

GJSR010077222015



Received on : 18.12.2015

Registered on : 18.12.2015

Decided on : 07.03.2026

Duration : YY. MM. DD.

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

**M.A.C.P. No. 499/2015****Exh. \_\_\_\_\_**

**Legal Representatives of deceased Jigneshbhai Amrutbhai Patel**

**1) Dipikaben Amrutbhai Patel**

Aged about : 28 years, Occupation : Household  
Residing at : House No: 216, Part- II,  
Sant Tukaram Society, Opposite Ramji Temple,  
Palanpur Jakatnaka, Surat

**2) Minor Gargi Jigneshbhai Patel**

**Through her Best friend Dipikaben Amrutbhai Patel**

Aged about : 09 years, Occupation : -,  
Residing at : House No: 216, Part- II,  
Sant Tukaram Society, Opposite Ramji Temple,  
Palanpur Jakatnaka, Surat

**3) Nimishaben Amrutbhai Patel**

Aged about : 33 years, Occupation : Study  
Residing at : House No: 216, Part- II,  
Sant Tukaram Society, Opposite Ramji Temple,  
Palanpur Jakatnaka, Surat

**4) Manishaben Jigneshbhai Patel**

**@ Manishaben Sandipbhai Patel**

Aged about : Adult, Occupation : Not Known  
Residing at : Payal Maternity Surgical ,  
Huseni Masjid, Lalgate, Surat.

**....PETITIONERS**

**VERSUS**

- 1) Driver of Western Railway Goods Train  
(At the time of accident)**  
(To be impleaded upon getting details)  
**(Deleted vide order passed below Exhibit 44)**
  
- 2) Western Railway, Manager**  
Having its office situated At :  
"Union of India". The General Manager,  
Legal Department, Churchgate, Mumbai
  
- 3) Amrut bhai Purshottambhai Patel  
(Owner of Swift Car No: GJ05 CN 8429)**  
Aged about : Adult, Occupation : Not Known  
Residing at : 18, Raj Mahal Row House,  
Near Sai Rachna Row House, Nr. Nanavati Toyota Show Room,  
Pal Road, Surat.
  
- 4) Bajaj Allianz General Insurance Ltd.**  
Having its office situated At :  
25-28, Upper Ground, Megh Mayur Plaza,  
Parle Point, Athwalines, Surat.  
**(Deleted vide order below Exhibit 29)**
  
- 5) Rajendra Jayshankar Bhatt  
Driver of Goods Train at the time of accident  
(Impleaded vide order below Exhibit 34)**  
Aged about : Adult, Occupation : Not Known  
Residing at : Maninagar, Besides, Rameshwar Park,  
Raiya Road, Rajkot

**....OPPONENTS****APPEARANCE:**

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**Shri H. H. Shah,** Ld. Advocate for the Petitioners  
**Shri D.V. Dave,** Ld. Advocate for the opponents  
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**SUB : CLAIM PETITION U/S. 166 OF THE M. V. ACT.**

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

- [1]** The present claim petition has been preferred by the legal representatives of the deceased Jigneshbhai Amrutbhai Patel for compensation of Rs. 40,00,000/- under section 166 of M.V Act for losses suffered by the applicants upon demise of deceased in vehicular accident involving Swift car bearing no: GJ 05 CN 8429 & Goods Train of Opponent Railway Authority on 26.05.2014.
- [2]** The Opponent No:5 is the loco pilot of the goods train on the day of accident. It would not be out of place at this juncture to mention that applicant had deleted Opponent no:1 ( driver of the goods train) with liberty to implead him as necessary party upon getting his details. Upon getting the name and address of the (Loco pilot of the train) he has been impleaded as an opponent No:5, by virtue of order passed below exhibit 34. Besides Opponent no:4, the insurance company of Maruti Swift car involved in the accident has been deleted by Applicant vide order passed below exhibit 29. Thus the petition has been proceeded by the applicants against the Opponent Nos. 2,3 and 5.
- [3]** Ld. Advocate Shri H. H. Shah is present for applicants. Ld.

Advocate Shri D.V. Dave has appeared for Opponents - Railway Authority. Heard the Ld. Advocates appearing for the parties and perused the record.

**:: FACTUAL MATRIX ::**

**[4]** The facts of the case as undraped before the tribunal are frescolded without making prolix narration as under :-

**(A) CLAIM PETITION :-**

**[4.1]** The applicants are the legal representatives of the deceased Jigneshbhai Patel (While Applicant Nos. 1 and 3 being the sisters of the deceased, Applicant Nos: 2 being the daughter of the deceased, Applicant No: 4 is the widow of the deceased who has remarried upon death of the deceased) have preferred the present claim petition contending interalia that :-

**[4.2]** On 26.05.2014, the deceased Jigneshbhai was proceeding to Sumra village in the Maruti Swift car bearing No: GJ 05 CN 8429, owned by Opponent No:4, by driving the car slowly, carefully and by following the rules of the traffic and when he reached near the site of accident i.e at Hadmatiya Village "unmanned crossing", one goods train managed by Opponent no:2 and driven by Opponent

no:5 in very negligent and in a manner endangering human life suddenly without giving any signal or whistle came and dashed with the car of deceased. It is the case of the applicants that the train dragged the car of the deceased 150 mtrs. It is the case of the applicants that due to above unfortunate collision the deceased and his mother Jyotiben sustained serious injuries and they were taken to Dhrol Hospital, where they succumb to the injuries during the treatment.

**[4.3]** It is the case of the applicants that the accident has arisen for the rash and negligent conduct of the Opponent Railway Authority inasmuch as on a road having a curve and at "unmanned crossing", there were dense trees and bushes at the railway track, no responsible officer of the railway was deputed at the site.

**[4.4]** It is mentioned interalia the petition that for the accident an offence is registered with Padghari Police Station vide I CR No: 33/2014.

**[4.5]** It is the case of the applicants that at the time of accident the deceased was 34 years old fit and healthy person. It is the case of the applicants that the deceased was indulged in the construction business and was earning Rs. 21,107/- per month. It is the case of

the applicants that due to the demise of the deceased the applicants have not only lost their beloved one which has caused tremendous trauma to the applicants but the economic prospects of the applicants have also been affected substantially inasmuch as the applicants were dependents of the deceased.

**[4.6]** Thus for the losses suffered by the applicants which include pecuniary and non pecuniary losses, the applicants have been constrained to file present claim petition.

**(B) REPLY TO THE CLAIM PETITION :-**

**[5]** The summons of the Petition has been duly served upon the opponents.

**[5.1]** The opponent No. 2, Railway Authority has filed the reply/ written statement at Exhibit 23 in which all the allegations and averments contained, *interalia*, the claim petition have been denied in toto by the Opponent. The factum of accident as narrated in the claim petition has been denied by the opponent. The details of age, income, occupation and dependents of the deceased mentioned in the claim petition have been denied by the opponents. It is contended that present claimants had earlier also preferred one

MACP No: 484/2015 and said fact has been suppressed by the applicants in the present claim petition and hence present claim petition needs to be dismissed. It is specifically stated that as per Section 2(28) of the Motor Vehicles Act, the train and Railway is not included in the ambit of vehicle and therefore the claim petition is not maintainable and Railway Authority is not liable to compensate the applicants. It is further stated that in the accident it was the deceased who ought to have taken care while crossing the "unmanned crossing" and the accident in question has occurred due to rash and negligent driving of the deceased only for which the opponent cannot be made liable to compensate the applicants. It is stated that the Opponent- Railway Authority has taken adequate safety measures by displaying the hoardings for taking care at the time of crossing the "unmanned crossing". On all above grounds, it is contended that the claim petition of the applicants must be dismissed.

**[5.2]** The Opponent No:4 Insurance company has also filed the reply to the claim petition at Exhibit 27 , however as the Opponent no:4 has been deleted by the order passed below Exhibit 29, the contentions taken by the opponent no:4 would be of less significant and hence are not discussed in detail.

**(C) ISSUES :-**

**[6]** Considering the pleadings of the parties, the Tribunal has framed the Issues vide Exh. 40. The Issues read as under:

1. Whether it is proved that the deceased sustained injuries and died on account of rashness or negligence in driving on the part of the driver of vehicle involved in the accident ?
2. What amount, if any, the claimant is entitled to get by way of compensation and from which of the opponents ?
3. Whether applicant proves that this tribunal has jurisdiction to try the petition ?
4. What order and award ?

**(D) FINDINGS :-**

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

1. In affirmative.
2. In affirmative, as per the final order.
3. In affirmative
4. As per the final Order.

**:: REASONS ::****ISSUE NO:3****[ISSUE OF JURISDICTION]**

**[8]** In the present case the Opponent Railway Authority has taken the preliminary contention of the jurisdiction of this Tribunal to try and decide the present claim petition against the Railway.

**[9]** It is submitted by the Ld. Advocate Mr. Dave appearing for the opponents that the opponent- Railway corporation in its reply at Exhibit 23, in para 11 has contended that:

*"Regarding para (13) of the petition, it is submitted that the Hon'ble Tribunal has jurisdiction to entertain the petition against the opponent - Railway. The provisions of M.V. Act -1988 are not applicable to the opponent Railway. As per Section 2(28) of the said Act the "Motor Vehicle" or "Vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or eternal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding [twenty- five cubic centimeters] and therefore, the application for compensation against the Opponent Railway is not maintainable and hence the Opponent Railway is not liable to pay compensation for alleged accident."*

**[9.1]** Ld. Advocate Mr. Dave appearing for the Opponent Railway

Authority has further submitted that as per the provisions of Railways Act and Motor Vehicle Act, the applicants are not entitled to claim compensation from Opponent Railway Authority u/s 166 of M.V. Act. Ld. Advocate Mr. Dave has referred Section 165 of the Motor Vehicles Act which provide as under :-

***“Section 165 of MV Act- 165. Claims Tribunals. - (1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.***

*Explanation. For the removal of doubts, it is hereby declared that the expression “claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles includes claims for compensation under section 140 [and Section 163A].”*

**[9.2]** Moreover, Ld. Advocate has also referred the definition of Section 2(28) of M.V. Act, which is as under:-

***“2(28) “motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine***

*capacity of not exceeding1 [twenty-five cubic centimetres].”*

- [9.3]** Ld. Advocate Mr. Dave has further submitted that perusal of above provision clearly transpires that the MAC Tribunal has jurisdiction to try the cases of compensation for the accidents arising out of use of motor vehicles.
- [9.4]** Thus it is submitted that by combined reading of above provisions, railway train which is totally excluded from the category of vehicle, the tribunal cannot decide the claim petition filed by the applicants.
- [10]** Per contra Ld. Advocate Ms. H. H Shah, appearing for Applicants has submitted that the issue of jurisdiction of MAC Tribunal to decide the claim petition involving railway train is no longer *res integra* in view of judgment of the Hon'ble Apex Court in the case of ***Union of India V/S United India Insurance company Ltd reported in 1997 (8) SCC 683.***
- [11]** The Tribunal is cautious to the fact that above decision of Hon'ble Apex Court, referred by Ld. Advocate for the applicants is overruled in the case of ***Union Of India V/S Bhagwati Prasad reported in 2002(0) AIJEL - SC 32617,*** wherein it is held that:-

*“3. On account of the rapid development of road transport and increase in number of Motor Vehicles on the road the incidence of road accidents by Motor Vehicles having increased enormously the Motor Vehicles Act enacted by the Parliament was amended and the provisions were inserted for payment of compensation in certain cases of accidents without proof or fault or negligence on the part of the driver of the vehicle. The claim for compensation in respect of the accidents involving death or bodily injury to persons arising out of the use of motor vehicles as well as the insurance of the motor vehicles against the third party risk and the liability of the insurer are contained in Chapter VIII of the Motor Vehicles Act. The State Government has been empowered u/s. 110(1) of the Act to constitute one or more Motor Vehicles Accidents Claim Tribunals by Notification in the Official Gazette. Section 110-A provides for filing an application for compensation and sec. 110-B is the power of the Claims Tribunal to pass an award on receiving an application for compensation made under sub-sec. (A) of sec. 110. The procedure and powers of the Claims Tribunal are enumerated in sec. 110-C of the Act. It is not necessary for adjudicating the point in issue to examine and notice any other provision of the Act. In the case of Union of India V/s. United India Insurance Company (supra) applications for compensation had been filed either by the injured passengers or the dependent of the deceased passengers traveling in the ill-fated motor vehicle both against the insurer of the motor vehicle as well as against the Railway Administration and one of the contention which had been raised before this Court by the Railway Administration was whether a claim for compensation would at all be maintainable before the Tribunal against other persons or agencies which are held to be guilty of composite negligence or are joint tortfeasor's, and if the same arose out of the use of the motor vehicle. On consideration of different provisions of the Motor Vehicles Act this Court ultimately came to hold that, "We hold that the claim for compensation is maintainable before the Tribunal against other persons or agencies which are held to be guilty of composite negligence or are joint tortfeasor's, and if arising*

*out of use of the motor vehicle. We hold that the Tribunal and the High Court were right in holding that an award could be passed against the Railways if its negligence in relation to the same accident was also proved." The Court also came to hold that the views expressed by Gauhati, Orissa, and Madras High Courts to the effect that no award can be passed against others except the owner/driver or insurer of the motor vehicle are not correct, and on the other hand the view taken by the Allahabad, Punjab and Haryana, Gujarat, Kerala and Rajasthan High Courts to the effect that the claim lies before the Tribunal even against another joint tortfeasor connected with the same accident or against whom composite negligence is alleged. We are in respectful agreement with the aforesaid conclusion of the Court in the aforesaid case. Having said so it was further held that if it is ultimately found that there is no negligence on the part of the driver of the vehicle or there is no defect in the vehicle but the accident is only due to the sole negligence of other parties/agencies then on that finding the claim would go out of sec. 110 of the Act because the case would become exclusive negligence of Railways and again if the accident had arisen only on account of the negligence of persons other than the driver/owner of the motor vehicle the claim would not be maintainable before the Tribunal. It is this observation of the Court in the aforesaid case which is strongly relied upon by Mrs. Indira Sawhney, the learned counsel appearing for the Railway Administration and it is this observation with which the two learned Judges hearing the appeal did not prima facie agree with for which the reference has been made to this larger Bench. The question that arises for consideration, therefore, is whether an application filed before a Claims Tribunal for compensation in respect of accidents involving the death or bodily injury to persons arising out of the use of motor vehicle and the claim is made both against the insurer, owner and driver of the motor vehicle as well as the other joint tortfeasor's, if a finding on hearing is reached that it is solely the negligence of the joint tortfeasor and not the driver of the motor vehicle then would the Tribunal lose the jurisdiction to award compensation against the joint tortfeasor. It is*

*not disputed, and as has been already held by this Court in the case of Union of India V/s. United India Insurance Co. Ltd. (supra) that a claim for compensation on account of the accident arising out of the use of motor vehicle could be filed before a Tribunal constituted under the Motor Vehicles Act not only against the owner or insurer of the motor vehicle but also against another joint tortfeasor connected with the accident or against whom composite negligence is alleged. A combined reading of Ss. 110, 110-A, which deal with the Constitution of one or more Motor Accidents Claims Tribunal and application for compensation arising out of an accident, as specified in sub-sec. (1) of sec. 110 unequivocally indicates that Claims Tribunal would have the jurisdiction to entertain application for compensation both by the persons injured or legal representatives of the deceased when the accident arose out of the use of motor vehicle. The crucial expression conferring jurisdiction upon the Claims Tribunal constituted under the Motor Vehicles Act is the accident arising out of use of motor vehicle, and therefore, if there has been a collision between the motor vehicle and Railway train then all those persons injured or died could make application for compensation before the Claims Tribunal not only against the owner, driver or insurer of the motor vehicle but also against the Railway Administration. Once such an application is held to be maintainable and the Tribunal entertains such an application, if in course of enquiry the Tribunal comes to a finding that it is the other joint tortfeasor connected with the accident who was responsible and not the owner or driver of the motor vehicle then the Tribunal cannot be held to be denuded of its jurisdiction which it had initially. In other words, in such a case also the Motor Vehicle Claims Tribunal would be entitled to award compensation against the other joint tortfeasor, and in the case in hand, it would be fully justified to award compensation against the Railway Administration if ultimately it is held that it was the sole negligence on the part of the Railway Administration. To denude the Tribunal of its jurisdiction on a finding that the driver of the motor vehicle was not negligent, would cause undue hardship to every claimant and we see no justification to interpret the provisions*

*of the Act in that manner. The jurisdiction of the Tribunal to entertain application for compensation flows from the provisions contained in sec. 110-A read with sub-sec. (1) of sec. 110. Once the jurisdiction is invoked and is exercised the said jurisdiction cannot be divested of on any subsequent finding about the negligence of the tortfeasor concerned. It would be immaterial if the finding is arrived at that it is only other joint tortfeasor who was negligent in causing accident and not the driver of the motor vehicle. In our considered opinion the jurisdiction of the Tribunal to entertain application for claim of compensation in respect of an accident arising out of the use of motor vehicle depends essentially on the fact whether there had been any use of motor vehicle and once that is established the Tribunal's jurisdiction cannot be held to be ousted on a finding being arrived at a later point of time that it is the negligence of the other joint tortfeasor and not the negligence of the motor vehicle in question. We are therefore, of the considered opinion that the conclusion of the Court in the case of Union of India V/s. United India Insurance Co. Ltd. (supra) to the effect - "It is ultimately found that there is no negligence on the part of the driver of the vehicle or there is no defect in the vehicle but the accident is only due to the sole negligence of the other parties/agencies, then on that finding, the claim would go out of sec. 110(1) of the Act because the case would then become one of the exclusive negligence of Railways. Again if the accident had arisen only on account of the negligence of persons other than the driver/owner of the motor vehicle, the claim would not be maintainable before the Tribunal" is not correct in law and to that extent the aforesaid decision must be held to have not been correctly decided.*

*4. In the aforesaid premises, we do not find any infirmity with the impugned Judgement of the Division Bench of Allahabad High Court requiring interference of this Court. These appeals fail and are dismissed."*

**[12]** Moreover it is also held in the case of ***Union Of India Versus Hareshbhai Tulsibhai Kanjiya*** reported in **2004 (3) GLH 742** in which it is held that:-

*“6. From the aforesaid provisions of the said Act, it is crystal clear that whenever the application is preferred under Sec. 140 of the Motor Vehicles Act, 1988 and if the accident arises out of the use of the motor vehicle, always the Motor Accident Claims Tribunal under the Motor Vehicles Act, 1988 , has got jurisdiction, powers and authority to decide the same. It is not necessary that if one of the vehicles is a train or railway or vehicle runs on fixed rail, the jurisdiction of the Motor Accident Claims Tribunal is ousted. On the contrary, on plain reading of Sec. 140 of the Motor Vehicles Act, 1988 , it is sufficient if an accident has arisen because of one of the vehicles is a motor-vehicle, as defined in Sec. 2 (28) of the Motor Vehicles Act, 1988.*

*7. Learned advocate appearing for the petitioner has another angle of reading of Sec. 140 of the Motor Vehicles Act to the effect that if one of the vehicles in case of vehicular accident is not a motor vehicle within the meaning of Sec. 2 (28) of the Motor Vehicles Act, 1988 in that case the Motor Accident Claims Tribunal ceases to have jurisdiction, authority and powers to entertain the case. This contention of the petitioner is incorrect and illegal. This aspect of the matter has been decided by the Hon'ble Apex Court in the case of Union of India V/s. Bhagawati Prasad (Dead) & Ors, reported in 2002 (3) G.L.R. 1981 particularly paragraph No 3. Relevant portion of para 3 of the said judgment reads as under : ["Para 3. ... A combined reading of Secs. 110, 110A, which deal with the constitution of one or more Motor Accidents Claims Tribunals and application for compensation arising out of an accident, as specified in sub-sec. (1) of Sec.110 unequivocally indicates that the Claims Tribunal would have the jurisdiction to entertain application for compensation both by the persons injured or legal representatives of the deceased when the*

*accident arose out of the use of a motor-vehicle. The crucial expression conferring jurisdiction upon the Claims Tribunal constituted under the Motor Vehicles Act is the accident arising out of the use of a motor vehicle and railway train, then all those persons injured or legal representative of the deceased could make application for compensation before the Claims Tribunal not only against the owner, driver or insurer or the motor vehicle but also against the Railway Administration. Once, such an application is held to be maintainable and the Tribunal entertains such an application, if in course of enquiry the Tribunal comes to a finding that it is the other joint tortfeasor connected with the accident who was responsible and not the owner or driver of the motor vehicle then the Tribunal cannot be held to be denuded of its jurisdiction which it had initially. In other words, in such a case also the Motor Accident Claims Tribunal would be entitled to award compensation against the other joint tortfeasor, and in the case in hand, it would be fully justified to award compensation against the Railway Administration if ultimately it is held it was the sole negligence on the part of the Railway Administration. To denude the Tribunal of its jurisdiction on a finding that the driver of the motor vehicle was not negligent, would cause undue hardship to every claimant and we see no justification to interpret the provisions of the Act in that manner. The jurisdiction of the Tribunal to entertain application for compensation flows from the provisions contained in Sec. 110A read with Sub-sec. (1) of Sec.110. Once, the jurisdiction is invoked and is exercised the said jurisdiction cannot be divested of on any subsequent finding about the negligence of the tortfeasor concerned. It would be immaterial if the finding is arrived at that it is only the other joint tortfeasor who was negligent in causing the accident and not the driver of the motor vehicle. In our considered opinion, the jurisdiction of the Tribunal to entertain application for claim of compensation in respect of an accident arising out of the use of motor vehicle depends essentially on the fact whether there had been any use of motor vehicle and once that is established, the Tribunal's jurisdiction cannot be held to be ousted on a finding*

*being arrived at a later point of that time that it is the negligence of the other joint tortfeasor and not the negligence of the motor vehicle in question. We are, therefore, of the considered opinion that the conclusion of the Court in the case of Union of India V/s. United India Insurance Co. Ltd. 1997 (8) SCC 683 to the effect, "it is ultimately found that there is no negligence on the part of the driver of the vehicle or there is no defect in the vehicle but the accident is only due to the sole negligence of the other parties/agencies, then on that finding, the claim would go out of Sec.110(1) of the Act because the case would then become one of exclusive negligence of persons other than the driver/owner of the motor vehicle, the claim would not be maintainable before the Tribunal."]*

*8. From the aforesaid pronouncement of the law and on plain reading of Sections 140 of the Motor Vehicles Act, 1988 , the impugned order passed by the Motor Accident Claims Tribunal is perfectly correct, just, proper and in consonance with law and the facts and hence the present petition deserves to be dismissed.*

*9. In view of the above discussion, there is no substance in the petition. Accordingly, this petition is dismissed. Rule is discharged, with no order as to costs."*

**[13]** Considering the ratio laid down in the above referred judgments and applying the same to the factual matrix involved in the case, it clearly transpires that there is a collision between a Motor vehicle - Car and the train at "unmanned crossing". Thus for adjudicating the compensation for the losses suffered by the victims due to this accident the tribunal has jurisdiction and accordingly the issue no:3 is decided in affirmative.

**ISSUE NO:1****[ISSUE OF NEGLIGENCE]****CONTENTIONS OF THE PARTIES:-**

**[14]** In the present case, examination in chief - affidavit of applicant no:1 under Order 18 Rule 4 of the C.P.C. is filed at Exh. 43, wherein on oath it is stated by Applicant no:1 that the applicant is an eye witness to the accident and it is stated that on 26.05.2014, the deceased Jigneshbhai was proceeding Sumra village in the Maruti Swift car bearing no: GJ 05 CN 8429, owned by Opponent no:4, by driving the car slowly, carefully and by following the rules of the traffic and when he reached near the site of accident i.e at Hadmatiya Village "unmanned crossing", one goods train managed by Opponent no:2 and driven by Opponent no:5 in a very negligent and in a manner endangering human life suddenly without giving any signal or whistle came and dashed with the car of deceased. It is further stated that the train dragged the car of the deceased 150 mtrs. It is stated that due to above unfortunate collision the deceased and his mother Jyotiben sustained serious injuries and they were taken to Dhrol Hospital, where they succumb to the injuries during treatment. It is further stated on oath by the applicant that the accident has arisen for

the rash and negligent conduct of the Opponent Railway Authority inasmuch as on a busy road having a curve the railway crossing was "unmanned". There were dense trees and bushes at the railway track and no responsible officer of the railway was deputed at the site. It is the case of the applicants that the accident in question has occurred due to rash and negligent driving of Opponent no:5 only. It is also stated that for the accident an offence is registered with Padghari Police Station vide I CR No: 33/2014.

**[15]** The applicants have produced at Exhibit 65, the copy of FIR registered for the accident. and at Exhibit 66, the copy of the panchnama of the scene of offence is produced.

**[16]** Ld Advocate Mr. Dave appearing for the opponents has submitted that FIR in question has been given by one Shri Kantibhai Vallabhbai Gajera against the deceased. Thus it is established that the accident in question has occurred due to rash and negligent act of deceased only.

**[17]** Per contra it is contended by Ld. Advocate Ms. Shah that merely

for the registration of FIR against the deceased, *ipso facto* no inference can be made that the accident in question has occurred due to negligent act of deceased only. In the present case at Exh. 60, the complainant himself has been examined and in his examination-in-chief affidavit, it is stated on oath that complainant had only placed his signature on the complaint that was already written by Padghari Police. It is also stated by the complainant that in the accident no negligence is attributed to the deceased Jigneshbhai rather the accident has occurred due to negligence on the part of railway authority.

**[17.1]** It is further submitted by Ld. Advocate Ms. Shah that on behalf of opponent - railway authority, witness Mr. Chandrashekhar Bharat is examined at Exh. 84, who works as Sr. Passenger Train Manager and he has admitted in the cross-examination that he was in the last boggy of the train when the accident had taken place. Most importantly, witness has admitted that at the place of accident there was a curve and there were trees and dense bushes. He has further admitted that no evidence suggesting the safety measures taken by opponent - railway authority at 'Unmanned Crossing' have been produced.

**[17.2]** It is further submitted that at Exh. 56/1, the copy of the statement

of opponent No. 5 - Loco Pilot of the goods train recorded before the Police is produced and it is stated that in the car, there were two male and two female passengers who sustained injuries. This statement of opponent no. 5 fortifies the say of applicant no. 1 to the effect that she saw the accident personally. It is also stated by the opponent No. 1 that at the time of accident the speed of the train was 73 km/h, which is excessive considering the place of accident.

**[17.3]** Considering the above aspects, Ld. Advocate Ms. Shah has submitted that it is established that accident has occurred due to rash and negligent driving of opponent No. 5 only. In support of her submission, the Ld. Advocate has placed reliance upon the following Judgments:-

***I. Jiju Kuruvilla & Ors. Vs. Kunjamma Mohan & Ors., reported in 2013 Lawsuit (SC) 527.***

***II. Bhikhup Agarwal Vs. Lilaben Laljibhai Vala, reported in 2000 LawSuit (Guj) 49.***

***III. United India Insurance Co. Ltd. Vs. Dharmisthaben Mithunbhai Vasava, 2021 LawSuit (Guj) 5093.***

***IV. Shri Ram General Insurance Co. Ltd. Vs. Heenaben Darpeshbhai Mehta & Ors., 2024 LawSuit (Guj) 2260.***

***V. Sushma Vs. Nitin Ganapati Rangole & Ors., 2024 LawSuit(SC)826.***

***VI. Bimla Devi and Ors. Vs. Himachal Road Transport Corporation, 2009 LawSuit(SC) 584.***

***VII. Janu Velayudin Nair Vs. Sunilkumar Tiwari in R/ First Appeal No. 755 of 2022 [Gujarat HC].***

***VIII. Parikita Behera Vs. Divisional Railway Manager, South Eastern Railway, 1997 LawSuit(Ori) 78.***

**ANALYSIS:-**

**[18]** In the present case, the two vehicles that were involved in the accident are a Maruti Swift Car and a train. Most importantly, the place of accident is an 'Unmanned Crossing'. It is stated on oath by applicant no. 1, who is an eyewitness to the accident, that there were big trees and bushes on the railway track near the place of accident. The witness examined by opponent - railway authority at Exh. 84 has also admitted that at the place of accident - railway track, there was a curve and there were trees and bushes. Considering these, it was incumbent upon the railway authority to take adequate care. Though the witness examined by the railway authority at Exh. 84 has stated that at the 'Unmanned Crossing' due care was taken by fixing hoardings, no proof suggesting the same has been brought to the notice of the Tribunal. Besides, though it is stated by the witness in his

examination-in-chief that the Loco Pilot always blows constant whistles while passing from the 'unmanned crossing', It is admitted in the cross-examination that witness was in the last boggy, so there is no reason to believe that he could personally see the care was observed by the Loco Pilot.

**[18.1]** In the present case, the railway authority though provided number of opportunities has failed to examine opponent No. 5- Loco Pilot, hence, adverse inference has to be drawn.

**[18.2]** The police statement of the Loco Pilot recorded and produced at Exh. 56/1 mentions that the speed of the train was 73 km/h. The said speed in the context of place where the accident happened is excessive.

**[18.3]** In the above set of circumstances, the applicants by touch stone of preponderance of probability have successfully establish that greater negligence is there on the part of opponent no. 5 in the accident.

**[19]** At this juncture, it will be profitable to refer the Judgment of the Hon'ble Apex Court in the case of ***N.G.Dastane Versus S.Dastane*** reported in ***1975 (0) AIR(SC) 1534***, wherein, it is

held as under:-

*"24. The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Sec. 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this of process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: "the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue" Per Dixon, J. in Wright V/s. Wright, (1948) 77 CLR 191; or as said by Lord Denning, "the degree of probability depends on the subjectmatter. In proportion as the offence is grave, so ought the proof to be clear. Blyth V/s. Blyth, 1966-1 All ER 524." But whether the issue is one of cruelty or of a loan on a pro-note, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged.*

*25. Proof beyond reasonable doubt is proof by a higher standard which generally governs criminal trials or trials involving inquiry into issues*

*of a quasi-criminal nature. A criminal trial involves the liberty of the subject which may not be taken away on a mere preponderance of probabilities. If the probabilities are so nicely balanced that a reasonable, not a vacillating, mind cannot find where the preponderance lies, a doubt arises regarding the existence of the fact to be proved and the benefit of such reasonable doubt goes to the accused. It is wrong to import such considerations in trials of a purely civil nature."*

**[20]** Further, it would also be profitable to refer the Judgment in the case of ***N. K. V. Bros (P) Ltd. vs. M. Karumai Ammal And Ors*** reported in ***1980(3) SCC 457***, wherein it is held that:

*"3. Road accidents are one of the top killers in our country, specially when truck and bus drivers operate nocturnally. This proverbial recklessness often persuades the courts, as has been observed by us earlier in other cases, to draw an initial presumption in several cases based on the doctrine of res ipsa loquitur. Accidents Tribunals must take special care to see that innocent victims do not suffer and drivers and owners do not escape liability merely because of some doubt here or some obscurity there. Save in plain cases, culpability must be inferred from the circumstances where it is fairly reasonable. The court should not succumb to niceties, technicalities and mystic maybes....."*

**[21]** Further, in the case of ***Bimla Devi Versus Himachal Road Transport Corporation*** reported in ***2009 (0) AIR(SC) 2819***, the Hon'ble Apex Court has held as under:

"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."

**[22]** It will also be profitable at this juncture to refer the Judgment of the Hon'ble High Court of Gujarat in the case of **Shri Ram General Insurance Co. Ltd. vs. Heena Ben Darpeshbhai Mehta & Ors.** reported in **2024 LawSuit(Guj) 2260**, wherein, it is held as under:-

"8. Applying ration of aforesaid case, in the present case, I see no error on the part of the learned Tribunal to attribute 30% negligence to the deceased and remaining 70% negligence to driver of stationary

*truck. Filing of FIR against deceased itself would not be reason to attribute deceased more negligent or consider him as sole negligent in causing road accident. **FIR is one mode to take fact into motion for investigation. FIR is not a complete insignia to determine the issue of negligence. Multiple factor is involved in deciding negligence of driver of the vehicle in causing road accident, thus each case needs to be decided on facts of that case. Evidently driver of the truck has not made himself available for evidence to clear the issue. Drawing of adverse inference is attracted, further evidence before learned Tribunal reproduced herein-above weigh more than filing of FIR.***

**[23]** Further, it is also held by the Hon'ble High Court of Gujarat in the case of ***Janu Velayudin Nair Vs. Sunilkumar Tiwari (Supra)***, **as under:-**

*"9.The doctrine of res ipsa loquitur gets attracted to the present case, and therefore, it would become the responsibility of the owner and driver of the vehicle to show that the accident was not due to the The driver was proceeding negligence of the driver. at an excessive speed, he lost control of his vehicle which turned turtle and the deceased sustained injuries which ultimately led to his death. There are cases in which accidents speak for itself so that it is sufficient for the claimant to prove the accident and nothing more and it would for the other side to establish that the accident happened due to some other cause than his own negligence and that makes the doctrine of res ipsa loquitur applicable, i.e. burden is on the driver to show that in fact the driver was not negligent or the accident might have occurred for other*

*reason than any negligence on part of the driver. For the application of this maxim, the claimant is required to prove the fact that the rickshaw was under the management of the driver and that the accident in ordinary course of things, would not happen on account of the driver who had managed the vehicle and used the same with proper care and caution. Adopting the doctrine of res ipsa loquitur and in absence of any evidence from the driver or owner of the rickshaw, the claimants have successfully proved the negligence. The learned Tribunal has therefore, erred in answering the said issue in the negative. The claimants became entitle for compensation.”*

**[24]** Considering the ratio laid down in the above referred Judgments, in the present case, it also requires to be considered that deceased was driving the car in which apart from him, three other occupants were there. Besides, at the unmanned crossing there is a curve, considering this due care is also required to be observed by the deceased also while crossing the unmanned railway crossing. Taking into account above aspects, Tribunal believes that the accident in question has occurred due to negligent act of drivers of both the vehicles involved in the accident i.e., the Maruti Swift Car and the Train. However, for the discussion made above greater negligence is attributed on the part of the Loco Pilot of train. Hence, considering all the aforesaid aspects, more particularly, the manner in which the accident was occurred, it would be apt to fix the liability towards negligence in the ratio of

**20% : 80%** (deceased driver of Maruti Swift Car : Loco pilot of the train).

**[25]** Further, the applicants have produced at Exh. 67, the copy of inquest panchnama and at Exh. 68, the copy of postmortem report of deceased. The holistic appreciation of documentary as well as ocular evidence discussed herewith establishes that deceased lost his life in the vehicular accident involving goods train and hence, I decide issue No. 1 in affirmative.

**ISSUE No. 2:**

➤ **QUANTUM OF COMPENSATION:**

**[26]** 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:**

**[27]** 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:**

**[28]** The applicants have produced at Exh. 73 the PAN Card of the deceased, which shows date of birth of deceased as 24.11.1979 and as the accident had taken place on 26.05.2014, it is established that at the time of accident, the deceased was 34 years old. Hence, it is held that at the time of accident the deceased was of **34 years old.**

● **INCOME:**

**[29]** It is stated by the applicant No. 1 on oath in her examination in chief affidavit at Exh. 43, that at the time of accident the deceased

was working as contractor and was earning Rs. 21,701/- per month. The following documents have been produced to prove the income of the deceased.

<b>Sr. No.</b>	<b>Details of Income Tax Return</b>	<b>Income</b>	<b>Exh.</b>
1.	Income Tax Return for the A.Y. 2011-12	1,90,924/-	74
2.	Income Tax Return for the A.Y. 2012-13	2,46,270/-	75
3.	Income Tax Return for the A.Y. 2013-14	2,53,282/-	76
4.	Income Tax Return for the A.Y. 2014-15	1,97,779/-	77

**[30]** It is worthwhile to note that how much significance can be given to the income tax return, has been explained by the Hon'ble High Court of Gujarat in the case of ***Vinodbhai Hasmukhbhai Patel vs. Hiren Kantibhai Bhavsar*** reported in ***2023(2) GLH (UJ) 1***, wherein it is held that:

*"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 fled 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."*

**[31]** At his juncture, 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.."*

**[32]** 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."*

**[33]** Considering the ratio laid down as above and on over all appreciation of the evidence adduced with respect to the income of the deceased and also considering the age, experience, able body concept, the industry in which the deceased was engrossed and the fact that the accident in question has occurred in the year of 2014, it would be just and proper to assess the monthly income of the deceased as **Rs. 18,000/- per month** and accordingly, the annual income of the deceased comes to **Rs. 2,16,000/-**.

**[34]** 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. **34 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. 86,400/-**) and accordingly, the annual income to be considered for the deceased comes to **Rs. 3,02,400/- (Rs. 2,16,000/- + Rs. 86,400/-)**.

➤ **DEPENDENTS - PERSONAL EXPENDITURE DEDUCTION OF DECEASED:**

**[35]** 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 applicant no. 2 is the daughter of the deceased, applicant no. 4 is the widow of the deceased and respondent no. 3 is the father of deceased. Considering the fact that applicant no. 1

and 3 are the sisters of deceased, who are dependent upon the deceased and accordingly number of dependents of deceased comes to **five members**, hence, **1/4<sup>th</sup>** proportion of the income of the deceased has to be deducted from the yearly income of deceased determined and by doing so, the **1/4<sup>th</sup>** income i.e. **Rs. 3,02,400/- (1/4<sup>th</sup> of Rs. 75,600/-)** 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. 2,26,800/-** (Rs. 3,02,400/- - Rs. 75,600/-).

**[36]** Further, as the deceased was 34 years old at the time of the accident, **Multiplier of 16** would be applicable. Hence, the claimants will be entitled to **Rs. 36,28,800/-** (Rs. 2,26,800/- x 16 multiplier) **as Loss of Dependency.**

➤ **CLAIM FOR FUNERAL CHARGES:**

**[37]** The 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.

**[38]** 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.**"*

**[39]** The Judgment in the case of National Insurance Company Ltd. vs. Pranay Shethi (supra), was passed on 31<sup>st</sup> 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."*

**[40]** 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:**

**[41]** Consortium is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. It is the case of the applicants that applicant

No. 2 has lost her father, applicant no. 4 has lost her husband and respondent no. 3 has lost her son. Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training. Hence the applicants have lost their beloved one at the point of time where they would love to have his the most. Further, 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. In the present case, the applicants have lost their daughter of minor age. The applicants have lost their beloved one at the point of time where they would love to have her the most.

**[41.1]** 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."*

**[41.2]** 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."*

**[41.3]** 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. 1,45,200/-** as **Consortium and Love and Affection.**

➤ **LOSS OF ESTATE:**

**[42]** 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.**

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

Loss of Dependency	:	Rs. 36,28,800/-
Funeral Charges	:	Rs. 18,150/-
Consortium	:	Rs. 1,45,200/-
Loss of Estate	:	Rs. 18,150/-
<b>Total</b>	<b>:</b>	<b>Rs. 38,10,300/-</b>

**[43.1]** As established earlier, the contributory negligence on the part of the deceased was 20%, and after deducting the 20% from the above amount i.e. Rs. 7,62,060/-, the claimants. are entitled to **Rs. 30,48,240/-** (Rs.38,10,300/- - Rs. 7,62,060/-) along with **7.5% interest** from the date of filing of the petition till realization.

**LIABILITY:**

**[44]** For the reasons stated while discussing the issue of negligence opponent no. 2 and 3 are jointly and severally liable to compensate the applicants. Accordingly issue of liability is decided and following final order is passed:

**:: ORDER ::**

1. The present M.A.C. Petition is hereby **partly allowed**.
2. The applicants to recover **Rs. 30,48,240 /- (Rupees Thirty Lakh Forty-Eight Thousand Two Hundred Forty Only)** from the opponent no. 2 and 3 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 applicants, 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.
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  
07<sup>th</sup> day of March, 2026.

Date : 07.03.2026  
Place : Surat.

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

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