GJSR010017922018

Received on	: 03.03.2018
Registered on	: 03.03.2018
Decided on	: 08.06.2026
Duration	: YY. MM. DD.

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL [MAIN], SURAT.

M.A.C.P. No. 66/2018

Exh. ______

1) **Ilaben Amitbhai Dholakiya**
Aged about : 27 years, Occupation : Household
Residing at : D/201, Happiness Residency,
Behind Shrushti Row-House,
Amroli, Surat.

2) **Minor Ruhi Amitbhai Dholakiya**
Through her mother and guardian
Ilaben Amitbhai Dholakiya
Aged about : 2 years,
Residing at : D/201, Happiness Residency,
Behind Shrushti Row-House,
Amroli, Surat.

3) **Gitaben Veljibhai Dholakiya**
Aged about : 41 years, Occupation : Household
Residing at : D/201, Happiness Residency,
Behind Shrushti Row-House,
Amroli, Surat.

4) **Veljibhai Naranbhai Dholakiya**
Aged about : 41 years, Occupation : Household
Residing at : D/201, Happiness Residency,
Behind Shrushti Row-House,
Amroli, Surat. **....PETITIONERS**

VERSUS

1) **Gautam Jogindar Sahani**
Aged about : 20 years Occupation : Diamond cutting
Residing at : B.No. 79/A/5, S.M.C. Awas,
Amroli, Surat.
Ori. Res. of : Thana - Sajanva,
Tal. Sodharav, Dist. Gorakhpur (U.P.)
Mo. 99797 24312

2) **Manoj Radheshyam Sahani**
Aged about : Major
Residing at : 90-B16H, 1, 89A To 92A,
89B To 92B, S.M.C. Awas,
Amroli, Surat. **....OPPONENTS**

Appearance:

Mr. P. K. Kheni Ld. Advocate for the Petitioners

SUB : CLAIM PETITION U/S. 166 OF THE M. V. ACT.

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

[1] Applicants are the legal heirs and legal representatives of deceased Amitbhai Dholakiya who have preferred the present Motor Accident Claim Petition under **Section 166 of the M. V. Act** for receiving compensation of **Rs. 50,00,000/-** for the losses suffered by the applicants due to the demise of deceased in a vehicular accident dated **06.08.2017.**

[2] Ld. Advocate Shri P. K. Kheni is present for applicants. The record reveals that though the notice was

served though the notice was served, the opponents have not appeared before the Tribunal. Heard the Ld. Advocate appearing for the applicants and perused the record.

➢ ***FACTUAL MATRIX*:**

(A) The applicants have contended *inter alia* the petition that on **06.08.2017** at about **09:00 pm** Amitbhai Dholakiya (Deceased) was proceeding by driving his motorcycle bearing **No. GJ-05-HP-4026** on Amroli - Sayan Road slowly on the correct side of the road and when he reached near the site of the accident i.e. near Gopinath Residency, Opp. Sunday Residency, the driver of motorcycle bearing registration **No. GJ-05-NE-7822**, while driving the said motorcycle in very rash, negligent and in the manner endangering the human life, dashed with Amitbhai's motorcycle. As a result of which, Amitbhai sustained serious head injuries and succumbed to the same during the treatments.

(B) It is the case of the applicants that the accident in question has occurred due to negligent act of opponent No. 1 for which the offence is registered with **Amroli Police Station** vide **I C. R. No. 147/2017.**

(C) It is the case of the applicants that at the time of the accident, the deceased was 27 years old and he was fit and healthy. It is the case of the applicants that the deceased was earning **Rs. 2,58,710/-** per annum by doing job in diamond office of Shri Ram Dimax Pvt. Ltd. It is the case of the applicants that the applicants were totally dependent upon the earning of the deceased only. It is the case of the applicants that due to the demise of the deceased, the applicants have lost their beloved one, hence the applicants have sustained serious mental trauma and serious financial losses. Thus, to recover the compensation for the losses suffered by the applicants due to the demise of deceased, the present petition is preferred by the applicants.

[3] Though the notice served to the opponents, none of the opponents have appeared before the Tribunal.

[4] Perusal of the record transpires that no Issues have been framed in the matter. As the stricto sensu rules of the Evidence Act are not binding to the Tribunal and for the effective adjudication of the present Claim Petition, following Issues have been framed:

1. Whether the applicants prove that the deceased died due to rash and negligent driving on the part of the driver of offending vehicle involved in the accident?

2. Whether the applicants are entitled to get compensation? If yes, what amount and from whom?

3. What Award and Order?

[5] My findings to the above Issues are as under:

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

:: <u>R E A S O N S</u> ::

<u>ISSUE Nos. 1</u>: [ISSUE OF NEGLIGENCE]

[6] The applicant No. 4 has filed his examination in chief affidavit under **Order 18 Rule 4 of the C.P.C.** at **Exh. 36** and it is stated that on **06.08.2017** at about **09:00 pm** Amitbhai Dholakiya (Deceased) was proceeding by driving his motorcycle bearing **No. GJ-05-HP-4026** on Amroli - Sayan Road slowly on the correct side of the road and when he reached near the site of the accident i.e. near

Gopinath Residency, Opp. Sunday Residency, the driver of motorcycle bearing registration **No. GJ-05-NE-7822**, while driving the said motorcycle in very rash, negligent and in the manner endangering the human life, dashed with Amitbhai's motorcycle. As a result of which, Amitbhai sustained serious head injuries and succumbed to the same during the treatments. It is the case of the applicants that the accident in question has occurred due to negligent act of opponent No. 1 for which the offence is registered with **Amroli Police Station** vide **I C. R. No. 147/2017.**

[7] The record reveals that though the enough opportunities were accorded, the cross-examination of the applicant No. 4 was not conducted.

[8] Ld. Advocate for the claimants has submitted that sufficient evidence has been produced on record to prove that driver of the alleged motorcycle i.e. the opponent No. 1 was solely negligent for the occurrence of the accident. He has further submitted that though the opponents have been served, none of the opponents have appeared to contest the claim petition, hence, adverse inference is required to be drawn against the opponent

No.1.

[9] Having heard the Ld. Advocate for the applicant and upon deeply scrutinizing the evidence adduced on record, it transpires that in addition to the oral evidence of applicant No. 3 at **Exh. 36,** the applicants have produced at **Exh. 21** the copy of Complaint, at **Exh. 22** the copy of panchnama of place of accident and at **Exh. 23** the copy of charge-sheet. The contents of the said documents corroborate with the averments of the petition and the statements made in the affidavit **Exh. 36.** It is also on record that the opponents, though served, have not appeared before the Tribunal. Considering the said aspect and in view of the Judgment of Hon'ble High Court of Gujarat in case of **Bhikhup Agrawal vs Leelaben Laljibhai Vala reported** in **2001 TAC Part I Page 27,** the adverse inference has to be drawn against the opponent. It transpires from the evidence adduced on record that had the driver of the offending motorcycle taken adequate care, the accident in question could have been avoided.

[10] At this juncture, it would be profitable to refer the Judgment in case of **Bimla Devi Versus Himachal**

Road Transport Corporation reported in **2009 (0) AIR(SC) 2819,** wherein the Hon'ble Apex Court has held as under:

> *"14. The learned Tribunal, in our opinion, has rightly proceeded on the basis that apparently there was absolutely no reason to falsely implicate the respondent Nos. 2 and 3. Claimant was not at the place of occurrence. She, therefore, might not be aware of the details as to how the accident took place but the fact that the First Information Report had been lodged in relation to an accident could not have been ignored. Some discrepancies in the evidences of the claimant's witnesses might have occurred but the core question before the Tribunal and consequently before the High Court was as to whether the bus in question was involved in the accident or not. For the purpose of determining the said issue, the Court was required to apply the principle underlying burden of proof in terms of the provisions of Section 106 of the Indian Evidence Act as to whether a dead body wrapped in a blanket had been found at the spot at such an early hour, which was required to be proved by the respondent Nos.2 and 3.*
>
> *15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne in mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants.* ***The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied.*** *For the said purpose, the High Court should have taken into consideration the respective stories set forth by both the parties.*

> *16. The judgment of the High Court to a great extent is based on conjectures and surmises. While holding that the police might have implicated the respondents, no reason has been assigned in support thereof. No material brought on record has been referred to for the said purpose.*
>
> *17. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.*"

[11] The applicants have produced on record oral as well as documentary evidence in the form of FIR and Panchnama of place of accident. It is held in case of **New India Assurance Co. Ltd. vs. Neelam Singh** reported in **2013(0) AIJEL-DL 1367156,** that admittedly, the evidence under the Motor Vehicles Act, 1998 being a welfare legislation, is not required to be proved like civil and criminal cases beyond reasonable doubt.

[12] Hence, upon holistic appreciation of the evidence adduced on record, it transpires that the applicants have been successful in establishing that the driver of the offending motorcycle i.e. opponent No. 1 has been negligent for the occurrence of the accident.

[13] The applicants have produced at **Exh. 24** and

Exh. 25 the copy of Inquest Panchnama and the post-mortem report of the deceased and the said documents suggest that the deceased lost his life due to the accidental injuries.

[14] Thus, from the above referred documentary as well as oral evidence, it is proved that the deceased lost his life due to the vehicular accident that has occurred due to rash and negligent driving of opponent No. 1 and hence, I decide Issue No. 1 in **'Affirmative'.**

ISSUE No. 2:

➢ **ENTITLEMENT OF COMPENSATION:**

[15] Once it is established that accident in question has occurred due to rash and negligent driving of the opponent and it is also proved that deceased of above MACP lost his life in the accident, it is proved that the applicants are entitled for compensation.

➢ **QUANTUM OF COMPENSATION:**

[16] The cardinal principal for awarding compensation in the accident cases, is that the compensation to be awarded must not be inadequate nor must be exorbitant but the same must be JUST COMPENSATION and the Hon'ble Apex Court has, in case

of **Sarla Verma vs. Delhi Transport Corpn.,** reported in **2009 ACJ 1258** provided guidelines for awarding JUST COMPENSATION to the victims and the case of **National Insurance Co. Ltd. vs. Pranay Sethi and Others reported in 2017 16 SCC 680** and accordingly, in the present case JUST COMPENSATION is worked out as under.

➢ **CLAIM FOR FUTURE LOSS OF INCOME - LOSS OF DEPENDENCY:**

[17] The claim for future loss of income can be computed by considering the age and income of the deceased and hence, it is **sine qua non** to determine first the age and income of the deceased. The said aspects are discussed below.

● **AGE:**

[18] At **Exh. 28**, the Copy of the School Leaving Certificate of the deceased is produced, which reflect the date of his birth as **01.09.1991,** hence, considering the same as well as the date of accident i.e. 06.08.2017, it reveals that the deceased was **26 years old** at the time of the accident.

INCOME:

[19] In the examination in chief - affidavit at Exh.

36, the claimant has contended that the deceased was doing the job in a diamond office, named, Shri Ram Dimax Pvt. Ltd., Katargam and his yearly income was **Rs. 2,58,170/-.** In order to prove the income, the claimants have produced at **Exh. 30 and Exh. 31** the copies of the income tax returns for **Assessment years 2016-17 and 2015-16.**

[19.1] At this juncture, the Judgment in the case of **Vinodbhai Hasmukhbhai Patel vs. Hiren Kantibhai Bhavsar** reported in **2023(2) GLH (UJ) 1,** is required to be referred to, wherein the Hon'ble High Court of Gujarat has explained as to how much significance can be given to the income tax return. The observations of the Hon'ble High Court of Gujarat are as under:

> "**7.** *At this stage, it would be apposite to incorporate the observations made by the Apex Court in the case of Malharvizhi and Ors.(supra) which reads as under:*
>
> > *"6. In appeal, the High Court concluded that on an analysis of the income tax returns filed by the deceased for the financial years 1995-1996 to 2000-2001, the income declared for the financial year 1997-1998 was the highest and must be taken as the annual income of the deceased. Hence, Rs 2,09,211 was determined to be the annual income of the deceased. Rs 40,000 per annum was added towards*

future prospects. The total income was thus arrived at Rs 2,50,000 per annum. No deduction was made towards personal expenses. Applying a multiplier of 13, the loss of dependency was calculated to be Rs 32,50,000. To this, funeral expenses, loss of consortium and loss of love and affection were added in the amount of Rs 1,05,000. A total compensation of Rs 33,55,000 was awarded.

10. The Tribunal proceeded to determine the agricultural income arising from 36.76 acres of land on the basis of two judgments of the High Court. The Tribunal arrived at two different figures by applying the decisions and proceeded to determine the agricultural income on an average of the two amounts. The Tribunal superimposed a possible value of income from agricultural land despite a clear indication in the income tax returns of the income from agricultural land. The method adopted by the Tribunal is not sustainable in law. On the other hand, the High Court has proceeded on the basis of the income reflected in the income tax returns for the assessment year 1997-1998. The relevant portion of the return reads:

"Income from House property - Rs. 1,920 Business profit (other than 14.b) - Rs. 1,21,071 Net Agricultural income - Rs. 88,140"

The tax return indicates an annual income of Rs 2,11,131 in the relevant assessment year. Mr Jayanth Muth Raj, learned Senior Counsel appearing on behalf of the appellant contended that other documents were marked which reflected the income of the deceased. We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The *income tax return is C/FA/601/2018 JUDGMENT DATED: 02/02/2023 a statutory document on which reliance may be placed to determine the annual income of the deceased. To the benefit of the appellants, the High Court has proceeded on the basis of the income tax return for the assessment year 1997-1998 and not 1999-2000 and 2000-2001 which reflected a reduction in the annual income of the deceased.*

8. *In the case of Malharvizhi and Ors. (supra), the Apex Court has confirmed the decision of the High Court, where the High Court concluded and held that the income of the deceased is required to be fixed as per his highest ITR.*

9. *In the case of Smt. Anjali and Ors. (supra) the Apex Court has observed thus:*

> *"9. The Tribunal and the High Court both committed grave error while estimating the deceased's income by disregarding the Income Tax Return of the Deceased. The appellants had filed the Income Tax Return (2009- 2010) of the deceased, which reflects the deceased's annual income to be Rs.1,18,261/-, approx. Rs.9,855/- per month. This Court in Malarvizhi & Ors. (Supra) has reaffirmed that the Income Tax Return is a statutory document on which reliance be placed, where available, for computation of annual income. In Malarvizhi (Supra), this Court has laid as under:*
>
> *"10. ...We are in agreement with the High Court that the determination must proceed on the basis of the income tax return, where available. The income tax return is a statutory document on which reliance may be placed to determine the annual income of the deceased." 2 (2020) 4 SCC 228 Hence, this Court is of the opinion that the deceased's annual*

> *income be fixed at Rs.1,18,261/-, approx. Rs.9,855/- per month keeping in mind the deceased's Income Tax Return for the year 2009-2010."*

10. *The Apex Court, while referring the judgement in the case of Malharvizhi and Ors. (supra), fixed the income of the deceased only on the basis of the single annual ITR.*

11*. In the case of Smt. Sangita Arya and Ors. (supra), the Apex Court, while considering the ITR, which was 2 months prior to the death of the deceased, has held thus:*

> *"Second, the High Court determined the income of the deceased by taking the average of the ITRs filed for the years 200203 at Rs. 54,000 p.a., 200304 at Rs. 52,405 p.a., and 200405 at Rs. 51,500 p.a. The learned Single Judge disregarded the ITR for the year 200607, wherein the income of the deceased was shown as Rs. 98,500 p.a. on the ground that it was allegedly filed almost one year after the death of the deceased. This finding also is factually incorrect.*
>
> *A photocopy of the original ITR for the year 200607 was filed before this Court, bearing the rubber stamp of the Income Tax Department. It shows that the date of filing the ITR was 20.04.2007, which is prior to the death of the deceased which occurred on 18.06.2007. Hence, the High Court was not justified in disregarding the ITR for the year 200607 while assessing the income of the deceased.*
>
> *The Appellants have also placed on record a copy of the ITR for the year 200506, which bears the rubber stamp of the Income Tax Department, and reveals the income of the deceased at Rs. 98,100 p.a. during the previous assessment year.*

As a consequence, the impugned judgment dated 22.07.2016 passed by the High Court is hereby set aside.

8. On a perusal of the documentary evidence on record i.e. the ITRs for the assessment years 200506 and 200607, filed prior to the death of the deceased, which reflect the income of approximately Rs. 1,00,000 p.a. (as assessed by the MACT in its Award dated 22.12.2009), we make this the basis for computing the compensation payable to the Claimants."

12. *The Apex Court has held that High Court was not justified in disregarding the ITR for the year 2006-07, while assessing income of the deceased, after placing on record the ITR as the documentary evidence, which bears Rubber Stamp of the Income Tax Department and reveals the income of the deceased as per the documentary evidence of in the nature of ITR.*

13. *In the case of Shashikala and Ors. (supra), the Apex Court has held thus:*

"10. The deceased was aged 45 years and was doing transport business. Though the claimants have filed income tax returns for two assessment years 2005-06 and 2006-07, as per the income tax returns for the year 2006-07, the income of the assessee was Rs.2,02,911/-. Tribunal did not take the income of the deceased for the assessment year 2006-07 on the ground that only xerox copy was filed and the claimants have failed to examine income-tax authorities to prove the same. Instead of taking the income of the deceased as per the assessment year 2006-07, the High Court has chosen to calculate the

average of the income for two assessment years 2005-06 and 2006-07. Considering the age of the deceased and the nature of business he was doing, in my considered view, the High Court was not justified in so taking the average of income of the two assessment years. The deceased was aged 45 years and doing business. Admittedly, he was also owning agricultural lands. Even though agricultural income was not shown in the income tax return, it emerges from the evidence that the deceased was also doing agricultural work."

[19.2] Moreover, it would be apt to refer the Judgment in case of **Divisional Controller, KSRTC v. Mahadeva Shetty and Another**, reported in **(2003) 7 SCC 197,** wherein the Hon'ble Apex Court has observed in para - 15 as under:

"15. It has to be borne in mind that compensation for loss of limbs or life can hardly be weighed in golden scales. Bodily injury is nothing but a deprivation which entitles the claimant to damages. The quantum of damages fixed should be in accordance with the injury. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical loss, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not

be a pittance. The courts and tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be "just" compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of "just" compensation which is the pivotal consideration. Though by use of the expression "which appears to it to be just", a wide discretion is vested in the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, wild guesses and arbitrariness.."

[19.3] Further in the case of **R. D. Hattangadi Vs. Pest Control (India) (P) Ltd.** reported in **1995 1 SCC 551,** the Hon'ble Apex Court has laid down as under:

"12. In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

[20] Applying the ratio laid down in the above Judgments to the factual aspects in the present case, it would be just and proper to consider the average income of

the said two Assessment Years. The Annual Income after deducting Tax as mentioned in income tax return Exh. 30 for Assessment Year **2016-17 is Rs. 2,58,710/-** and at **Exh. 31** for Assessment Year **2015-16 the income is Rs. 2,68,251/-**. The average income for the said two years would come to **Rs. 2,63,480/-.** Hence, considering the ratio laid down in the above Judgments as well as the documentary proof produced by the applicants in the form of income tax returns attached with the Computation of Income so also considering the age of the deceased, his experience, nature of industry in which the deceased was engrossed, standard of living, able body concept, the fact that the accident in question was occurred in the year 2018 and most importantly, the guidelines given by the Hon'ble Apex Court in case of **Divisional Controller, KSRTC vs. Mahadeva Shetty and Another (supra)** and the case of **R. D. Hattangadi Vs. Pest Control (India) (P) Ltd. (supra),** it will be apt to assess the income of the deceased as **Rs. 2,63,480/-** per annum.

[21] Further, as per the ruling of the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. vs. Pranay Sethi and others** reported in **2017(16)**

SCC 680, considering the age of the deceased i.e. **26 years** and the status of the deceased, it would be just to increase the income of the deceased upto **40%** for prospective rise **(i.e. Rs. 1,05,392/-)** and accordingly, the annual income to be considered for the deceased comes to **Rs. 3,68,872/- (Rs. 2,63,480/- + Rs. 1,05,392/-).**

➢ **<u>DEPENDENTS - PERSONAL EXPENDITURE DEDUCTION OF DECEASED</u>:**

[22] Moreover, for arriving at the JUST COMPENSATION in terms of future loss of income, it is necessary to reduce the yearly income of the deceased by adjusting to the proportion of the income that would be used by the deceased, had he been alive and for deciding the said proportion, the guidelines have been issued in the decision of the Hon'ble Supreme Court in the case of **Sarla Verma vs. Delhi Transport Corpn. (supra).** According to which, the proportion for personal expenditure deductions have to be made by considering the number of dependents. In the present petition, the applicants have claimed that all the applicants are dependents of the deceased, hence, the number of dependents comes to **four members**, hence, **1/4th** proportion of the income of the deceased has to be

deducted from the yearly income of deceased determined and by doing so, the **1/4th** income i.e. **Rs. 92,218/- (1/4th of Rs. 3,68,872/-)** has to be deducted towards the personal expenditure of the deceased that would have been incurred by the deceased, had he been alive and accordingly, the income in question comes to **Rs. 2,76,654/-** (Rs. 3,68,872/- - Rs. 92,218/-).

[23] Further, as the deceased was **26 years** old at the time of the accident, **Multiplier of 17** would be applicable. Hence, the claimants will be entitled to **Rs. 47,03,118/-** (Rs. 2,76,654/- x 17 multiplier) **as Loss of Dependency.**

➢ **CLAIM FOR FUNERAL CHARGES:**

[24] Phrase Funeral Expenses includes fee paid in crematorium, fee paid for space in cemetery and expenses on several religious practices and conventions pursuant to death and considering the decision of Hon'ble Apex court in case of National Insurance company Ltd. vs. Pranay Shethi (supra), the applicants are entitled for the amount under the head of Funeral and Ritual expenditure.

[25] It is worthwhile to note that the Hon'ble Apex

Court in case of National Insurance Company Ltd. vs. Pranay Shethi (supra), has observed in regard to enhancement of conventional heads, namely, loss of estate, loss of consortium and funeral expenses that:

> *"61. In view of the aforesaid analysis, we proceed to record our conclusions:-*
>
> *x x x x*
>
> *(viii) 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.* ***The aforesaid amounts should be enhanced at the rate of 10% in every three years.*****"**

[26] The Judgment in case of National Insurance Company Ltd. vs. Pranay Shethi (supra), was passed on 31st October, 2017 and therefore, the amount of the conventional heads are required to be enhanced by 10% at every three years. In that regard, it will be profitable to refer the Judgment in case of **Lalabhai Chelabhai Chauhan vs. Virendrasinh Kundansinh Jadav & Ors.** decided by the Hon'ble High Court of Gujarat in **First Appeal No. 2886/2025**, wherein it is held that:

> *"9) Further, the learned Tribunal while relying on the judgment of Pranay Sethi (supra) has awarded total Rs.50,000/- under the three conventional heads, however, this Court is of the view that amount is required to be*

> *reassessed as* ***Rs. 18,150/- towards loss of estate, Rs.18,150/- towards funeral expenses and Rs. 48,400/- towards loss of consortium.*** *Therefore, the amount under the three conventional heads is reassessed as Rs.84,700/-. Therefore, the appellant is are entitled for additional amount of Rs.34,700/- under the three conventional heads.*"

[27] Considering the above principles and applying the same in the case on hand, the claimants are entitled to the amount of **Rs. 18,150/- towards Funeral and Ritual Expenditure**.

➢ **CONSORTIUM / LOVE AND AFFECTION:**

[28] Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit. The applicants have lost their beloved one at the point of time where they would love to have her the most.

[28.1] Further, it would be beneficial to refer the Judgment in the case of ***Magma General Insurance Co. Ltd. Vs. Nanu Ram alias Chuhru Ram & Ors.*** **decided**

in *Civil Appeal No. 9581 of 2018 (Arising out of SLP (Civil) No.3192 of 2018),* wherein the Hon'ble Apex Court has held that:

> "*...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*'*..... Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit. Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child. The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has 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.*"

[28.2] The above observation has been reiterated by the Hon’ble Apex Court in the case of **New India Assurance**

Co. Ltd. vs. Somwati and others reported in **2020(9) SCC 644,** wherein the Hon'ble Apex Court has referred various citations and found it proper to award consortium to each of the claimants in accordance with law. Moreover, the Hon'ble High Court of Gujarat while deciding the case of **Hirbai Keshavji Maheshwari (L.H. and representatives of Deceased Keshavji Balabhai Maheshwari) vs. Bajubhai Narshibhai Thakore in First Appeal No. 2831 of 2018** vide Judgment dated **22.11.2021** has also referred the above citations and observed in paragraph - 12 as under:

> *"12. In view of the above observations, we are of the opinion that in Indian society, care, concern, help, guidance and affection is not limited to spouse only. Therefore, the contention that aged mother and children are not entitled for filial and parental consortium in our opinion is contrary to the ratio of the above decisions and intent and object of payment of consortium."*

[28.3] Hence, keeping forefront the above observations of the Hon'ble Apex Court as well as the Hon'ble High Court of Gujarat, the claimants are entitled for the amount of consortium as per the Judgment in case of National Insurance company Ltd. vs. Pranay Shethi (supra) as well as Lalabhai Chelabhai Chauhan vs. Virendrasinh

Kundansinh Jadav & Ors. (supra), I am of the opinion to award the sum of **Rs. 1,93,600/-** as **Consortium and Love and Affection.**

➢ **LOSS OF ESTATE:**

[29] As per the Judgment of Hon'ble Apex Court in case of National Insurance company Ltd. vs. Pranay Shethi and others (supra), the applicants are entitled to **Rs. 18,150/- towards Loss of Estate.**

[30] In view of all the above aspects, the applicants are awarded the amount of compensation under following different heads:-

Loss of Dependency	:	Rs. 47,03,118/-
Funeral Charges	:	Rs. 18,150/-
Consortium	:	Rs. 1,93,600/-
Loss of Estate	:	Rs. 18,150/-
Total	**:**	**Rs. 49,33,018/-**

[30.1] As such, the applicants are entitled to above claim amount along with **7.5%** interest from the date of filing of the petition till realization.

LIABILITY:

[31] At **Exh. 5/8** – the copy of R. C. Book of the

offending vehicle has been produced and perusal of the same transpires that the opponent No. 2 was the owner of the offending vehicle. Hence, it is hereby held that the opponent Nos. 1 and 2 are jointly and severally liable to compensate the applicants.

:: O R D E R ::

1. The present M.A.C. Petition is hereby **partly allowed.**

2. The applicants to recover **Rs. 49,33,018/- (Rupees Forty-Nine Lakhs Thirty-Three Thousand and Eighteen Only)** from the opponents with running interest at the rate of **7.5%** from the date of filing the petition till realization of the amount along with the proportionate costs of the petition.

3. The opponents will follow the guidelines of Hon'ble Gujarat High Court given in para 14 in the case of **Hansagauri Prafulchandra Ladhani** cited at **2007 ACJ 1897,** with regard to the Income Tax Liability.

4. The opponents are hereby directed to deposit in the office of this Tribunal the above amount of award, after deducting the amount of interim compensation, if any, paid u/s. 140 of the M. V. Act within one month from

the date of this order.

5. The Opponents are directed to deposit the Awarded amount with interest as per the direction given by the Hon'ble Supreme Court in Writ Petition(s) (Civil) No. 534/2020 through RTGs or NEFT mode in the account of Additional District Judge, Surat. The details of the account are as under:-

Branch	: State Bank of India, Nanpura Branch, Surat
A/c. Name	: Additional District Judge, Surat
A/c. No.	: 40750729019
IFSC	: SBIN0001388
MICR	: 395002004

6. After depositing the awarded amount in the above account, the insurance company shall inform and send the copy of the said bank advice to the M.A.C. Tribunal through e-mail ID No. dcourt-mact-sut@gujarat.gov.in.

7. The applicant/s shall provide details of PAN Card, Adhar Card and Saving Bank Account for transfer of compensation as per the direction given by the Hon'ble Supreme Court in Writ Petition(s) (Civil) No. 534/2020.

8. On depositing the above amount of award by the

opponents in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, be recovered from the awarded amount and the same be taxed as the costs of the petition.

9. After above deductions, **70%** amount be deposited in the name of respective applicant Nos. 1, 3 and 4, in any nationalized bank of the choice of the applicants, for a period of FIVE YEARS and remaining amount of **30%** be paid to the respective applicants by Account Payee Cheque, after due verification, however, the amount coming to the share of the minor applicant **No. 2 - Minor Ruhi Amitbhai Dholakiya**, is ordered to be invested in Fixed Deposit Receipts in any nationalized bank of Govt. security with her guardian and mother Ilaben Amitbhai Dholakiya as his guardian for a period of FIVE YEARS or till the minor claimant attains the age of majority, whichever is later.

10. Award be drawn accordingly.

11. Investments, as above, shall be encumbered with following **terms and conditions:**

    i) The said amount shall be invested with any of the nationalized Bank of the choice of the applicant in Fixed Deposit Receipt Account.

ii) The interest on the above Fixed Deposit Receipt Account as and when it becomes payable monthly, quarterly, half-yearly or annually, as agreed to, shall be paid to the applicant.

iii) No facility by way of loan, over-draft or cash credit shall be available on the above investment and the Bank shall not allow any such transaction, encumbering the investment or on the basis of the security of the same.

iv) The Bank shall not permit the applicant to withdraw the said amount prior to its maturity or without prior permission of this Tribunal.

v) The Bank shall intimate to this Tribunal the particulars of the investment viz., number of Fixed Deposit Receipt, name of holder and the date of maturity immediately after issuance of Fixed Deposit Receipt in this case.

vi) At the end of the period aforesaid, the Bank shall pay the principal amount to the payee, the concerned applicant.

Pronounced in open Court today on this
8th June, 2026.

Date : 08.06.2026
Place : Surat.

(Rahul Arunkumar Trivedi)
Chairman
M. A. C. Tribunal (Main),
Surat.
Code No. **GJ01495.**

//Uttam//