


GJPM010018882023 	Received on :	25/05/2023		
	Registered on :	21/06/2023		
	Decided on :	30/04/2026		
	<u>Duration :</u>	02	10	09
Years		Months	Days	

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL (Main)  
PANCHMAHALS AT GODHRA**

**MACP No.213 of 2023**

**Applicants:-**

*[Amended vide Exh.-14]*

Heirs of deceased Aslambhai Ganibhai Shekh

1. Rizwana Aslam Shekh  
Age: 40 Years, Occupation: H.Hold work,
2. Tosif Aslam Shekh  
Age: 18 Years, Occupation: H.Hold work,
3. Minor Sanya Aslam Shekh  
Age: 15 Years, Occupation: H.Hold work,
4. Minor Javed Aslam Shekh  
Age: 12 Years, Occupation: H.Hold work,
5. Minor Nilofar Aslam Shekh  
Age: 73 Years, Occupation:H.Hold work,

All residing at: Santrampur, Dist. Mahisagar  
Originally Res. Juna Vankarvas, Dahod.

***Versus***

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**Opponents:-**

1. Dilipsing Sanilal Bhuriya  
Age: Adult, Occupation: Driver,  
Res.: House No.10, Shrinath Residency,  
Muwaliya road, Motisarsi, Ta.Dist. Dahod.  
***[Driver of Car No.GJ-20-AH-6843]***
2. Muniben Dililpsing Bhuriya  
Age: Adult, Occupation: Owner,  
Res.: House No.10, Shrinath Residency,  
Muwaliya road, Motisarsi, Ta.Dist. Dahod.  
***[Owner of Car No.GJ-20-AH-6843]***
3. United India Insurance Co. Ltd. *[Deleted vide Exh.-15]*  
Insurer, Branch Office at Kalindi Mahaveer  
Jain Society, Godhra.  
***[Insurer of Car No.GJ-20-AH-6843]***
3. Bajaj Allianz General Insurance Co. Ltd. *[Amended vide Exh.-17]*  
Insurer, Branch Office at Gokulesh-2,  
R.C.Dutt road, Alkapuri, Vadodara.  
***[Insurer of Car No.GJ-20-AH-6843]***

\* \* \*

**Appearance:**

Mr. M. M. Tunia, Ld. advocate for the Applicants.  
Mr. M. D. Damor, Ld. advocate for the opponent No.1 & 2.  
Mr. T. N. Purani, Ld. Advocate for the opponent No.3.

**: J U D G M E N T :**

01. This claim petition has been filed by the claimants under sec.166 of the Motor Vehicle Act, 1988 (hereinafter referred as the Act') claiming relief of compensation of Rs.50,00,000/- along with interest & costs; due to death of deceased Aslambhai Ganibhai Shekh in the vehicular accident.

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02. The brief fact of the petition, mentioned as follows:

On dt.08.01.2023, the deceased Aslambhai Ganibhai Shekh was driving rickshaw No.GJ-17-U-8603. At about 06:30 Hours, he was passing outskirts of Village Parvadi, Ta.Godhra; the opponent No.1 i.e. driver of Car No.GJ-20-AH-6843 [hereinafter called as "offending vehicle"] came driving his vehicle in a rash and negligent manner and then dashed with rickshaw No.GJ-17-U-8603 from behind. Thus, in this manner the accident has occurred. In the said incident, Aslambhai Ganibhai Shekh succumbed due to accidental injuries. The said incident was registered as an offense at Godhra Taluka Police Station, *vide* I-CR No.7/2023.

03. It is petition of the claimants that at the time of accident, the deceased was aged about 44 years old and was earning monthly income of Rs.21,000/- by driving rickshaw. In this income, the deceased was maintaining his family. Due to death of deceased, the claimants have suffered loss of income, love & affection of deceased etc. Thus, the legal heirs and representatives of deceased, have filed present claim for getting compensation on account of the death of the deceased arising out of the use of the said motor vehicle. The applicants have claimed total amount of compensation of Rs.50,00,000/- under all consolidated heads.

04. On institution of the petition, summon/notice was issued which was duly served to the opponent. The opponent No.1 & 2 have jointly filed the written statement at Exh.-10. The opponent No.1 & 2 have mainly denied the fact of petition and have specifically denied the rash & negligent driving on the part of opponent No.1. It is contended that at the time of accident deceased was driving his vehicle in rash & negligent manner and came on wrong side of the road without applying any sign & signal and caused the accident. It is contended that if the Tribunal comes to conclusion that the opponent No.1 is liable for the accident, then the opponent No.3 being Insurer is liable to pay compensation if any. Lastly, the opponent No.1 & 2 have requested to dismiss the petition. The opponent No.3.-Insurance Company of offending vehicle, has filed written statement at Exh.-21. In the written statement, the opponent No.3 has denied the income of deceased and involvement of offending vehicle at the time of accident. Further, the opponent No.3 has taken defence regarding valid & effective driving license of the part of opponent No.1. The opponent No.3 has also denied the age, income, and injuries sustained by the deceased as well as rash & negligent driving on the part of opponent No.1 at the time of accident. Lastly, the opponent No.3 has prayed to dismiss the petition with costs.

05. From the pleadings which has appeared on record

following **ISSUES** are framed for adjudication of this claim petition at Exh.22:

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

**Answer: Affirmative.**

2. What amount, if any, the claimants are entitled to by way of compensation and from which of the opponent?

**Answer: As per final order.**

3. What order ?

**Answer: As per final order.**

**06. Evidence from the applicant side.**

**-// ORAL EVIDENCES \--**

<b>Sr. No.</b>	<b>Particular</b>	<b>Exh. No.</b>
1.	Affidavit/Deposition of applicant No.1.	25

**-// DOCUMENTARY EVIDENCES \--**

<b>Sr. No.</b>	<b>Description of Documents</b>	<b>Exh. No.</b>
1.	Copy of chargesheet.	27
2.	Copy of complaint with index.	28
3.	Copy of Inquest panchnama.	29
4.	Copy of panchnama.	30
5.	Copy of P. M. Report	31
6.	Copy Copy of driving license of	32

	opponent No.1.	
7.	Copy of R.C.Book of opponent No.2.	33
8.	Copy of Insurance Policy of offending vehicle.	34
9.	Copy of school leaving certificate of deceased.	35
10.	Copy of accident report form 54.	36

**07. The evidence of opponents.**

**Nil**

The claimant & opponent No.3 have jointly filed their closing pursis at Exh.37. Heard the ld. counsel appearing on behalf of both the parties. Perused the record of this petition.

**:REASONS FOR ISSUES:**

**Issue No.1:(Negligence):**

**08.** It is settled position of law that, while deciding the point of negligence, the Tribunal has to borne in mind that, aspect of negligence in claim petition under Section 166 of the Motor Vehicles Act is to be decided only on the touch stone of preponderance of probability and not on the aspect of beyond the reasonable doubt. The above position of law is laid down by the Hon'ble Apex Court in the following cases:

**(i) *Bimladevi vs. H.R.T.C., AIR 2009 SC 2819.***

**(ii) *Parmeshwari Devi vs. Amirchand, (2011)11 SCC 635.***

Looking to the citation, which is the case before *hon'ble Supreme Court* between *Surender Kumar and another v/s Manoj Bisla (Dr.) and others, 2012 A.C. 180 (SC)*, wherein it is held that in claim petition filed under sec.166 of the Act, the burden lies on the claimants to establish negligence of the driver or the owner of the vehicle concerned but if the petition is filed under sec.163 then the compensation is to be awarded in terms of schedule without calling upon the victim or his dependents to establish any negligence or default on part of driver or owner of vehicle.

09. To prove the negligence in this case, the applicant No.1, widow of the deceased has filed her examination in chief at Exh.25. She has deposed and reiterated the *averments* of the accident as is mentioned in the claim petition. The say of claimant, is supported by the documentary evidence *viz*, complaint, panchnama, Inquest panchnama & P. M. Note, placed on record. It transpires from the record, that complaint regarding accident filed against the opponent No.1 i.e. driver of Car No.GJ-20-AH-6843. Further, the driver of Car No.GJ-20-AH-6843 driving his vehicle in rash & negligent manner and caused the accident. Moreover, it transpires from the copy of chargesheet vide Exh.-27 that after thorough investigation, Investigating Officer has filed chargesheet against driver of offending vehicle. The postmortem report produced on record also proves the fact that the cause of death of deceased is

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accidental injuries. No evidence is produced on behalf of opponents to discard the oral & documentary evidence of claimant. Moreover, the insurer has also not examined the opponent No.1 as their witness to prove anything contrary. Thus, from the above dictum it is clear that in the case the accident was occurred due to sole rash & negligent driving on the part of opponent No.1 i.e. the driver of Car No.GJ-20-AH-6843. Hence, **issue no.1** is answered in **"affirmative."**

**Issue Nos.2 & 3:**

**Quantum of Compensation:**

10. Now when it is proved that the accident in question was occurred due to sole negligence of the driver of offending vehicle and the deceased mentioned herein has died due to injuries received in said accident then the next question will be that what would be the amount of compensation which is to be awarded to his legal heirs and representatives. In order to arrive what should be the amount of compensation then as per the provisions of sec.168 of the M. V. Act, it is prime duty bestowed on the Tribunal that claimants get “just compensation”. For that aspect the Tribunal has to decide factors such as dependency loss, age & income of deceased on the date of accident. So it is duty of the Tribunal to award just, equitable and fair compensation to the claimant. The expression 'compensation' is a comprehensive term which  
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includes a claim for damages. The hon'ble Apex Court in ***Sarla Verma & Ors. v/s Delhi Transport Corporation & Anr.*** reported in ***2009 A.C.J. 1298***, has discussed as under:

*"..... just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit."*

**Income:**

11. The claimant has deposed vide Exh.-25 that at the time of accident, the deceased was earning monthly income of Rs.21,000/- by driving rickshaw. In support of her say, the claimant has not produced any evidence. Thus, the applicant has failed to submit any direct, reliable or cogent evidence to show the exact income & occupation of deceased. Under these circumstances, the Tribunal is empowered to presume the monthly income of the applicant. It is also cardinal principle of law that when there is no proof of income of victim, his/her monthly income can be assessed on the basis of the prevailing minimum wages. In the case of ***Govind Yadav v/s the New India Insurance Co. Ltd***, reported in ***2012 ACJ 28 (SC)*** and in the judgment of ***Meena Pawaia and Ors. v/s Ashraf Ali and Ors.*** reported in ***2021(13) Scale 733 (2021 SCC Online SC 1083)***, the Hon'ble Supreme Court has impressed upon the Tribunal to keep in mind the rate of

minimum wages for counting income of the victim of the road accident, if no proper data of the income is produced or lead in the evidence. So as per principle laid down by the Hon'ble Supreme Court in the above referred case the rate of minimum wages for such year is required to be taken into consideration, which was about Rs.9,237.80/- per month under the category of **unskilled workers**. Therefore, the monthly income of deceased at the date of accident on basis of minimum wages is to be considered as **Rs.9,238/-** p.m.

**Age:**

12. It is the case of the applicant that the deceased was 44 years old at the time of occurrence of accident. In support of say, the applicant has produced school leaving certificate of deceased at Exh.-35, which shows the birth date of deceased "01.06.1977". Thus, it is believed that the deceased was 46 years old at the time of accident. Hence, this Tribunal has to consider the age of deceased to be 46-50 years at the time of accident.

**Future Prospectus:**

13. Further it is required to refer the citation which is the case before *hon'ble Supreme Court of India*, between *National Insurance Company Ltd. v/s Pranay Sethi and Ors., SLP (Civil) No.25590/2014*, decided on *dtd.31.10.2017*, wherein in para-61, it is held that when deceased was

between 40-50 years and was self employed or on a fixed salary then an addition of 25% amount is required to be added in his income as future prospectus. Herein the deceased was aged about 44 years and was a self employed person, so 25% amount is to be added as future prospectus. Hence, by adding 25% of Rs.9,238/- i.e. Rs.2,310/- net monthly amount as income along with future prospectus for deciding compensation comes to Rs.11,548/- p.m. i.e. Rs.1,38,576/- p.a.

14. Herein the case on hand, there are four claimants, who are widow of deceased, children & mother of deceased. Therefore, as per decision of *hon'ble Apex Court* in case of *Sarla Verma (supra)*, that where the deceased was married and the number of dependent in family members are 4 to 6, then the deduction towards personal and living expenses of the deceased should be 1/4<sup>th</sup> i.e. the one fourth amount is required to be deducted as personal expenditure of the deceased. Thus, 1/4<sup>th</sup> amount of Rs.1,38,576/- comes to Rs.34,644/-, and after deducing same, net amount which falls in the share of applicants to **Rs.1,03,932/-** p.a.

**Multiplier:**

15. In pursuance to the above discussion now it is required to refer the citation which is the case before *hon'ble Supreme Court* between *Sarla Verma & Ors. v/s Delhi Transport Corporation & Anr.* reported in *2009 A.C.J. 1298*, para 21 and considering age of deceased between 46 to 50 years at

the time of accident, the multiplier of “13” is applicable in the instant case.

**Dependency loss:**

16. In view of the above referred discussion, the claimants are entitled for following amount under the head of future loss of income: (Rs.1,03,932 x13 multiplier)= **Rs.13,51,116/-**.

**Loss of Estate and Funeral Expenses:**

17. As per the decision of hon'ble Apex Court in case of *National Insurance Co. Ltd. v/s Pranay Sethi (Supra)*, the claimants would be entitled for the amount of Rs.15,000/- each, under head of loss of estate and funeral expense. It is pertinent to note that as per the aforementioned judgment, 10% rise is also required to be awarded towards the conventional heads of loss of estate, loss of consortium and funeral expenses, for every 3 years. Therefore, this Tribunal thinks it fit to awards **Rs.16,500/-** towards loss of estate & **Rs.16,500/-** towards funeral expense to the claimants.

**Consortium:**

18. It is pertinent to note that, as a result of this accident, the claimant No.1 has lost her husband, the claimants Nos.2 to 5 have lost their beloved father and thereby have lost their future support. Therefore, as per principle laid down by the Hon'ble Apex Court in the case of *Magma General*

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*Insurance Co. Ltd. v/s Nanu Ram Alias Chuhru Ram & Ors., Civil Appeal No. 9581 of 2018, decided on 18<sup>th</sup> September, 2018,* para No.8.7 of the judgment has observed that:

*8.7 A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium. In legal parlance, “ consortium” is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.....Parental Consortium is awarded to children who lost their parents in motor vehicle accidents under the Act..... The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down in Pranay Sethi (supra).*

19. In the judgment of *Pranay Sethi (supra)* it is held that the amount of consortium to be awarded to each dependent should be Rs.40,000/- and ten percent rise is to be given at every three years. The spousal, parental, filial consortium was awarded as such also by Hon'ble Supreme Court in case of *Smt. Anjali & Ors. (supra)*. Therefore in the present case, this Tribunal deems it appropriate to award Rs.44,000/- to the claimant no.1 towards spousal consortium and further, the claimants No. 2to 5 are children of deceased are awarded Rs.44,000/- each towards parental consortium. Thus, the claimants are entitled for following amount as compensation:

Rs. 13,51,116/-	Loss of dependency.
Rs. 2,20,000/-	Consortium
Rs. 16,500/-	Funeral Expenses.
Rs. 16,500/-	Loss of Estate.
<b>Rs. 16,04,116/-</b>	<b>Total Compensation.</b>

**Liability:**

20. So far as the point of liability is concerned, it is established from the record that the opponent No.1 herein is the driver and the opponent No.2 herein is the owner & the opponent No.3 is the Insurer of the offending vehicle at the time of accident. The policy produced on record covered the date of accident & risk of occupant. Therefore, the present opponents Nos.1 to 3 are jointly and severally liable to pay compensation which is awarded to the claimants.

**Interest:**

21. In view of the above discussion, the petitioners are entitled to receive the compensation as mentioned above along with simple interest @ 9% per annum from date of claim petition till its realization, from the opponent Nos.1 to 3, jointly and severally.(See : *Hon'ble Apex Court* in case of *Smt. Anjali & Ors. (supra)* and *Ved Prakash Goel @ Ved Goel & Anr. Vs. S. D. Singh & Anr., Civil Appeal No. 2831 of 2020, Hon'ble Supreme Court*).
22. In view of above, the petition is required to be partly allowed and for the issue no.2 & 3 the following final order is passed in the larger interest of justice.

~: ORDER :~

1. This petition is hereby partly allowed against the opponent No.1 to 3.
2. The applicants are entitled to recover **Rs.16,04,116/- (Rupees Sixteen Lakhs four thousand one hundred sixteen Only)** along with simple interest @ 9% per annum and proportionate cost from the date of claim petition till realization of the same, from the opponent No.1 to 3, jointly & severally
3. Accordingly, the opponents shall deposit the amount of compensation as above together with interest @ 9% per annum from the date of filing of the claim petition till realization of the same, before the registry of this Tribunal within one month from the date of this Judgment.
4. The opponents are hereby directed to deposit before the registry of this Tribunal the above amount of award, to the extent of the liability fixed herein above, after deducting the amount of interim compensation, if any, paid under sec.140 of M.V. Act, within one month from the date of this order.
5. On deposit of the above amount of award by the opponents before this Tribunal, the amount of Court Fees, recoverable if any, be recovered from the awarded amount and the same be considered under the head of the costs of the petition.
6. The order of disbursement and payment of the deposited amount will be done then after.
7. The petitioner is directed to submit following details within one week from today:
  - Name of the petitioners/victim with address:
  - Name of the Bank & Branch, Bank IFSC Code, Account Number of the Petitioners/Victim.
  - First page of the Bank pass-book, which contains the photograph of the petitioners/victim, duly attested by the Bank concerned, should be made available.
  - Wherever the petitioners/victim is impleaded as

respondents, before the claims tribunal, their account details, as above, will have to be furnished.

8. The Insurance Company / Transport Corporations and such other entities shall deposit the amount as directed *vide* letter No. A/c.319/2023, dated 27.07.2023, in the Bank of Baroda, Main Branch, Godhra, A/c. Name : **MACT GODHRA**, A/c. No. **01820100027160**, IFSC Code : **BARB0GODHRA** and on such deposits being made, the Insurance Companies / Transport Corporations and such other entities shall submit a letter to the Registry of District Court, Panchmahals at Godhra, enclosing a copy of the said bank advice, in prescribed format, as per which the deposit was made to the bank account of the Claims Tribunal, to enable the Claims Tribunal to keep tab on the deposits made and the MACPs for which they were made, which is a fundamental need for smooth implementation.

The Payment Advice for remittance of compensation is as under:

**PAYMENT ADVICE FOR REMITTANCE OF COMPENSATION**

From : (Name of the Bank)

To : (Name of the Court)

We confirm remittance of compensation as follows on instructions of Insurance Company / Transport Corporation :

1.	M.A.C.P. Number
2.	On the file of (Name of Claims Tribunal)
3.	Place
4.	Date of Award
5.	Amount Deposited
6.	Income Tax Deduction at Source, if any Unique Transaction Reference (UTR) No.

- 9 The Insurance Companies / Transport Corporations and such other entities making such deposit, shall also send a copy of the payment advice in the aforesaid clause to the Claims Tribunal concerned and serve a copy of the same on the claimants or their counsel as the case may be.
10. In view of the judgment delivered by the Division Bench of Hon'ble Gujarat High Court in the case of *Oriental Insurance Co. Ltd. v/s Chief Commissioner of Income Tax (TDS), Special Civil Application No. 4800 of 2021*, the interest awarded by the Motor Accident Claims Tribunal U/Sec.171 of the Motor Vehicle Act, 1988, is not taxable under the Income Tax Act, 1961.
11. The award be drawn accordingly.

Pronounced in the open Court today,  
i.e. on this 30<sup>th</sup> day of April, 2026.

Date: 30.04.2026  
Place: Godhra.

**(Chandrapalsingh K. Chauhan)**  
Motor Accident Claims Tribunal (Main)  
Panchmahals, at Godhra  
Code No. GJ00513

Malek