide list Exh.43 of Rs.25,940/-, which is awarded to the applicant towards medical expenses. The applicant is also entitled for Rs.2,500/- towards S.A.T. charges and Rs.2,500/-

towards pain, shock and suffering. In all, the applicant is entitled to get **Rs.30,940/-** under all heads.

So far as the rate of interest is concerned, in my opinion Bank rate prevailing at present is 9%, and hence in the interest of justice, it will be just and proper, applicant is awarded interest at the rate of 9 % P.A.

**LIABILITY TO PAY THE COMPENSATION:**

So far as the liability to pay the compensation is concerned, the applicants have produced insurance policy of Jeep vide Mark 5/4 and Tractor vide Mark 5/7, which shows that, the insurance policies were in force and were not denied by the opponents' side. Thus, opponent No.1 as being driver, opponent No.2 as being owner and opponent No.3 as being insurer of Tractor & Trolley held liable to pay compensation to the applicant No.1 of MACP No.1511 of 2012 jointly and severally. So far as MACP

No.1517 of 2012 is concerned, all the opponents are held liable to pay compensation to the applicant jointly and severally.

**ISSUE No.3.**

In view of the above findings, I do hereby pass the following final order:

**O R D E R**

**M.A.C.P. No.1511 of 2012.**

- ➔ The claim petition is hereby partly allowed.
- ➔ That the applicant No.1 is entitled to get amount of compensation of **Rs.5,39,840/-** (Rupees Five Lacs Thirty Nine Thousand Eight Hundred Forty only) with interest at the rate of 9% p.a. from the date of filing of the application till its realization with proportionate costs.

- ➔ That, opponent Nos.1 to 3 are held liable to pay compensation to the applicant jointly and severally. The opponents are hereby directed to deposit the aforesaid amount in the office of the Tribunal within one month from this order.
  
- ➔ Interim amount, if any, paid to the claimant be adjusted at the time of final disbursement. The deficit court fees, if any, be deducted from the awarded amount.
  
- ➔ Out of remaining awarded amount of compensation awarded to the applicant, 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 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 by A/c. payee cheque, after due verification.

→ Award be drawn accordingly.

**M.A.C.P. No.1517 of 2012.**

→ The claim petition is hereby partly allowed.

→ That the applicant is entitled to get amount of compensation of **Rs.30,940/-** (Rupees Thirty Thousand Nine Hundred Forty only) with interest at the rate of 9% p.a. from the date of filing of the application till its realization with proportionate costs.

- ➔ That, all the opponents are held liable to pay compensation to the applicants jointly and severally. The opponents are hereby directed to deposit the aforesaid amount in the office of the Tribunal within one month from this order.
  
- ➔ Interim amount, if any, paid to the claimant be adjusted at the time of final disbursement. The deficit court fees, if any, be deducted from the awarded amount.
  
- ➔ Out of the total awarded amount of compensation, 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 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 by A/c. payee cheque, after due verification.

- ➔ Award be drawn accordingly.
- ➔ Copy of this Judgment be kept with MACP No.1517 of 2012.

Signed and pronounced in the open Court on this 6<sup>th</sup> day of July, 2021 at Visnagar.

**(Upendra Mahashankar Bhatt)**  
**CODE NO.GJ00589**  
**4<sup>th</sup> M.A.C. Tribunal(Aux.)**  
**Mahesana at Visnagar.**