Received on	:	13-02-2023		
Registered on	:	13-02-2023		
Decided on	:	29-04-2026		
Duration	:	04	04	03
		Years	Month	Days

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN),

AT: PATAN

M.A.C.P.No.31/2023

Exh.: 66

APPLICANTS:-

Legal Heirs of Late Dhirubhai Hemabhai Makvana

1. **Aashaben Dhirubhai Makvana**
   Aged about 44 years, Occupation : Household,
   {Widow of deceased}

2. **Samuben Hemabhai Makvana**
   Aged about 69 years, Occupation : Household,
   {Mother of deceased}

3. **Priyankaben Dhirubhai Makvana**
   Aged about 21 years, Occupation : Study,
   {Daughter of deceased}

4. **Vijay Dhirubhai Makvana**
   Aged about 22 years, Occupation : Study,
   {Son of deceased}

   All R/o.Shergarh, Radhanpur,
   Dist. Patan.

Versus

OPPONENTS :-

1. Registered Owner of Car No.DJ-5/CH-5983:

   Hamirbhai Dosabhai
   Age : Adult, Occupation : Driving,

R/o.136, Jahugi, Aadarshnagar, N.S.Mandi,
North West-Delhi-110033.

2. Insured Owner of Car No.DJ-5/CH-5983:

Rohitkumar Sureshkumar
Age : Adult, Occupation : Driving,
R/o. K 1773 Block K, Nr.Mother Dairy,
Jahangirpuri Bhalswa, North West Delhi-110033.

3. Insurance Co. of Car No.DJ-5/CH-5983:

Go Digit General Insurance Co. Ltd.
Address: Branch Office, Sreedev Complex,
Bageswar Mahadev Mandir, At. Ta. Dist. Patan.
Policy No.D080775742/28102022
Period from 29/10/2022 to 28/10/2022

CLAIM PETITION U/S 166 OF THE MOTOR VEHICLE ACT FOR COMPENSATION OF Rs.30,00,000/-

APPEARANCE *:-*
****
Mr. D. V. Parmar, ld. Advocate for applicants.
Opponent Nos.1 & 2 – Served.
Mr. D. P. Khamar, ld. Advocate for Opponent No.3.
****

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

1. The captioned petition has been preferred by the legal heirs of late Dhirubhai Hemabhai Makvana (in short "deceased") - applicants for compensation u/s.166 of Motor Vehicles Act for compensation of Rs.30,00,000/- along with interest.

2. The brief facts of the petition are as under:-

2.1 OCCURRENCE OF ACCIDENT:

On 27/01/2023, at about 5.45 hours of the evening, deceased Dhirubhai was going on his motorcycle bearing RTO registration No.GJ-24-R-9957 (herein-after referred to as "motorcycle") with moderate speed and correct side of the road, during that time period, one Wagon-R car bearing RTO registration No.DL-5-CH-5983 (in short "Car") come with full speed and careless manner and hit the motorcycle of deceased, as a result, he sustained grievous injuries on his head and body as a whole, so immediately he took Radhanpur Referral Hospital where he declared dead by the doctor.

2.2 **NEGLIGENCE :-**

It is the case of applicants that, accident in question occurred due to rash and negligent driving of car driver.

2.3 **DETAILS OF COMPENSATION CLAIMED :-**

It is the case of applicants that, at the time of accident, deceased was aged about 48 years old and he was healthy and well builded person and he was earning Rs.40,000/- from doing agricultural and animal husbandry work as well as running electronic shop namely Kunjan and maintained his family. Thus, if the driver of car drove his vehicle with moderate speed and applied brake right time, the accident had not been occurred and Dhirubhai would have been alive and he would have more earned in future. It is further stated that, the applicant No.1 being wife of deceased has lost love and affection, applicant No.2 being widow mother and applicant Nos.3 & 4 being daughter and son of deceased lost their father as well as lost love, guidance and caring hands of their father and, therefore, applicants are entitled to get compensation towards pain, shock and suffering, transportation, funeral expenses and loss of love, affection and estate. Hence, the applicants have constrained to file present claim petition.

3. The notices issued by the Tribunal upon the opponents and said has been duly served. The learned advocate Mr.D.P.Khamar, appearing on behalf of opponent No.3 has filed written statement vide Exh.64.

4. <u>WRITTEN STATEMENT BY OPPONENT NO.3</u> :-

Mr.D.P.Khamar, learned advocate for insurance company of car has filed written statement vide Exh.64 in which he has denied the facts of accident. It is also submitted that driver of the Car did not hold valid and effective driving licence at the time of accident as well as details of age, occupation and income of deceased, nature of injuries sustained by deceased, the agony sustained by deceased etc. as narrated in the claim petition has been denied in toto.

6. The learned advocate Mr.D.P.Khamar, appearing on behalf of Opponent No.3 has given application u/s.170 of the M.V.Act for obtaining the necessary permission for cross-examining the witnesses on all points which was permitted by the tribunal on 18/09/2025 vide Exh.22.

7. The learned advocate for applicants has produced following oral as well as documentary evidence.

ORAL EVIDENCE :-

Sr. No.	Particulars	Exh.
1.	Deposition of applicant No.1–Ashaben Dhirubhai Makvana	21

DOCUMENTARY EVIDENCE WITH LISTS:

Sr. No.	Particulars	Exh.
1	Certified copy of Complaint	23
2	Certified copy of Panchnama of place of incident	24
3	Certified copy of Inquest Panchnama	25
4	Copy of R.C.Book of car (Registered Owner)	26
5	Copy of R.C.Book of car (Insured Owner)	27
6	Copy of Insurance Policy of car	28
7	Copy of P.U.C of car	29
8	Copy of Aadhar Card of applicant No.1	30
9	Copy of Pan Card of applicant No.1	31
10	Copy of Bank Pass-book of applicant No.1	32
11	Copy of Aadhar Card of applicant No.2	33
12	Copy of Pan Card of applicant No.2	34
13	Copy of Bank Pass-book of applicant No.2	35
14	Copy of Aadhar Card of applicant No.3	36
15	Copy of Pan Card of applicant No.3	37
16	Copy of Bank Pass-book of applicant No.3	38
17	Copy of Aadhar Card of applicant No.4	39

18	Copy of Pan Card of applicant No.4	40
19	Copy of Bank Pass-book of applicant No.4	41
20	Certified copy of P.M.Report of late Dhirubhai	46
21	Copy of Driving Licence of deceased Dhirubhai	47
22	Closing pursis	48

8. The learned advocate for opponent No.3 has produced following oral as well as documentary evidence.

<u>ORAL EVIDENCE</u> :-

The learned advocate for opponent No.3 has examined Mr.Kuldeepkumar Naranbhai Thakkar, Asst. Inspector, R.T.O., Patan vide Exh.50 & Mr.Divakar Dineshkumar Raval, Assitant Legal Manager of insurance company vide Exh.56.

<u>DOCUMENTARY EVIDENCE WITH LIST</u> :-

Sr. No.	**Particulars**	**Exh.**
1.	Extract of Driving Licence	52
2.	Original copy of Insurance Policy	59

9. The learned advocate for opponent No.3 has given closing purshis vide Exh.60.

10. On the basis of the aforesaid pleadings of the parties, following issues have been framed vide **Exh.18.**

-:: <u>I S S U E S</u> ::-

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

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

3. What order and award?

11. My findings on the above issues are as under for the reason assigned hereinafter.

1. In the affirmative.
2. As per final Order.
3. As per final Order.

12. The learned advocate for the applicants has produced written arguments vide Exh.61.

13. *Per contra,* leaned advocate Mr.D.P.Khamar, appearing for opponent No.3 has produced written arguments vide Exh.65.

14. I have heard learned Advocates for the parties at length. Perused the R & P, evidence produced by the applicants.

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

ISSUE No.1:

15. ISSUE OF NEGLIGENCE:-

The present claim petition has been preferred by the claimants u/s.166 of Motor Vehicles Act, 1988 and hence it is sine qua non on the part of the claimants to prove that the accident in question has occurred due to the rash and negligent driving of car driver.

15.1 After travelling through the pleadings as well as evidence led by the parties, it appears that vehicular accident took place between two vehicles i.e. motorcycle and Wagon-R Car, whereupon deceased Dhirubhai was driving one of the involved vehicle i.e. motorcycle. Thus, issue of contributory negligence of the deceased himself would be construed for the present claim.

NEGLIGENCE:-

15.2 The applicant No.1 Ashaben Dhirubhai Makvanahas given deposition at Exh.21 and she has supported their claim petition through oral evidence. Further, she has been cross examined by learned advocate for opponent No.3 in which she has admitted that she did not have personal knowledge regarding the accident.

15.3 Further, the applicants have produced the certified copy of complaint, Panchnama of place of accident, Inquest Panchnama and P.M.Note of deceased vide Exhs.24, 25 & 46 respectively. The complaint in respect to the accident is given by relative of deceased against the driver of Car who absconded from the place of incident. Looking to the Panchnama of place of accident, there was 20 ft. broad double high way road and its eastern side one black coloured motorcycle lying on the road which is totally bent position and its head light and front number plate also found in broken condition. Thus, the said motorcycle damaged in sum of Rs.15,000/- approximately. Whereas, one maruti wagon-R car lying at the western side of the road in turned turtle condition. Front bumper of car & head light found in broken condition at driver side. Front number plate is found in bent, thus the car is damaged worth of Rs.70,000/- approximately. Western side of the road some glass and plastic pieces found here and there.

Looking to the Inquest Panchnama & P.M.report of deceased Exhs.25, & 33, it appears that deceased died due to crush injury over head and left side chest in road accident.

16. After perusing oral as well as documentary evidence on record, it transpires that deceased died due to vehicular accident occurred on 27/01/2023 between motorcycle and Wagon-R car in a manner of head on collision near to driver side. The complaint had given against the driver of car. Moreover, the driver of wagon-R car being eye witness of accident has not stepped into witness box. Thus, this Tribunal come to the conclusion that the accident in question occurred between car and motorcycle and if both the drivers of involved vehicles drove their vehicles in moderate speed, careful manner and follow traffic rules and regulations, the accident had not been occurred and, therefore, looking to the overall evidence on record, driver of wagon-R car find more negligent to drive his vehicle to the extent of **90%** and driver of motorcycle-deceased himself was negligent to the extent of **10%** to drive his vehicle and hence accordingly I hold the issue No.1 in affirmative.

<u>ISSUE NO.2</u>

<u>ENTITLEMENT OF COMPENSATION</u> :-

17. Once it is established that, accident in question occurred due to rash and negligent driving of both drivers of involved vehicles and it is also proved that, deceased sustained serious fatal injuries on his head and body as a whole and died at the place of incident hence it is proved that applicants are entitled to claim compensation.

QUANTUM OF THE COMPENSATION :-

18. The next important question arises that what could be just and reasonable compensation for the applicants for the death of the deceased arised out of vehicular accident. To determine the just and reasonable compensation, which should not be luxury. This Tribunal has to assess income and age of the deceased at the time of his death as well as future prospects and contribution of deceased towards livelihood of the family.

CLAIM FOR DEPENDENCY LOSS :-

19. The claim for dependency loss of income can be computed by considering the age of deceased. And hence it is sine qua non to determine first the age, and loss of future prospect due to death of the deceased. The said aspects are discussed below.

AGE OF DECEASED & MULTIPLIER :-

19.1 The applicants have produced the copy of Driving Licence of Dhirabhai vide **Exh.47** wherein his date of birth is mentioned as 01/01/1974. Calculating with the date of accident 27/01/2023, deceased was 48 years 7 months 26 days old at the time of occurrence of accident. Hence, as ratio laid down in case of **Sarla Verma** multiplier of 13 for the age group 46-50 is applicable hence, present applicants are entitled for multiplier of **13** for the consideration of dependency loss of income.

INCOME OF DECEASED:

19.2 As far as income of deceased is concerned, applicants have claimed that, at the time of accident deceased was earning Rs.40,000/- per month out of doing agricultural work, animal husbandry and running Kunjan Electronic shop, but in support of submission, the learned advocate for applicants has not produced any cogent evidence related income of deceased and, therefore, this tribunal consider **Rs.9,200/-** per month as per minimum wages of accidental year and this figure is taken as monthly income of deceased.

19.3 For conventional compensation, the Hon'ble Supreme Court held in a **para 61(iv)** in the case of **NATIONAL INSURANCE CO. LTD. V/S. PRANAY SHETHI,** reported in **2017 ACJ 2700** that-

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 25% of the established income should be the warrant where the deceased was between the age of 40 to 50 years. The established income means the income minus the tax component.

Keeping in mind the principle set in the case of **PRANAY SHETHI (supra)** which is consistently followed in all later cases, I add **25%** to the income of the deceased in his existing income as to calculate future dependency loss in absence of cogent evidence regarding self employed. After adding 25%, the figure arrived would be **Rs.11,500/- [Rs.9,200+Rs.2,300(25%)]** per month.

<u>FUTURE DEPENDENCY LOSS</u>:-

20. In present case, deceased Dhirubhai was survived four dependents therefore 1/4 of his income is deducted towards personal and pocket expense. Mathematical calculation shows result as **Rs.8,625/- [Rs.11,500-Rs.2,875(1/4],** the multiplicand could be applied for assessing future dependency loss. Now, if we implies this figure into the mathematical formula, derived future dependency loss would be **Rs.8,625/- monthly dependency loss X 12 months X 13 multiplier = Rs.13,45,500/-** the amount of compensation which can be granted as future dependency loss.

21. It is the fact that, applicant No.1 is widow, applicant No.2 is widow mother of deceased & applicant Nos.3 & 4 are two children of deceased. In these circumstances, the Tribunal grant **Rs.84,000/-(Eighty Four Thousand rupees only)** with increment towards Spousal consortium, Funeral expenses & loss of estate as per quoted in the case of **NATIONAL INSURANCE CO. LTD. V/S. PRANAY SHETHI (supra)**.

21.1 The applicant Nos. 3 & 4 are the children of deceased and, therefore, this tribunal is granted **Rs.40,000/-** for loss of parental aid, protection, affection, society, discipline, guidance and training as per the case of **Pranay Sethi (supra) & Magma General Insurance Co. Ltd.** Thus, applicants would get compensation of Rs.14,69,500/- (Fourteen Lakhs Sixty Nine Thousand Five Hundred rupees only).

22. Deduction of contributory negligency of applicant :-

Out of the total compensation of **Rs.14,69,500/-, 10%** contributory negligence attributable on the part of deceased himself requires to be deducted and, therefore, the total amount would come to **Rs.13,22,550/- [Rs.14,69,500/- – Rs.1,46,950/- (10% contributory negligency)]** and it is just and reasonable amount and I award the same.

23. Calculation of compensation is as per below table.

Sl.	Heads	Calculation

No.		
1	Compensation for Dependency loss	Rs.13,49,868.00
2	Compensation for loss of Consortium, funeral expenses & loss to estate	Rs.00,84,000.00
3	Parental Consortium	Rs.00,40,000.00
	Amount of compensation to be paid Deducting 10% negligency deceased himself **Total compensation**	Rs.14,69,500.00 Rs.01,46,950.00 **Rs.13,22,550.00**

24. In total, applicants would get compensation of **Rs.13,22,550/- [Thirteen Lacs Twenty Two Thousand Five Hundred Fifty rupees only)** and it is just and reasonable amount and I award to same.

25. As the applicants have prayed compensation Rs.30,00,000/- but as per judgment of Hon'ble Supreme Court compensation should be just and fair. Thus, the total awardable amount of compensation to the applicants is **Rs.13,22,550/- [Thirteen Lacs Twenty Two Thousand Five Hundred Fifty rupees only)** and same shall be recovered from the opponents. Opponents are jointly and severally liable to pay the amount to the applicants with interest.

LIABILITY TO PAY COMPENSATION :-

26. The learned advocate Mr.D.P.Khamar, appearing on behalf of opponent No.3 has examined Mr.Kuldeepkumar Naranbhai Thakkar, Asst. Inspector, R.T.O., Patan vide Exh.50. In his examination-in-chief, he has admitted that two wheeler licence was issued on 23/07/2020 to Sohil Yasinbhai Memon and his four wheeler driving licence was issued on 27/03/2023. He has also produced Extract of Driving Licence of Sohil Y. Memon vide

Exh.52 in which the date of LMV licence issued on 27/03/2023. He has produced the affidavit of Mr.Divakar Dineshkumar Raval, Assistant Legal Manager of insurance company vide Exh.56. The learned advocate for applicants has cross-examined him in which he has admitted that the driver of vehicle did not have any other licence except for two wheeler. Looking to the Extract of driving licence Exh.52, on 27/03/2023, Sohil Y Memon got LMV driving licence, whereas the accident in question occurred on 27/01/2023 i.e. at the time of accident, driver of wagon-R car did not have valid and effective driving licence to drive the offending vehicle wagon-R car. Thus, the owner of said car is breached the terms and conditions of policy. Looking to the R.C.Books Exhs.26 & 27, it appears that Rohitkumar Sureshkumar is the insured owner of car who sold his car to Hamirbhai Dosabhai. Thus, opponent Nos.1 & 2 did not take pain to transfer the name of owner of vehicle in insurance policy. Looking to the insurance policy, it is commenced from 29/10/2022 to 28/10/2023 and the so called accident occurred on 27/01/2023 i.e. insurance covers the date of accident. Hence, driver of car liable to pay compensation with interest, whereas opponent Nos.1 & 2 being registered owner and insured owner of offending vehicle also liable to pay compensation with interest. Insurance company were issuing insurance policy after receiving premium from owner accepting liabilities as per Sec.147 of the M.V.Act. Therefore, in case, if, driver or owner if committed any breach of terms and conditions of insurance company, then insurance company can't be exonerated from statutory liability which has been cast upon insurance company under the provisions of Sec.147 of the

M.V.Act, but the remedy is available to insurance company, as per their terms and conditions incorporated in insurance policy that, in case, if breach is committed by driver/owner of the vehicle, then, they are entitled to recover the amount, for which, indemnify by insurance company for risk of owner to third party.

27. In present petition, the driver of wagon R car did not have valid and effective driving licence to drive car, in such circumstances, this tribunal rely upon the case of **First Appeal from Order No.1780/24, 1776/24, 1777/24 & 1789/24,** reported in 2025(AIGEL), HIGH COURT OF JUDICATURE AT ALLAHABAD, decided on 31/01/2025, whereupon Hon'ble Apex Court held 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 Amendment Act, 2019 and, hence, insurer shall continue to indemnify the owner 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 vs. Swaran Singh and others, JT 2004 (1) SC 109** has not lost its significance and binding effect despite omission of proviso. In case of **Bajaj Allianz General Insurance Co. Ltd. V/s. Dipakkumar Narayanbhai Nai & Ors.** reported in **GLR 3694** Vol.XLIX, **Pappu and others V/s. Vinod Kumar Lamba and**

another, reported in **2018 ACJ 690 & Lal Singh Marabi V/s. National Insurance Co. Ltd.,** reported in **2017 ACJ 1362,** whereupon Hon'ble Apex Court held that, insurance company directed to pay the compensation to claimant/s and recover the amount from owner in absence of driving licence of driver of vehicle. Thus, in absence of valid and effective driving licence of driver of car, Opponent No.3 being insurance company of offending vehicle is directing to first pay the awarded amount to the claimants and then to recover the paid awarded amount from the owners of the offending vehicle-opponent No.1 & 2.

28. As per the decision of the Hon'ble Supreme Court in case of "**Municipal Corporation of Delhi v/s Association of Victims of Uphar Society"** [2012 ACJ 48(SC)], it would be just and proper to award an interest @ 9% per annum on the compensation awarded in favour of the claimants and therefore, the claimants are entitled to get interest at the rate of 9% p.a. from the date of filing the present claim petition.

29. **ISSUE No.3 :-**

In view of above said discussions, made in issue Nos.1 & 2, pass the following final order.

-:: O R D E R ::-

(1) MAC petition No.**31 of 2023** is hereby partly allowed.

(2) The claimants are entitled to get compensation of **Rs.13,22,550/- [Thirteen Lacs Twenty Two Thousand Five Hundred Fifty rupees only)** from the opponents jointly and severally, who are liable to pay the amount of compensation with proportionate costs and running interest at the rate of 9% per annum from the date of filing of the claim petition till its realization.

(3) If Opponent **No.3-**Insurance company pay the awarded amount to the claimants, then they can recover the paid awarded amount from the opponent No. 1 & 2-owners of the vehicle without filing any suit.

(4) 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/Insurance Company/ AMTS/State Transport Corporation, as the case may be, 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)
MICR Code		384012082
Branch Code	:	MARPAT (Last Six Characters of IFSC Code)

Further, after deposit of the awarded amount, the opponents are 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 claimant or his 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 deficit amount of court fees shall be recovered first. Then the amount of interim compensation, if any, awarded and paid, be deducted and adjusted in the above said amounts.

(6) 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 claimant, as the case may be by **NEFT or RTGS**. The claimant is directed to furnish his/her following information in the format prescribed herein below to the Registry/Nazir Branch of this Court, for direct credit of the compensation amount to his/her 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 opponents are 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 claimants/ 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.

Pronounced and signed in the open Court today on this **29th** day of **April, 2026.**

Date : 29/04/2026
Place: Patan.

(Prashantkumar H. Sheth)
Judge, MACT (Main), Patan
UNIQUE ID CODE NO.GJ00524

kpandey