

GJVD220002342020



Order below Exhibit-33 in MACP No.89 of 2020

Present:

Ld. Advocate Mr.S.K.Joshi, for the claimants.

Ld. Advocate Mr.A.J. Barot, for Proposed Parties.

- 1) The present claim petition is filed by the original claimants for claiming compensation from the opponents for the death of Vijaybhai Kantibhai Tadvī who had expired in the accident dated 29.08.2015.
- 2) The Present applications have been filed on behalf of the claimants under order 1 rule 10 of the CPC for impleading Mathurbhai Bhatiya, Ramilaben Mathurbhai Bhatiya and Jigneshkumar Mathurbhai Bhatiya as the respondents in the present claim petition.
- 3) It has been averred in the application that, Janakbhai Mathurbhai Valand was the owner of motorcycle bearing registration No.GJ.HN.3453 which was involved in the accident in question, and the applicant had moved an application at Exh.25 to implead Janakbhai Mathurbhai Valand who was the owner of above motorcycle and IFFCO Tokio General Insurance Co. Ltd. i.e. the insurance company of the above motorcycle as parties. It is further averred in the application that the notices were issued to both the proposed parties on the application at Exh.25, and the notice issued to Janakbhai Mathurbhai Valand received back with the report that he was expired and thereafter this tribunal vide order dated 20.01.2026 allowed the application of the applicants qua the insurance company and rejected the application of the applicant qua Janakbhai Mathurbhai Valand as he had expired. It has been averred in the application that Mathurbhai Bhatiya, Ramilaben Mathurbhai Bhatiya and

Jigneshkumar Mathurbhai Bhatiya are the legal heirs of Janakbhai Mathurbhai therefore, the present application is filed to implead them as the respondents in the present claim petition.

- 4) It has been argued on behalf of the applicants that in absence of the owner of the vehicle, in future the insurance company may take the contention that the petition of the claimants is bad for non-joinder of necessary parties and considering that, the legal heirs of the late owner of the above vehicle may be impleaded as parties. The Learned Advocate for the applicant has further argued that the present application may be allowed in the interest of justice.
- 5) The notice of the application is sent to the proposed parties and Ld. Advocate Shri. A. J. Barot has appeared on their behalf and opposed the present application on the ground that it has no merits. It is further argued that the proposed respondents have not succeeded to any estate of the deceased owner of the above vehicle and therefore, they cannot be made liable to pay compensation after the death of owner of vehicle.
- 6) This Tribunal is aware that The Motor Vehicles Act, 1988 is a beneficiary and benevolent legislation, but the perusal of the record of the original claim petition shows that it was filed in the year 2015 and unnecessary delay has already been caused in the present claim petition. As far as the contention of the Ld. Advocate for the claimants is that adding the legal heirs of the Janakbhai Mathurbhai who was the owner of the vehicle bearing registration No.GJ.06.HN.3453 is necessary because the insurance company may take contention in future that the claim petition is bad for the want of non-joinder of necessary parties, is concerned, section 155 of the MV Act clearly provides that, in case of death of a person in whose favour a certificate of insurance had been issued, if it occurs after the happening of an event which has given rise to claim, the cause of action would survive against his estate or against the insurer. Further, a petition filed under section 166 of the MV Act is incidental upon the tort of negligence but, the maxim '*actio personalis moritur cum*

persona' does not apply to the insurance company as a liability of the insurance company based upon the action on contract of insurance.

- 7) Further, the claimant has failed to show that the legal heirs of Janakbhai Mathurbhai has succeeded to his estate or after the death of the Janakbhai Mathurbhai, they have received any property qua him. Therefore, this Tribunal does not deem it just to allow the present application and the present application is rejected.
- 8) With the above order, the present applications are disposed of.

Signed and pronounced in open court today on this 3rd day of March, 2026.

Date : 03/03/2026

Place: Dabhoi.

**[RAHUL SHARMA]
CHAIRMAN, M.A.C.T. (AUXI.)
DABHOI, VADODARA.
CODE No. GJ01588**