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**In the Motor Accident Claims Tribunal (Main),
At-Surendranagar.****M.A.C. PETITION NO. 84/2024****Exh...36**

<u>Petitioners:</u>	
	Heirs of Deceased Navghanbhai Gordhanbhai Bohukiya ;
1.	Bohukiya Kanchanben Navghanbhai, Age about -32 years, Occu. Household,
2.	Minor Bohukiya Haritaben Navghanbhai, Age about -13 years, Occu. Study,
3.	Minor Bohukiya Sunilbhai Navghanbhai Age about-11 years, Occu. Study,
4.	Minor Bohukiya Jayshreeben Navghanbhai, Age about-10 years, Occu. Study,
5.	Minor Bohukiya Vijay Navghanbhai, Age about-7 years, Occu. Study,
6.	Bohukiya Gordhanbhai Maganbhai, Age about-56 years, Occu. Study,
7.	Bohukiya Kaliben Gordhanbhai, Age about-53 years, Occu. Study,
	Minor Applicant Nos.2 to 5 through their guardian and next friend the applicant No.1. All Res. At; Vavdi, Tal. Chotila, Dist.Surendranagar.

VERSUS

<u>Opponents :</u>	
	S.T.No.GJ-18-Z-7743 ;
1.	Driver;

	Pruthvirajsinh L. Zala, Res.At; Karela, Tal.Lakhtar, Dist.Surendranagar.
2.	Owner ; Gujarat State Road Transport Corporation, Gondal road, Rajkot.

Appearance:

Mr.R.S.Jitiya,L.A. for the applicants.

Mr.S.J.Mehta,L.A. for the opponent Nos.1,2.

**Claim For Compensation of Rs.50,00,000/- U/s.166 of
The M.V.Act,1988.****:: JUDGEMENT ::**

1. The present claim petition is preferred for getting a compensation of Rs.50,00,000/- along with the costs and interest @ 18% p.a. from the date of filling of the claim petition till realization under the provisions of Section 166 of The Motor Vehicles Act by the legal heirs and representatives of deceased Navghanbhai Gordhanbhai Bohukiya who sustained serious injuries and succumbed to the injuries in a vehicular accident which occurred on 01/08/2024.

2. The brief facts giving rise to the present claim petition are as under ;

That on 01/08/2024, at about 3.45 a.m. deceased Navghanbhai Gordhanbhai Bohukiya was driving his motorcycle No.GJ-13AE-7023 carefully on the correct side of Surendranagar-Wadhwan road and his wife i.e. the applicant No.1 was traveling a pillion rider on the said motorcycle and when they reached opposite Shiv Hotel within the limit of

Surendranagar “B” Division Police Station, the opponent No.1 came from behind driving S.T.Bus No.GJ-18-Z-7743 in a rash and negligent manner with excessive speed and dashed the said S.T.Bus with the motorcycle of the deceased, as a result which the accident occurred and the deceased sustained grievous injuries and succumbed to his injuries. That the accident occurred due to sheer negligence on the part of the opponent No.1 S.T.Bus driver. It is further the case of the applicants that on account of the death of the deceased, they have suffered economic loss to a great extent by way of dependency and the applicants have also spent a huge amount for funeral of the deceased. It is also the case of the applicants that on account of the untimely death of the deceased, they have suffered loss of estate, Hence, under all eligible heads, the applicants have claimed Rs.50,00,000/- by way of compensation from all the opponents jointly and severally.

3. Notices were duly served upon the opponents. The opponents have appeared through learned advocate Mr.S.J.Mehta and filed their common written statement vide Exh.13 denying all the contents of the claim petition including negligence on the part of the opponent No.1 i.e. S.T.Bus driver, age and income of the deceased and compensation claimed by the applicants under different heads and has specifically contended that at the time of the accident, the deceased was driving his motorcycle rashly and negligently and the accident occurred on account of negligence on the part of the deceased and ultimately the opponents have prayed for dismissal of the claim petition against them.

4. On behalf of the parties, the following oral as well as documentary evidences have been produced on record.

Oral Evidence Produced by the Applicants :

Exh.No.	Particulars of Document
Exh.19	Affidavit of the applicant No.1

Documentary Evidence Produced by the Applicants :

Exh.No.	Particulars of Document
Exh.22	Copy of FIR
Exh.23	Copy of panchanama of the place of accident
Exh.24	Copy of inquest panchanama
Exh.25	Copy of P.M.Note of the deceased
Exh.26	Copy of PUC Certificate of the offending vehicle
Exh.27	Copy of driving licence of the offending vehicle driver
Exh.28	Copy of driving licence of the deceased
Exhs.29 to 31	Copies of Village Forms

Oral Evidence Produced by the opponents :

Exh.No.	Particulars of Document
Exh.34	Deposition of the opponent No.1 S.T.Bus driver.

5. In view of the pleadings of the parties , the following issues have been framed at Exh.14 for the determination of this petition;

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

2. What amount, if any the complainants are entitled to by way of compensation and from which of the opponents?
 3. What order ?
6. My findings on the above issues are as under :-

FINDINGS :-

1. In the affirmative and 100% negligence on the part of the opponent No.1 i.e. driver of S.T.Bus No.GJ-18-Z-7743 for happening of the accident.
2. In the affirmative and as per final order.
3. As per final order.

:: REASONS ::

7. I have heard learned advocate for learned advocate Mr.R.S.Jitiya for the applicants and learned advocate Mr.S.J.Mehta for the opponents.

ISSUE No. 1 :

8. Learned advocate Mr.R.S.Jitiya for the applicants has mainly submitted that looking to the copies of the FIR at Exh.22, panchnama of the place of accident Exh.23 and P.M.Note of the deceased at Exh.25, the applicants have successfully proved that the accident occurred on account of the rash and negligent driving on the part of the opponent No.1 –

driver of S.T.Bus No.GJ-18-Z-7743 and in the said accident, the deceased sustained injuries and succumbed to his injuries. Per contra, learned advocate Mr.S.J.Mehta for the opponents has submitted that at the time of the accident, the deceased was riding the motorcycle rashly and negligently and therefore the accident occurred and the said fact is proved from the deposition of the opponent No.1 and hence, learned advocate Mr.S.J.Mehta has requested that the deceased should be held also liable for the accident.

9. In this matter, the applicant No.1, who is the widow of deceased Navghanbhai Gordhanbhai Bohukiya has deposed on oath at Exh.19 that 01/08/2024 at about 3.45 a.m. deceased Navghanbhai Gordhanbhai Bohukiya was driving his motorcycle No.GJ-13AE-7023 carefully on the correct side of Surendranagar-Wadhwan road and she was traveling as pillion rider and when they reached opposite Shiv Hotel within the limit of Surendranagar "B" Division Police Station, the opponent No.1 came from behind driving S.T.Bus No.GJ-18-Z-7743 in a rash and negligent manner with excessive speed and dashed the said S.T.Bus with the motorcycle of the deceased, as a result which the accident occurred and the deceased sustained grievous injuries and succumbed to his injuries. That the accident occurred due to sheer negligence on the part of the opponent No.1 S.T.Bus driver.

9.1 In the cross examination by the learned advocate for the opponents, the applicant has admitted that the accident site is situated opposite Shiv Hotel in Surendranagar and that there

was a divider in the middle of the road and that the ST bus was proceeding from Wadhwan to Surendranagar at the time of the accident and that they were also travelling from Wadhwan towards Surendranagar, but the applicant has categorically denied that road construction work was going on in front of Swaminarayan Mandir opposite Shiv Hotel and that pits were dug on the road at the accident site. The applicant has also denied that the driver of the ST bus was driving the bus slowly on the side of the road and that the deceased was driving his vehicle at full speed in an attempt to overtake the bus and that due to excessive speed, their vehicle passed through a pothole at the accident site and went out of control and that the vehicle came into contact with the indicator near the front tyre on the conductor's side of the bus, as alleged, and slipped before falling in front of the bus. The applicant has denied that the accident occurred due to the negligence and careless driving of the deceased and that the driver of the ST bus was not negligent in the occurrence of the accident.

10. In support of the claim petition and deposition of the applicant No.1, the applicants have produced the copies of the complaint Exh.22, panchnama of the place of accident Exh.23, inquest panchana at Exh.24 and P.M.Note of the deceased at Exh.25 and on perusal of the complaint Exh.22, it transpires that the complaint has been lodged against the S.T.Bus driver due to his rash and negligent driving. Further, it transpires that after completion of the investigation, the charge sheet has been filed against the opponent No.1 S.T.Bus driver due to his rash and negligent driving.

11. It is pertinent to note that though in the chief affidavit at Exh.34 the opponent No.1 i.e. the driver of S.T. Bus bearing Registration No. GJ-18-Z-7743 has stated that he was driving the bus carefully and that the accident occurred due to rash and negligent driving on the part of the deceased motorcyclist, but in his cross-examination, he has categorically admitted that in connection with the present accident, a complaint has been filed against him and that a charge-sheet has been filed against him before the competent Court arising out of the said complaint and that he has not filed any separate complaint against the motorcycle driver before any police station regarding the present accident.

12. I have carefully considered the oral as well as documentary evidence produced on record. It is a settled principle that in proceedings under the Motor Vehicles Act, negligence is to be determined on the basis of preponderance of probabilities and not on the strict standard of proof required in criminal trials. In the present case, the consistent testimony of the applicant No.1, supported by contemporaneous documentary evidence including FIR, panchnama and charge-sheet, establishes that the bus came from behind and dashed the motorcycle. A heavy passenger vehicle like an S.T. bus is expected to be driven with greater care and caution. Failure to maintain proper distance and control resulting in a collision from behind indicates negligence on the part of the opponent No.1

12.1 The defence theory that the motorcycle struck the

bus while overtaking appears to be an afterthought and is not substantiated by independent evidence and it is clear that in his chief affidavit the opponent No.1 S.T.Bus driver has not produced the correct picture of the manner in which the accident occurred . The overall material on record clearly tilts the balance of probabilities in favour of the applicants. If indeed the accident had occurred due to the negligence of the deceased, there was no impediment for the opponent No.1 to lodge a counter-complaint. His failure to do so casts doubt on the defence version. The explanation that the police did not record his complaint is not supported by any documentary material and therefore cannot be given any weight.

12.2 In view of the foregoing discussion and appreciation of the evidence on record, the applicants have successfully proved that the accident occurred due to sheer rash and negligent driving of the opponent No.1, driver of S.T. Bus bearing Registration No. GJ-18-Z-7743 and hence, the opponent No.1-driver of S.T. Bus bearing Registration No. GJ-18-Z-7743 is held 100% liable for the accident and there was no negligence on the part of the deceased and in the said accident, the deceased sustained grievous injuries and succumbed to his injuries. Hence I answer issue No.1 in the affirmative.

ISSUE No.2 :

13. Learned advocate Mr.R.S.Jitiya for the applicants has mainly submitted that at the time of the accident the deceased was 32 years old and was earning Rs.25,000/- per month by driving Dumper and Rs.25,000/- by doing agricultural

work on the land owned by his father and hence, in view of the same and oral as well as documentary evidence led by the applicants, Rs.50,00,000/- may be awarded to the applicants under all heads. Per contra, learned advocate Mr.S.J.Mehta for the opponent No.2 has submitted that the applicants have failed to prove the alleged or any income of the deceased by producing any cogent and convincing evidence and hence, notional income of the deceased may be considered for awarding compensation under the head of loss of dependency and Rs.70,000/- may be awarded to the applicant under conventional heads. Learned advocate Mr.S.J.Mehta has submitted that the applicant No.6 is 56 years and possessing an agricultural land and hence the applicant Nos.6 and 7, who are the parents of the deceased cannot be considered as the dependents of the deceased.

LOSS OF FAMILY DEPENDENCY :

[a] Age :

14. In this matter, the applicant No.1 has deposed on oath at Exh.19 that at the time of the accident, the deceased was 32 years old and the applicants have produced the copy of the driving licence of the deceased vide Exh.28, wherein, the date of birth of the deceased is mentioned 21/02/1992. In this matter, the accident occurred on 01/08/2024 and hence, at the time of the accident, the deceased was 33 years old and hence, the age of the deceased is considered 33 years at the time of the accident for awarding compensation to the applicants.

[b] Income :

15. The applicant No.1 has deposed at Exh.19 that the

deceased was earning Rs.25,000/- per month by driving Dumper and Rs.25,000/- by doing agricultural work and the applicants have produced a copy of driving licence of the deceased for transport vehicles at Exh.28 and Village Forms of the agricultural land admeasuring 2-76-04 mutated in the name of the Gordhanbhai Maganbhai i.e. the father of the deceased at Exhs.29 to 31, but admittedly the applicants have not produced any direct, cogent and convicting evidence proving the aforesaid alleged income of the deceased and hence, considering the entire facts, circumstances, date of the accident 01/08/2024, aforesaid limited evidence on record and considering the nature of work performed by the deceased at the time of the accident, the monthly income of the deceased is assessed at Rs.15,000/- for awarding just compensation and since the deceased 33 years old at the time of the accident and falls below 40 years, as per the decision of the Hon'ble Apex Court reported in **2017 ACJ 2700** in case of **National Insurance Co. v. Pranay Sethi**, future prospects @40% i.e. Rs.6,000/- is required to be awarded in the present case of the deceased and hence, the total monthly prospective income of the deceased would come at Rs.21,000/- per month.

[c] Deduction towards Personal Living Expenditure ;

16. As per the claim petition, there are seven dependents of the deceased including widows, minor children and parents of the deceased and hence, considering the same and as per settled law, 1/5 amount i.e. Rs.4,200/- by way of personal and living expenses from monthly income of deceased Rs.21,000/- is required to be deducted in the present case and hence, monthly

family dependency loss would come to Rs.16,800/- per month.

[d] Multiplier ;

17. So far as the multiplier is concerned, as held herein above, the deceased was 33 years old at the time of the accident and hence, as per the judgment of Hon'ble Supreme Court in the case of **Smt. Sarla Varma and others V/s. Delhi Transport Corporation** reported in 2009 ACJ 1298, the applicants are entitled to get multiplier of 16. Hence, I award the multiplier of 16 to the applicants.

[e] Calculation of Compensation under the head of Loss of Family Dependency ;

18. In view of the aforesaid discussions, considering the loss of monthly family dependency to the applicants to the tune of Rs.16,800/- and applying the multiplier of 16 the loss of dependency of family would come to Rs.32,25,600/- (Loss of monthly dependency Rs.16,800/- x 12 Months x 16 Multiplier) and hence I award Rs.32,25,600/- to the applicants under the head of loss of family dependency.

COMPENSATION UNDER CONVENTIONAL HEADS ;

19. It is also the case of the applicants that on account of untimely death of the deceased, the applicants have incurred expenditure for funeral of the deceased and the applicants have also suffered loss of estate and loss of love and expectation of life. This Tribunal has perused the decision of the Hon'ble Apex Court rendered in the case of **National Insurance Co. v. Pranay Sethi** reported in **2017(16) SCC 680** wherein Hon'ble

Apex Court has awarded lump sum total amount Rs.70,000/- to the applicants on conventional heads i.e. Rs.15,000/- on the head of loss of estate, Rs.40,000/- on the head of loss of love and expectation of life and Rs.15,000/- on the head of funeral expenses and has also held that the said compensation should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years. In this matter, the accident occurred in the year 2024 and hence, after six years, 20% enhancement i.e. Rs.14,000/- should be applied in the aforesaid amount of conventional heads and hence in the present case on hand, the applicants are entitled to the aforesaid amounts of compensation under the conventional heads with 20% enhancement i.e. Total Rs.84,000/- (Rs.70,000/- + Rs.14,000/-) and hence I award lump sum total amount Rs.84,000/- to the said applicants under conventional heads.

20. Furthermore, as per the ratio laid down in the Judgment of the Hon'ble Apex Court delivered in the case of United India Insurance Co. Ltd., Vs. Satinder Kaur & Ors. reported in 2020 ACJ Page 2131, each children who has lost the care and protection of his/her parent due to vehicular accident is entitled for Rs.40,000/- towards the head of loss of parental consortium. On perusal of the present case on hand it transpires that on the date of the accident, the claimant Nos.2 to 5, who are the children of the deceased, were studying at the time of the accident and minor and hence the claimant Nos.2 to 5 are entitled for an amount of Rs.40,000/- each towards loss of parental consortium. Hence considering the ratio laid down in the afore stated Judgment delivered by the Hon'ble Apex Court,

the claimant Nos.2 to 5, who are the minor children of the deceased are awarded Rs.1,60,000/- towards loss of parental consortium. In view of above, the total amount of compensation would come as under :

21. In view of above the applicants are entitled for following amount as compensation :

Loss of family dependency	Rs. 32,25,600/-
Loss of estate and funeral expenses and loss of love expectation of life	Rs. 84,000/-
Parental Consortium	Rs. 1,60,000/-
Total Amount Compensation	Rs. 34,69,600/-

Liability Issue ;

22. As held in issue No.1, the accident in question took place on account of the rash and negligent driving on the part of opponent No.1 i.e. driver of S.T.Bus No.GJ-18-Z-7743 and the opponent No. 2 was the owner of the said vehicle and hence the opponent No.1 to 2 are jointly and severally liable to pay the amount of compensation to the applicants.

23. The applicants have asked for interest at the rate of 18% p.a. whereas, the learned advocate for the opponents has requested to award interest @ 6% p.a. but in view of the decision of the Hon'ble High Court of Gujarat in **R/First Appeal No.2460/2021** with **R/First Appeal No.2461/2021** in the case of **New India Assurance Co. Ltd. v. Rajivkumar Omprakash Sultaniya**, the applicants in this case would be entitled to get the interest at the rate of 9% p.a., from the date of claim petition till

realization, hence, I answer Issue no.2 accordingly.

ISSUE No.2 :

24. In view of above discussions, I answer the issues accordingly and pass the following order:-

:: ORDER ::

The claim petition is hereby partly allowed against the Opponent Nos. 1 to 2.

The claimants are entitled to recover an amount of Rs.34,69,600/- (Rs. Thirty Four Lakhs Sixty Nine Thousand Six Hundred Only) with the proportionate cost and interest at the rate of 9% per annum, from the date of the claim petition till realization from the opponent Nos.1 to 2 jointly and severally.

The opponent No.1 to 2 are hereby directed to deposit the aforesaid amount of award after deducting the amount of interim compensation, if any paid u/s.140 of M.V. Act, directly by RTGS or NEFT to the following Bank Account of this Tribunal within 30 days from the date of this order ;

Account Name	Motor Accidents Claims Tribunal, Surendranagar.
Account No.	40714211695
Name of Bank	State Bank of India
Name of Branch	Vadipara, Surendranagar.
IFSC Code	SBIN0060101
MICR Code	363002002

The opponents shall instruct their Banks to remit the payment with the following information ;

MACP No.	
Claims Tribunal Name, Place	
Date of Award	
Compensation Amount	
Income Tax Deducted at Source	
Bank Transaction Reference No./ Unique Transaction Reference (UTR) No.	
Name of Bank	
Name of Insurance Co.	

On such deposits being made, the opponents shall submit a letter to the Office of the Claims Tribunal enclosing a copy of the bank advice in the prescribed format as above.

The opponents making such deposit, shall also send a copy of the aforesaid payment advice to the Claims Tribunal concerned and serve a copy of the same on the applicants or their advocate as the case may be.

Deficit Court Fees stamp, if any, be recovered from the awarded amount.

After above deductions, the applicant Nos.1 to 7 are entitled to 40%, 10%, 10%, 10%, 10%, 10% and 10% respectively of the amount of compensation.

After such apportionment, so far the shares of the major applicant Nos.1,6 and 7 are concerned, 60% amount of compensation be kept in Fixed Deposit Receipt in the names of the respective applicants in any nationalized bank of their choice, for a period of five years and remaining 40% amount be paid by NEFT or RTGS directly in the bank account of the respective applicants after due verification.

So far the shares of the minor applicant Nos.2 to 5 are concerned, their entire amount of compensation be kept in Fixed

Deposit Receipts in the names of the respective minor applicants through their guardian i.e. the applicant No.1 in any nationalized bank of her choice, for a period of five years or till the minor attain majority, whichever is later

The concerned Bank is directed not to grant any loan, advances or withdrawal against the aforesaid FDRs without obtaining prior permission of this Tribunal. However, the applicants will be at liberty to withdraw the periodical interest accrued on the said FDRs.

Opponents to bear their own cost and to pay the cost to the claimants.

Award be drawn accordingly.

Pronounced in the open Tribunal on this **06th** **day of**
March, 2026.

Date : **06/03/2026**
Place: Surendranagar.

(KAILASNATH R. UPADHYAY)
Chairman, MACT (Main),
Surendranagar.
(GJ00333)