Petition Filed on	22/11/2023
Petition Registered on	22/11/2023
Petition Decided on	06/05/2026
Duration	Y / M /Days 2 / 5 / 14

IN THE COURT OF HON'BLE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN), PATAN

M.A.C.P. No.356/2023
Ex.: 62

APPLICANTS:-
Legal heirs of deceased Thakor Viramji Bachuji

(1) Thakor Bachuji Tarsangji
Age: 49 Years, Occupation: Labour Work
(Father of the deceased)

(2) Thakor Vijaben Bachuji
Age: 45 Years, Occupation: Housewife
(Mother of the deceased)

(3) Thakor Pintuji Bachuji
Age: 21 Years, Occupation: Labour Work
(Brother of the deceased)

Applicant nos.1 to 3 R/o.: Koita, Ta-Saraswati, Dist-Patan.

(4) Vidhatar Pinkiben D/O Bachuji Tarsangji & W/O Mukeshji Jayantiji
Age: 19 Years, Occupation: Housewife
R/o.: Khardosan, Ta-Deesa, Dist-Banaskantha.
(Sister of the deceased)

V/s.

OPPONENTS:-

(1) Chola Mandalam General Insurance Co.Ltd.
Add.: 9, Keshyam Avenue, Shop No.8, beside Indian Bank, At-Patan, Ta-Dist: Patan.
(Insurance Company of Bike No.GJ-08-CF-3971)

(2) Thakor Jigarji Rajuji
Age: Adult
R/o.: Dhummad, Ta-Siddhpur, Dist-Patan.
(Driver of Bike No.GJ-08-CF-3971)

(3) Chandisara Mathurji Kuraji
Age: Adult

R/o.: Dhuva, Chandisaravas, Ta-Deesa, Dist-Banaskantha.
(Owner of Bike No.GJ-08-CF-3971)

APPEARANCE:-
Ld. Advocate Mr.B.G.Thakor for Applicants.
Ld. Advocate Mr.H.N.Patel for Opponent No.1.
Ld. Advocate Mr.V.C.Thakor for Opponent No.2.
Ld. Advocate Mr.V.R.Thakor for Opponent No.3.

A Claim Petition For Compensation U/s.166 of M.V. Act.

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

1. Deceased Thakor Viramji Bachuji succumbed to injuries following the vehicular accident therefore his legal heirs have filed the present petition U/s. 166 of M.V. Act for getting compensation of Rs.30,00,000/-.

2. **The case of the claimants can be summarized as under** :

(2.1) It is submitted that, on 25/09/2023, deceased Thakor Viramji Bachuji (hereinafter referred to as 'Deceased'), was coming back after attending a fair at Vana village by walk and he was walking on the road side and in meanwhile, the driver of the bike having registration No.GJ-08-CF-3971 (for brevity 'Bike') came from Vana village side in excessive speed endangering to human life and hit the deceased. Due to sustaining severe injuries in the accident, the deceased was first taken to Jangral P.H.C. and for further treatment he was taken to Dharpur Civil Hospital, where he succumbed to injuries. So it is claimed that the said accident had occurred due to rash and negligent driving of driver of the bike.

(2.2) It is claimed that deceased was 27 years old at the time of accident. The deceased was earning more than Rs.20,000/- per month by farming and animal husbandry. Deceased was very efficient and hard working and if had not died in the accident, he would have lived long and could earn more in future. It is claimed that due to early death of the deceased, applicants have become destitute and their later life has become gloomy and painful. The deceased spent all his income for applicants but due to death of the deceased, applicants would suffer future potential and dependency loss. Applicants have claimed compensation for expenses incurred for last rites and rituals of the deceased. So applicants have claimed above compensation from the opponents under all heads.

REPLY OF THE OPPONENTS :

3. After execution of process, opponent no.2 filed reply vide Ex.20 and denied the facts of the claim petition. It is submitted that the accident had occurred due to negligence of the deceased and present claim petition is not tenable in law and deserves to be dismissed against opponent. It is submitted that the claimants are entitled to receive compensation from the opponent nos.1 & 3.

4. After execution of process, the opponent no.1 filed written statement vide Ex.22 and denied each and every averment of the claim petition. It is submitted that the claim of the applicants is false and fabricated and hence the present claim petition is not tenable in law and deserves to be dismissed.

5. Tribunal framed issues at Ex.23 as under:-

-::**I S S U E S**::-

(1) Whether the applicants prove that deceased died in the accident which occurred due to rash, careless and negligent driving of the driver of the motor vehicle involved in the accident?

(2) What amount, if any, the applicants are entitled to get and

from whom and at what rate of interest ?

(3) What order and award ?

6. My answers to above issues are as under:-

(1) In Affirmative

(2) As per final order

(3) As per final order

7. The applicants have produced following oral as well as documentary evidences:-

ORAL AND DOCUMENTARY EVIDENCES:

EX.	DETAILS
29	Affidavit of the applicant
31	Copy of FIR
32	Copy of Panchnama of place of offence
33	Copy of Inquest Panchnama of the deceased
34	Copy of P.M. Report of the deceased
35	Copy of R.C. Book of the Bike
36	Copy of Insurance Policy of the Bike
37	Copy of the Charge-sheet
38	Closing purshish

8. Opponents have produced any oral / documentary evidences as under :

ORAL AND DOCUMENTARY EVIDENCES:

EX.	DETAILS
OPPONENT NO.1	
44	Deposition of the Investigating Officer of the present offence
45	Copy of Police Statement of accused – Jigarji Rajuji
46	Copy of Report of addition of section to FIR
47	Copy of Charge-sheet Counter
53	Copy of Notice to the owner

54	Original Receipt of notice sent
55	Copy of Online status of notice received by owner
56	Deposition of the Assistant Legal Officer of Cholamandalam MS General Insurance Co.Ltd.
57	Closing purshish

9. I have heard the learned advocates for the respective parties.

10. Learned advocate for the claimants have produced written arguments vide Ex.60 and reiterated the facts contained in the claim petition. The learned advocate for the applicants has submitted to pass pay and recover order relying upon the decisions of Hon'ble High Court and Apex Court.

11. The learned advocate for the opponent-insurance company has produced written arguments vide Ex.61 and denied the facts of the present claim petition. It is further submitted that the driver of the bike was not holding any driving license at the time of accident and hence insurance company is not liable to pay compensation. It is further submitted that pay and recover order cannot be passed in 'No License' case after the 2019 amendment and the owner of the vehicle is solely and absolutely liable to pay compensation. The learned advocate for the insurance company has relied upon the various decisions of the Hon'ble Apex Court as well as different High Courts.

-:: R E A S O N S ::-

ISSUE No.1 (NEGLIGENCE) :

12. FIR of the incident was given by the cousin brother of the deceased against the driver of the bike. Charge-sheet of the offence is on record which was filed against the driver of the bike i.e. opponent

no.2. Looking to the panchnama of place of offence, it is stated that the driver of the bike had escaped from the spot. Moreover, the driver of the bike has not come before this Tribunal to give his statement. Moreover, Investigating Officer has deposed before this Tribunal and stated that the driver of the bike was not holding driving license at the time of accident and therefore he had added section 3 & 181 of the M.V. Act. Also perused the statement of the accused driver before police on record, wherein he has stated that he was not holding driving license at the time of accident. Moreover, the learned advocate for the opponents has not produced any rebuttal evidence against the evidence of the claimants. So, looking to the facts and circumstances of the case and evidence on record of the claimants, this Tribunal holds the driver of the errant bike sole negligent for the accident.

ISSUE No.2 (QUANTUM OF COMPENSATION):-

13. To arrive at just and reasonable compensation for which the applicants are entitled, this Tribunal has to assess the age, income, future prospects of the deceased and dependency of the applicants.

AGE :

14. Looking to the Aadhaar Card as well as School Leaving Certificate of the deceased on record vide Mark-28/7 & 28/9 respectively, date of birth of the deceased was 01/06/1996. Date of accident was 25/09/2023. So, the age of the deceased was ***27 years, 3 months and 24 days*** at the time of accident. Therefore, as per the guidelines given in the case of **Sarla Varma Vs. DTC, 2009 ACJ Page 1298 (SC),** as the deceased falls between the age group of 26-30, multiplier of **17** would apply to the multiplicand to arrive at just and reasonable dependency loss.

INCOME :

15. Claimants have claimed that the deceased was earning Rs.20,000/- per month by farming and animal husbandry. However the applicants have not produced any evidence of income of the deceased. So in absence of any evidence regarding the income of the deceased, considering the accidental year i.e. 2023, Tribunal has assessed the income of the deceased at Rs.11,500/- per month as un-skilled worker according to the rates of Minimum Wages Act.

16. As guided in ***National Insurance Co.Ltd. V/s. Pranay Shethi, reported in 2017 ACJ 2700(SC),*** addition of 40% should be added into the existing income of the deceased at the time of his death to calculate the loss of future prospects considering the fact that the deceased's age at the time of accident was below 40 years. Deceased was bachelor at the time of accident. So, 1/2 amount of the deceased's income is required to be deducted for her personal expenditures as guided in ***National Insurance Co.Ltd. V/s. Pranay Shethi (supra)***.

17. The mathematical calculation would stand as under:-

Rs.11,500/- X 40% = Rs.4600/-. Thus, Rs.11,500 + Rs.4600 = Rs.16,100/-. Thus income of the deceased would reach to Rs.16,100/- per month. Thereafter, 1/2 amount i.e. Rs.8050/- (Rs.16,100/2) is deducted from his actual monthly income as personal expenses of deceased. Thereafter the amount that would come in the share of the dependents would be Rs.8050/- (Rs.16,100 - Rs.8050). Calculating the amount of compensation for future dependency loss based upon above figures would reach to Rs.96,600/- (Rs.8050 X 12 Months). Thus, Rs.96,600/- (Yearly Income) X 17 (Multiplier) = **Rs.16,42,200/-**.

18. In the case of ***National Insurance Co. Ltd. V/s. Pranay Shethi (Supra)***, the Hon'ble Apex Court has provided guidelines for grant of compensation under conventional heads and further held that such amount of compensation should be enhanced at the rate of 10% at every three years. Deceased was bachelor at the time of accident. In such circumstances, this Tribunal grants **Rs.36,000/-** towards the conventional heads i.e. loss of estate and funeral expenses to the applicants. Moreover, the Hon'ble Supreme Court held in the case of ***MAGMA GENERAL INSURANCE CO. LTD. V/s. NANU RAM ALIAS CHUHRU RAM & ORS, CIVIL APPEAL No.9581 OF 2018, 18th SEPTEMBER, 2018*** that, in case where the parents have lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial consortium. In this circumstances, the Tribunal grants ***Rs.40,000/-*** towards filial consortium to applicant nos.1 & 2 who are parents of the deceased and Rs.40,000/- to the brother and sister of the deceased towards filial consortium i.e. applicant nos.3 & 4.

19. In view of above, the claimants are entitled to the following amounts.

Particulars	Amount
Compensation for future dependency loss	Rs.16,42,200/-
Conventional amount i.e. Funeral Expenses & Loss to Estate & Filial Consortium	Rs.1,16,000/-
Total Compensation	**Rs.17,58,200/-**

20. Tribunal awards 9% p.a. interest on the awarded amount from the date of petition till realization with cost of proceedings.

LIABILITY:-

21. The learned advocate for the opponent-insurance company has contested the present claim petition and submitted that the driver of the bike was not holding any driving license at the time of accident and hence insurance company is not liable to pay compensation. It is further submitted that pay and recover order cannot be passed in 'No License' case after 2019 amendment and the owner of the vehicle is solely and absolutely liable to pay compensation. The driver of the bike was not holding driving license at the time of accident and the said fact has been admitted by the Investigating Officer in his deposition before this Tribunal as well as accused – Jigarji Rajuji in his police statement which is also produced on record. The I.O. has added section 3 & 181 as the accused was not having driving license at the time of accident. Thus, the insurance company has been able to establish the fact that the driver of the bike was not having any driving license at the time of accident and hence they have prayed for absolution from the liability of compensation.

22. On the contrary, the learned advocate for the claimants has relied upon various decisions of Hon'ble Apex Court as well as different High Courts and requested to pass an order of pay and recover. I have perused these decisions and specifically looking to the decision of ***ICICI Lombard General Insurance Co.Ltd. V/s. Smt. Arti Devi and 8 others, Neutral Citation No.2025:AHC:14110, delivered on 31/01/2025***, wherein the Hon'ble Allahabad High Court has held as under in para no.38 :

38. The Court, therefore, holds that mere omission of proviso attached to sub-section (4) of Section 149 of Motor Vehicles Act, 1988 after its replacement by Section 150 of Motor Vehicles (Amendment) Act, 2019 (32 of 2019), neither takes away the liability of the insurer to pay the claimants nor its right to

recover the said amount from the owner. The law to this effect remains intact and unaffected by <u>Amendment Act, 2019</u> and, hence, insurer shall continue to indemnify the owner's risk in relation to accidents taking place after 01.04.2022 and "PAY & RECOVER" principle will still continue to govern the field advancing social object of the Statute protecting third party interest. Principle of law laid down by the Supreme Court in National Insurance Company Limited V/s. Swaran Singh and others, JT 2004 (1) SC 109 has not lost its significance and binding effect despite omission of proviso. Held accordingly.

23. Upon going through the above referred decision of Hon'ble Allahabad High Court, it clearly transpires that the insurer shall continue to indemnify owner's risk in respect of accidents which take place after 01/04/2022 and pay and recover order can be passed in such cases. So in the present case, the accident has taken place on 25/09/2023 which is post 01/04/2022 and hence principle laid down by the Hon'ble Allahabad High Court in the above decision shall be applicable in the present case and order of pay and recover can be passed.

24. As far as point of liability is concerned, opponent no.2 is the driver of the errant bike and his driving license is on record. Opponent no.3 is the registered owner of the bike as per R.C. Book. Insurance Policy of the bike is on record and it is duly insured with opponent no.1. The deceased was entitled for third party compensation. Looking to the insurance policy of the bike, there is no breach of any terms & conditions or non-coverage of insurance as on date of accident and the claimants are entitled to receive the compensation. In wake of above reasons, issue no.1 is answered affirmatively, whereas for issue nos.2 & 3, the following order is passed.

-:: O R D E R ::-

1. The Claim Petition of the claimants is hereby **Partly *Allowed*** with costs and interest.

2. Applicants to recover **Rs.17,58,200/- (Rs. Seventeen Lac Fifty Eight Thousand Two Hundred Only)** from the **opponent nos.1 to 3 jointly & severally** as compensation along with a simple interest to be calculated @ 9% p.a. from the date of filing of the claim petition till its realization. **However, the insurance company, i.e. opponent No.1, will be at liberty to recover, if the amount is paid by it, from the driver or owner of the vehicle i.e. opponent nos.2 & 3 or their legal heirs**.

3. Opponents are hereby directed to deposit the aforesaid amount before this Tribunal within one month from the date of this order. Further, in view of the directions of the **Hon'ble Supreme Court of India in Writ Petition (Civil) No.534/2020, titled Bajaj Allianz General Insurance Co. Ltd. V/s. Union of India and the directions of the Hon'ble High Court**, Opponents are directed to deposit the aforesaid amounts by way of Direct Bank Transfer through NEFT or RTGS only to the below mentioned Current Bank Account of this Claims Tribunal as directed in Circular No.08/2022 dated 01/02/2022. The particulars of the Current Bank Account is as under:-

Name of Bank	*Bank of Baroda, Market Yard Branch, Patan*
Account Name	*Motor Accident Claims Tribunal (Main), Patan*
Current Account No	*08410100036624*
IFSC Code	*BARB0MARPAT (fifth character is zero)*
Branch Code	*384012082*

4. Further, after deposit of the awarded amount, opponent is instructed to ensure that deposit of the awarded amount, by way of direct bank transfer to the above said Current Bank Account in compliance of the Award passed by the Tribunal is accomplished by furnishing the following information in the format prescribed herein below along

with bank payment advice to the Registry/Nazir Branch of this Court, for maintaining the account MACP Deposits by this Court. A copy of the same be also served to the claimants or their counsel as the case may be.

1	MACP Number	
2	On the File of (Claims Tribunal Name)	
3	Date of Award	
4	Compensation Amount	
5	Income Tax Deduction at Source	
6	Bank Transaction Reference No./ Unique Transaction Reference (UTR) No.	

5. The amounts of interim compensation, if any awarded and paid, be deducted and adjusted in the above said amounts.
6. The deficit amount of court fees shall be recovered first. **Disbursement of the amount shall be made at the time of the deposition of the awarded amount by the opponents in the Tribunal**.
7. The disbursal of compensation amount shall be made directly to the credit of the bank account of the applicants, as the case may be by NEFT or RTGS. The applicants are directed to furnish their following information in the format prescribed herein below to the Registry/Nazir Branch of this Court, for direct credit of the compensation amount to their account.

Aadhaar Card No.	
PAN Card No.	
Bank Name & Branch	
Bank Address	
Name and address of Account holder (claimant)	
Bank Account No.	
IFSC Code	
First page of passbook with photograph of the claimant duly	

attested by Bank be attached	

8. The opponent is directed to follow the guidelines of the Hon'ble Gujarat High Court in the judgment reported in 2007 ACJ 1897, in the case of **Smt.Hansagauri Prafulchandra Ladhani & Others v. The Oriental Insurance Co. Ltd. & Others**, while calculating and deciding T.D.S.
9. In case of Tax deduction at source, Form 16-A of the Income Tax Act be provided to the claimant/victim on whose behalf the deduction has been made so as to enable him/her seek refund of tax deducted, if any.
10. Registry/opponents shall ensure compliance of Hon’ble Supreme Court’s directions in **Writ Petition (Civil) No.534/2020, titled Bajaj Allianz General Insurance Co. Ltd. v/s Union of India**.
11. Award be drawn accordingly.

Signed & Pronounced in open Court today.

Date : 06/05/2026 **(Prashantkumar H. Sheth)**
Place: Patan **M.A.C.T. (MAIN), PATAN**
U.I.Code No.GJ00524

(CRD)