

Received on : 14-03-2011
Registered on : 14-03-2011
Decided on : 21-01-2023
Duration : 11 - 10 - 07
YY – MM -DD

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUX.)
AT BHACHAU, KACHCHH**

M.A.C. Petition No.146/2020

Exh.:

<u>Applicants:</u>	<u>Age</u>	<u>Occupation</u>
1] Niliben w/o Hansraj (Koli) Makvana,	23	Housewife
2] Rohit s/o Hansraj (Koli) Makvana, (being minor his claimant no.4 is his guardian)	02	-
3] Saviben w/o Raydhanbhai (Koli) Makvana, d/o deceased Ismailsha Hajisa Fakir	43	Housewife
4] Raydhanbhai Jagabhai (Koli) Makvana, (guardian of the claimant no.2)	46	Farmer

All are residing at :-
Village : Balasar, Ta. Bhachau, Dist. Kachchh.

V/s.

Opponents:

1] Pravinbhai Pethabhai Miyani, R/o. Village - Ramvav, Ta. Rapar, Dist. Kachchh	31	Driver
2] Naresh Sutarambhai Chaudhari, R/o, Maniba Industries, Pansara Road, Mota Borasra, Surat – 394517 (Gujarat)	Adult	Transport
3] Reliance General Insurance Co. Ltd. At Gandhidham, Kachchh.	-	Insurer

- 4] **Govindbhai Laljibhai Harijan,** 25 Driving
R/o, Village – Gadhada (Rahaji),
Ta. Rapar, Dist. Kachchh.

**Claim Petition U/Sec. 163-A of the Motor Vehicle Act
for getting compensation of Rs.4,89,452/-**

APPEARANCE

Mr. R. B. Vaghela, Ld. Advocates for the applicants.
None for the opponent no.1 & 2.
Mr. V. N. Pathak, Ld. Advocate for the opponent No.3.

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DATE OF JUDGMENT: 21/01/2023

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

- 1] The present claim petition has been preferred by the claimant U/Sec.163-A of the Motor Vehicles Act, 1988 for seeking compensation to the tune of Rs.4,89,452/- (Rupees Four Lakh Eighty Nine Thousand Five Hundred and Fifty Two Only)

Brief facts of an accident:

- 2] On dated 07/01/20011, the deceased namely Hashraj was going to Rapar from his village Balasar in the Jeep Car of the Lalji Sava Harijan. On their way, opponent no.1-driver of the Tempo (metadoor) No.GJ-01-AZ-8178 came from opposite side very speedily and negligently that it dashed with the driver-side of the Jeep in which the deceased was boarding and due to this fatal accident deceased sustained grievous injuries on his head and as a result of that he succumb to death at the spot. The FIR for this incident is registered with Rapar Police Station vide FIR No.03/2011 against the opponent no.1-driver of the Tempo (metadoor) No.GJ-01-AZ-8178.
- 2.1] All the opponents are served except opponent no.1. Opponent No.3- Reliance General Insurance Co. Ltd., being insurance company of the of the alleged Tempo (metadoor) No.GJ-01-AZ-8178, filed a written

reply below Exh.11B wherein it denied all the material facts averred in this claim petition. It is accordingly urged to dismiss the claim petition.

3] Considering the above pleadings, this tribunal has framed following issues vide Exh.26B:

- [1] Whether the claimants prove that the deceased died due to vehicular accident ?
- [2] Whether the claimants are entitled to any amount of compensation ? If yes, to what extent and from whom ?
- [3] What Order and Award?

4] My findings to the above issues are as under:

- 1] In the affirmative.
- 2] As per final order.
- 3] As per final order.

Issue No. 1

5] In order to prove the case, the claimants and opponents have led the following oral as well as documentary evidences:

<i>Sr. No.</i>	<i>Description of Documents</i>	<i>Exh./Mark</i>
	<u>Oral evidence of the claimant:</u>	
1	Affidavit in form of examination-in-chief led by opponent no.3	27
	<u>Documentary evidence of the claimant:</u>	
1	Certified copy of the FIR	Mark - 4/1
2	Certified copy of Panchnama of scene of the accident.	Mark - 4/2
3	Copy of Death Certificate	Mark - 4/3
4	Copy of R.C. Book of Tempo (metadoor) No.GJ-01-AZ-8178	Mark - 4/4

5	Copy of Insurance Police of Tempo (metadoor) No.GJ-01-AZ-8178	Mark - 4/5
6	Copy of Permit of Tempo (metadoor) No.GJ-01-AZ-8178	Mark - 4/6
7	Copy of Fitness Certificate of Jeep No.GJ-12-Z-0521	Mark - 4/7
8	Copy of DL of driver of Tempo (metadoor) No.GJ-01-AZ-8178 i.e. opponent no.1	Mark - 4/8
9	Certified Copy of Post Mortem Report of the deceased	Mark - 20/1
10	Copy of Charge-sheet	Mark - 20/2
11	Copy of Inquest Panchanama Form	Mark - 20/3
12	Certified copy of the FIR	31
13	Certified copy of Panchnama of scene of the accident.	32
14	Copy of Inquest Panchanama	33
15	Copy of arrest Panchanama	34
16	Copy of DL of driver of opponent no.1	35
17	Copy of R. C. Book of opponent no.2	36
18	Copy of Goods Permit of opponent no.2	37
19	Copy of Death Certificate of the deceased	38
20	Copy of charge-sheet	39
21	Copy of PM Note of the deceased	40

<i>Sr. No.</i>	<i>Particulars</i>	<i>Exh.</i>
	<u>Documentary evidence of the opponents:</u>	
1.	Certified Copy of Insurance Policy of alleged vehicle	48

- 6] The Ld. Advocate for the claimant has submitted closing pursis vide Exh.45, whereas the same is produced by the Ld. Advocate for the opponent No.3 vide Exhibit No. 47.

- 7.1] It is admitted fact that the present petition has been filed u/s.163-A of M.V. Act, which is special provision as to payment of compensation on Structured Formula as indicated in the Schedule-II to the legal heirs and it is further clarified that in the case of 163-A, claimants shall not be required to plead or establish the negligence.
- 7.2.] In the case of the claimants, it is alleged by the Ld. Advocate of the claimants that on dated 07/01/20011, the deceased namely Hashraj was going to Rapar from his village Balasar in the Jeep Car of the Lalji Sava Harijan. On their way, opponent no.1-driver of the Tempo (metadoor) No.GJ-01-AZ-8178 came from opposite side very speedily and negligently that it dashed with the driver-side of the Jeep in which the deceased was boarding and due to this accident deceased sustained grievous injuries on his head and as a result of that the deceased took his last breath at the spot spontaneously.
- 7.3] I have head Ld. Advocates for the respective parties and also perused the documents forming part of the present claim petition. Looking to the affidavit of examination-in-chief and the cross-examination, bare reading of FIR and Panchnama clearly reveals the fact that on his way to Rapar in the alleged vehicle, opponent no.1-driver of the offending vehicle dashed with the vehicle in which the deceased was boarding and as a result of heavy injuries on his head deceased succumb to death at the spot. Therefore, considering facts and circumstances of the case, I am of the opinion that the accident took place due to rashness and negligent driving of the opponent no.1-driver of the Tempo (metadoor) No.GJ-01-AZ-8178, but since the present petition is u/s 163-A, the claimants shall not be required to be plead or establish the negligency. So I answer Issue No.1 accordingly.

Issue No. 2:

8.1] **Age :**

Looking to the Postmortem Report and as per the affidavit filed by the claimants vide Exh.33, the age of the deceased was 25 years at the time of accident, but in the absence of any documentary evidence about the age, I consider the age of the deceased-Hanshraj Raydhan Koli, as **26 years** at the time of accident.

8.2] **Income :**

Though the claimants have said in their affidavit that the deceased was earning Rs.3300/- per month, however, the claimants have not produced any documentary evidence in support of the income of the deceased. Hence, I find it fit to assess the annual income of the deceased as per the notional income during the respective year as **Rs.36000/-** per annum.

8.3] The present claim petition has been preferred under Section-163A of the M.V. Act and as per settled principle of law, the Tribunal is required to grant compensation as per Schedule-II of the Motor Vehicle Act, taking into considering the age and income of the deceased. As discussed herein above, the deceased-Hanshraj Raydhan Koli was aged about 26 years and his income has been assessed as Rs.36,000/- per annum and therefore, claimants are entitled for an average of amount prescribed under the column of Second Schedule and it would be **Rs.6,12,000/-**. However, out of the said amount of **Rs.6,12,000/-** 1/3rd amount i.e. **Rs.2,04,000/-** is required to be deducted in consideration of expenses incurred by deceased towards maintaining himself and hence the remaining amount which comes is **Rs.4,08,000/-**. As per the Second Schedule, claimants are also entitled for **Rs.2,000/-** as funeral expenses, **Rs.2500/-** as loss of estate. In total,

applicants are entitled to get compensation of **Rs.4,12,500/-** with proportionate costs and interest.

- 9] Therefore, applicants are entitled to get the following amount by way of compensation:

Sr.No.	Description	Amount(Rs.)
1.	Towards Future Loss of Income	4,08,000=00
2.	Towards Funeral Expenses	2,000=00
3.	Towards Loss of Estate	2500=00
	TOTAL...	4,12,500=00

- 10] In view of the above discussions, present petition is required to be held and accordingly all the opponents are jointly and severally liable to pay the amount of compensation to the claimants together with proportionate cost and interest at the rate of 8% per annum. Hence, I pass the following order in the interest of justice.

:: ORDER ::

1. Present M. A. C. Petition is hereby allowed with proportionate costs and interest in respect of petitioners and against opponents jointly and severally.
2. The petitioners shall recover a sum of **Rs.4,12,500 (Rupees Four Lakh Twelve Thousand and Five Hundred Only)** with interest @ 8% per annum from the date of petition till realization along with proportionate costs jointly and severally from the opponents.
3. Accordingly, the opponents shall jointly and severally deposit the amount of compensation of Rs.4,12,500 (Rupees Four Lakh Twelve Thousand and Five Hundred Only) together with interest @ 8% per annum from the date of filing of the petition till realization along with proportionate costs in the office of this Tribunal within one month from the date of this Judgment.

4. The principal amount of interim compensation if any paid to the petitioners be deducted from this awarded amount of total compensation.
5. Deficit Court Fees, if any, be deducted from the awarded amount.
6. Order regarding disbursement of the amount shall be passed later on after depositing of the awarded amount by the opponents.
7. The opponents are directed to scrupulously follow the guidelines issued by the Hon'ble Gujarat High Court in the case of *Hansaguri Prafulchandra Ladhani and others Vs. Oriental Insurance Co. Ltd. And others reported in 2007(1) GLR 291* and the decision dated 08.08.2016 of the Hon'ble Division Bench of the Hon'ble High Court of Gujarat in the case of *The New India Assurance Co. Ltd. Vs. Bhoyabhai Haribhai Bharwad and others, 2017 ACJ 1727*, in respect of T.D.S.
8. Award be drawn accordingly.

Signed and pronounced in open Court today i.e. on this **21st** day of **January, 2023**.

Date : 21/01/2023
Place : Bhachau, Kachchh

Sd/-
(P. T. Patel)
Judge,
M.A.C. Tribunal (Aux.),
Bhachau, Kachchh
Code: GJ00528