GJNV010009292022		Presented on :30.06.2022 Registered on :30.06.2022 Decided on :22.07.2026 Duration: YY MM DD 04--00--22

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN) OF NAVSARI DISTRICT, AT NAVSARI
(Presided by Mr.P.J.Tamakuwala)

M.A.C.P. No.:21/2022:-
Exh.No.___49_

Petitioners:- 1) **Geetaben Rakeshbhai Patel,**
Aged 47 years, Occ. – Housework work,
2) **Krishnakumari Rakeshbhai Patel,**
Aged 26 years, Occ.Study.
3) **Jeet Rakeshbhai Patel,**
Aged about 24 years, Occ.Study
All residing at Kanbiwad, Vanzana,
Tal.Chikhli, District.Navsari.

Versus

Opponents:-1) **Pareshkumar Bhikhubhai Patel,**
Aged about adult, Occ.Not known,
Resi.at.po.Chhinam, Via.Maroli Bazaar,
Tal.Jalalpore, District.Navsari.
2) **Bhikhubhai Parshottambhai Patel,**
Aged about adult, Occ.Not known,
Resi.at.po.Chhinam, Via.Maroli Bazaar,
Tal.Jalalpore, District.Navsari
(Dismissed vide order passed below Exh.1).
3) **IFFCO TOKIO General Insurance Co.Ltd.,**
Om Complex, 2nd Floor,
Opt.Mango Market (A.P.M.C.),
Bencher Road, Valsad.

Ld.Adv.Mr.N.D.Vakil, for the petitioners.
Opponent No.1-In person.
Opponent No.2-Dismissed.
Ld.Adv.Mr.B.P.Modi, for the Opponent No.3.

-:JUDGMENT:-

1. The Present claim petition is preferred under Section-166 of the Motor Vehicle Act, 1988, for getting compensation of Rs.75,00,000/- (Rupees Seventy Five Lakhs Only).
2. An order dated 14.07.2023 has been passed that, the opponent no.2 has died on 05.02.2017 and claim petition was filed in the year 2022. Vide notice issued to the opponent no.2 dated 29.07.2022, it was returned with endorsement that opponent no.2 died on 05.02.2016. Since passing of the one year of fact brought on record that opponent no.2 has passed away, no procedure was being carried out by the parties, and therefore, my Ld.Predecessor has passed order dated 14.07.2023 for dismissal of claim petition against Opponent No.2 and accordingly, claim petition against Opponent No.2 stood dismissed.
3. The factual matrix leading to the present proceeding are as under:-

That, on the date of accident i.e.on dt.06/02/2017 around 5:15 hours in the afternoon, the deceased was returning home from his agriculture farm on motorcycle no.GJ.21.9001, and when he reached near the place of accident, the opponent no.1 came driving his Innova Car bearing registration no.GJ.21.AH.2117, at full speed, carelessly, negligently and in a manner endangering human life, and dashed with the motorcycle of the deceased and deceased was thrown away with his motorcycle and deceased sustained grievous injuries and he succumbed to the injuries in Apple Hospital, Surat, on 06.02.2017. The offence regarding the said accident has been registered with Chikhli Police Station vide C.R.No.23/2017, against Opponent No. 1.

It is further case of the petitioners that, at the time of accident, the deceased was physically fit and healthy and he was aged 45 years. He was doing agriculture in half portion of ancestral agriculture land coming to his share and taking crop of sugarcane, mango and banana and by this way he was deriving income of Rs.1,00,000/-. It is further case of the petitioners that they were dependent upon the income of the deceased and due to sudden death of deceased they are undergoing financial problem. Therefore, with the aforesaid contentions, the petitioners have filed the present claim petition for getting compensation of Rs.75,00,000/- u/s.166 of M.V.Act. The Opponent No.1 being the driver of offending vehicle, Opponent No.2 (Dismissed) being the owner of offending vehicle and Opponent No.3 being the Insurance Company of the offending vehicle are jointly and severally liable to pay the amount of compensation u/s.166 of M.V.Act.

4. The Opponents were duly served with the notices. The Opponent No.1 appeared but, has not filed any written statement.

The Opponent No.3 appeared and filed written statement vide Exh.28, denying the contentions raised in the claim petition. It has been contended that, the police complaint has been lodged/registered against the driver of Innova Car bearing Registration No.GJ.21.AH.2117 at Chikhli Police Station in C.R.No.23/2017 u/s.279, 337, 338, 304(a) of IPC. The Opponent No.3 has further contended that, the accident didn't took place due to negligence of driver of vehicle bearing no.GJ.21.AH.2117. It has been further contended that the accident took place because of sole negligence on the part of driver of Motorcycle bearing registration no.GJ.21.9001. It is contended that driver of car bearing registration no.GJ.21.AH.2117 was driving his vehicle at a moderate speed and on the correct side of the road and was blowing horn as and when found necessary. But, the driver of motorcycle bearing registration no.GJ.21.9001 has drove his vehicle with full speed and in rash and negligent manner on wrong side and caused accident and there was no negligence whatsoever on part of driver of car bearing no.GJ.21.AH.2117 and therefore, the driver of car bearing no.GJ.21.AH.2117 cannot be held liable for the accident. It is further contended that if the Tribunal comes to conclusion regarding there being negligence of driver of Innova Car bearing no.GJ.21.AH.2117, then negligence on the part of the rider of motorcycle bearing registration no.GJ.21.9001 should be decided and considered to a larger extent and by raising such contentions has urged to reject the claim against them.

5. The petitioners have produced following oral and documentary evidence:-

ORAL EVIDENCE

Sr.No.	Particulars	Exh.No.
1.	Affidavit cum-examination-in-chief of petitioner-Geetaben Rakeshbhai Patel.	19

DOCUMENTARY EVIDENCE

Sr.No.	Particulars	Exh.No.
1.	Certified copy of the FIR	30
2.	Certified copy of spot Panchnama	31
3.	Certified copy of Inquest Panchnama	32
4.	Certified copy of P.M.Report	33
5.	Certificate issued by the Sugar Co-operative Society	40
6.	Ledger Account of Surbhi Food and Namkin run by deceased, Rameshbhai Natubhai Patel	41
7.	Copy of driving license of deceased, Rameshbhai Natubhai Patel	47

The opponents have produced the following documentary evidence.

ORAL EVIDENCE

Sr.No.	Particulars	Exh.No.
1.	Affidavit cum-examination-in-chief of Opponent No.1-Pareshkumar Bhikhubhai Patel	46

6. The Opponent No.3-IFFCO TOKIO General Insurance Company Ltd., have filed an application u/s.170 of M.V.Act, 1988 vide Exh.29 and the same had been granted

by the Tribunal and the Insurance Company has been permitted to defend the petition on all grounds.

7. The petitioners have filed closing pursis vide Exh.42 and the Opponent No.3 has filed closing pursis vide Exh.48 and declared their evidences to be closed.

8. Considered the oral arguments of the Learned Advocate for the petitioners and the opponent no.3. Read the R. & P. and took into consideration the evidences produced on record.

9. The following issues are framed vide Exh.16.

ISSUES

1. *Whether the deceased died due to rash and negligent driving on the part of the driver of the offending vehicle/s as alleged?*
2. *Whether the applicant/s is/are entitled to get compensation? If yes, what amount and from whom?*
3. *What order?*

10. My findings on the above issues are as under and the reasons for the same are discussed hereinafter.

FINDINGS

1. *In the Affirmative.*
2. *As per final order.*
3. *As per final order.*

REASONS

11. **Issue no.1**:-

While deciding the point of negligence, it has to be borne in mind that the negligence is required to be proved in claim petition u/s 166 of the Act only on the touchstone of the preponderance of probability and not beyond doubt. Above referred ratio is laid down by Hon'ble Apex Court in the cases of ***i)Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819*** *and* ***ii)Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.***

The issue No.1 is pertaining to negligence on the part of driver of offending vehicle involved in the incident. Negligence means failure to exercise required degree of care expected of a prudent driver. It is a settled principle of law that the burden to prove negligence on the part of driver of offending vehicle is on the petitioner who asserts it. The petitioner has to produce reasonable evidence to show that the accident took place due to negligence on the part of driver of the vehicle involved in the accident. Therefore, burden shifts upon the other side to explain the circumstances under which the accident occurred. In the claim petition for the accident under the Motor Vehicle Act, strict proof of negligence is not necessary. Negligence can be established even on the basis of preponderance of probabilities. It is true that sometimes direct evidence to prove the negligence is not available and therefore, principle of ***res ipsa loquiter*** i.e. things speak for themselves is required to be kept in mind at the time of deciding negligence. This settled principle of law has been frequently and exhaustively discussed in various judgments of Hon'ble Superior Courts as well as our Hon'ble High Court, as for instance Hon'ble Apex Court in the case of ***Gujarat State Road Transport Corporation v/s Kamlaben Valjibhai Vora*** reported in ***2001(3) GLR 2528***.

In order to prove this claim, the deposition of the petitioner no.1 is recorded vide Exhibit-19. On perusal of exhibit-19, which is the affidavit as per the provisions of Order-18, Rule-4 of the C.P.C. in lieu of examination-in-chief, there is narration of happening of incident as stated in exhibit-1, it has been averred that on the date of accident i.e.i.e. on dt.06/02/2017 around 5:15 hours in the afternoon, the deceased was returning home from his agriculture farm on motorcycle no.GJ.21.9001, and when he reached near the place of accident, the opponent no.1 came driving his Innova Car bearing registration no.GJ.21.AH.2117, at full speed, carelessly, negligently and in a manner endangering human life, and dashed with the motorcycle of the deceased and deceased was thrown away with his motorcycle and deceased sustained grievous injuries and he succumbed to the injuries in Apple Hospital, Surat, on 06.02.2017.

In her cross-examination, the petitioner no.1 has admitted that she has not seen the accident personally.

The Ld.Advocate for the opponent no.3-Insurance Company, has mainly contended that, the accident took place because of sole negligence on the part of the driver of motorcycle bearing registration no.GJ.21.9001 as driver of car bearing no.GJ.21.AH.2117 was at a moderate speed and on the correct side of the road and was blowing horn as and when found necessary. But, the driver of motorcycle bearing registration no.GJ.21.9001 has drove his vehicle with full speed and in a rash and negligent manner on wrong side and caused accident and there was no negligence whatsoever on part of driver of car bearing no.GJ.21.AH.2117 and therefore, driver of car cannot be held negligent for the accident. They have further contended that although if in case of liability of driver of Innova Car is held, then negligence on the part of driver of motorcycle bearing registration no.GJ.21.9001 should also be decided and considered on the larger extent.

In order to prove the aforesaid contention, the opponent no.3 has also examined opponent no.1-Pareshbhai Bhikhubhai Patel, driver of Innova Car bearing no.GJ.21.AH.2117, vide Exh.46. He has narrated the happening of accident in his deposition and has stated that, he was going from Rumla to Chhinam towards his village at about 5.00 o'clock in the evening by driving his car no.GJ.21.AH.2117, in moderate speed on a straight road and all of a sudden, the motorcyclist who was proceeding ahead of his car had stopped his motorcycle. The motorcyclist had come on the main road with his motorcycle from the left side of the main road and dashed on the left side of his car i.e.on the passenger side. There was complete negligency on the part of the motorcyclist. The opponent no.1 has further deposed that at the time of accident speed of his car was 80 kms/hr and to save the motorcyclist, he had applied brake to his car.

In his cross-examination, he has admitted that a complaint was filed against him and at the end of investigation, chargesheet was also filed against him. He has also admitted that the place where the accident occurred at that place, the road was a clear and broad. He has denied that his car was driven in excessive speed and he did not had control over his driving and the accident occurred due to his negligence.

Having considered the arguments put forward, it is an undisputed fact that the deceased died in the vehicular accident and the copy of the Inquest Panchnama at Exh.32 and Post Mortem Report at Exh.33, supports the said contention. As regards the negligency is concerned, the documentary evidences are required to be considered. On perusal of the complaint vide Exh.30, it appears that the complaint is filed by the cousin brother of the deceased, Rakeshbhai Natubhai Patel, who has narrated that, on 06.02.2017, he had received a phone call from his uncle, Ratilal Chhaganbhai Patel, who had informed him that his cousin brother, Rakeshbhai Natubhai Patel, who was proceeding upon his Unicorn motorcycle no.GJ.21.9001, from his agriculture farm to his home, when he reached near Vanzana village near Simda, one four wheeler Innova Car bearing no.GJ.21.AH.2117, which was driven in an excessive speed, rash and negligent manner by its driver, had dashed the motorcycle of his brother from behind and his brother sustained head injuries and he is unconscious. That, the complainant has brought his brother in Parsi

Hospital but, he is in unconscious state of mind. Such complaint has been registered.

The panchnama has been produced vide Exh.31, wherein it has been stated that, Innova Car bearing registration no.GJ.21.AH.2117 is involved in the accident. It has also been stated that the left side show glasses on front side of Innova Car is broken whereas, there are cracking marks found on the half portion of front show glasses. The head light on left side is broken and the left side guard is being broken.

So, far contention raised by the Opponent No.3, regarding negligency of motorcyclist is concerned, it is required to be noted that the present opponent no.1 has deposed before the Tribunal vide Exh.46 wherein, it has been contended that the deceased has all of a sudden came on the main road from left side and he stopped his motorcycle ahead of his Innova Car and due to his negligence, the accident has occurred but, the documentary evidence are speaking otherwise. It has also been stated by him that he was driving his Innova car at a speed of 80 km/hr which cannot be considered to be a moderate speed and this fact has been admitted by the opponent no.1 himself in his deposition. He has also admitted that the road at the place of accident was a clear and broad road. It also appears that, the opponent no.1 has admitted in his cross-examination that, after the investigation, charge-sheet has been filed against him. It is also noted that the opponent no.1 has not challenged the filing of the complaint and thereafter the chargesheet, and charge sheet is always filed after recording of statement of witnesses, collection of evidence and after thorough investigation. Moreover, the opponent no.1 has not produced the charge-sheet on record. Therefore, these evidences are also supporting the say of the petitioners. The panchnama of the place of accident produced at Exh.31 also shows that all the damages caused to Innova Car are in the front portion. The nature of damage rules out the theory that motorcycle dashed the Innova Car by coming all of a sudden on the road. On the contrary, it proves that the car came and dashed the motorcycle from behind. Further, except the bare words, there is no evidence that the motorcycle driver had suddenly stopped his motorcycle ahead of Innova Car and so, the said contention is totally against the evidences on record and so it is not tenable in eye of law. Moreover, it is settled law that the driver of a heavy vehicle like Innova Car owes a higher degree of care and caution towards smaller vehicles like motorcycle. It is also emerging on record that, when opponent no.1 himself is admitting in cross-examination that, the road was clear and broad in that circumstances, the opponent no.1 has not tried to avoid the accident and whatever averments have been made by him in his examination-in-chief in Exh.46 are totally against the evidence on record. If there was no negligence on his part, then why he has not challenged the filing of FIR and thenafter charge sheet against him is also a fact, which requires consideration. Thus, the oral testimony of the opponent no.1 stands falsified by the documentary evidence and circumstantial evidence on record. Hence, the argument of Ld.Adv.for the opponent no.3 regarding contributory negligence of both the vehicles are not sustainable.

So, taking into consideration the documentary evidences as well as oral evidence and also considering the manner in which the accident had occurred, this Tribunal comes to the conclusion that there was sole negligency of the opponent no.1, being driver of Innova Car No.GJ.21.AH.2117 and there was no negligence on the part of the deceased and therefore, I answer the issue No.1, accordingly in the "affirmative"

12. **Issue No. 2:**

While discussing the Issue no.1, it is held that the petitioners are entitled for compensation. In a fatal case arising out of a vehicular accident, compensation is broadly divided into **pecuniary loss and non-pecuniary loss.**

Normally, in a fatal accident case arising out of vehicular accident, the Tribunal is required to award compensation on two heads viz. **(1) Pecuniary loss, and (ii) Non-pecuniary loss.** Pecuniary loss consists of: Loss of income, expenditure incurred for funeral, medicines, treatment charges, if deceased has received treatment after the accident and before the death, transportation charges, etc., and non-pecuniary loss will include Pain, Shock and

Suffering, if the deceased has survived for some time after the accident and before his death, loss of estate, loss of expectation of life, loss of consortium, etc.

PECUNIARY LOSS **:**

In the present case, as regards the income of the deceased is concerned, it has been pleaded that the deceased was doing agriculture work and taking crops of sugarcane, mangoes, bananas and he was also getting income from sugarcane production and from the said income, he was maintaining his family. It is also stated that the deceased was producing sugarcane in half portion of ancestral agriculture land and he was deriving income of Rs.1,00,000/- per month.

In her cross-examination, the petitioner no.1 has admitted that the agriculture land upon which her deceased husband was doing agriculture, is being cultivated at present to by tenant farmer(Ganotiya). She has further admitted that, she has not produced any evidence on record to show that the said agriculture land is being cultivated through tenant farmer (Ganotiya). She has also admitted that she has to incur expenses for doing agriculture but, she has not produced any documentary evidence to show that expenses were incurred for labour and fertilizer expenses, by her deceased husband. She has also admitted that at present also, from the mango farm, they are taking mango produce. She has also admitted that in half portion of the ancestral property of her deceased husband, her deceased husband was doing cultivation and earning Rs.1,00,000/- per month. She has admitted that the agriculture land is ancestral land. She has also admitted that she has not produced any bank statement showing the income of her deceased husband, in support of her say. So, such kind of admissions are made by the petitioner no.1 in her deposition.

Now, on perusal of evidence on record, it appears that, in order to prove the income of the deceased, the petitioners have produced the certificate issued by Sahakari Khand Udyog Mandal Limited vide Exh.40, and on perusal of the same it appears that the total value of sugarcane which was supplied by the deceased, Rakeshbhai Natubhai Patel, for the season 2012-2013 was Rs.11,78,919.50, for the year 2013-2014 was Rs.9,40,664.10, for the year 2014-2015 was Rs. 5,69,392.50, for the year 2015-2016, it was Rs.6,23,749.50 and for the year 2016-2017, it was Rs.9,39,495.15. On perusal of the said documentary evidence, it appears that the same is issued in the name of deceased, Rakeshbhai Natvarlal Patel and is issued by the Manager (Finance) Sahakari Khand Udyog Mandal Ltd., Gandevi, Therefore, the above documentary evidence shows that sugarcane was given by the deceased to Sahakari Khand Udyog Mandal Limited, Gandevi and that the deceased was deriving income by supplying sugarcane to Sahakri Khand Udyog Mandal, Gandevi.

The petitioners have also produced statement of ledger account of deceased Rakeshbhai Natubhai Patel, issued by the Proprietor of Surbhi Foods Namkins, vide Exh.41, which is the ledger account for the period from 01.04.2011 to 31.03.2017 which shows the transaction with deceased Rakeshbhai Natubhai Patel, for the aforesaid period against the purchase of Banana. On perusal of the said document, it appears that the ledger account is in the name of deceased, Rakeshbhai Natubhai Patel, and there are entries of purchase of banana and payment made to the deceased, Rakeshbhai Natubhai Patel, which is in cash as well as through bank account. The said is signed by the Proprietor of Surbhi Food and Namkins. Therefore, the averments made by the petitioners in their claim petition and in her affidavit that the deceased was deriving income by doing cultivation of bananas cannot be denied but, as regards income from the same is concerned, the petitioners have not examined any personnel from Surbhi Foods & Namkins. Also, there is no evidence regarding expenses incurred and what is the profit after deduction of the expenses and hence, there is no clear evidence of income of deceased from sale of bananas.

Now, going to the other documentary evidence on record, the copy of various village form no.7-12 is produced on record vide mark 21/9 to 21/28. On perusal of the same, it transpires that, the name of the deceased is mentioned in the revenue record and the above documents clearly shows that the deceased was holding the agricultural lands and the record also shows that, after the death of deceased, the names of the legal heirs of deceased i.e.petitioners have been mutated in the revenue record. No doubt, the said lands are in the possession of the petitioners but it is a fact that the amount which the deceased would be earning from the said land as well as the supervisory income, the petitioners have suffered loss for the same and it is also to be noted that as the agricultural land was in the name of the deceased, he must be having some income from the agricultural work also and the same is proved vide Exh.40 and Exh.41. It is but obvious that the petitioners cannot be expected to receive the same income as the deceased would have earned and it is also a fact that the deceased must be doing some kind of work to keep himself occupied and support the family and it is also a fact that the petitioners have suffered physical, emotional & psychological dependency loss which cannot be equated in terms of the money. However, considering the fact that accident occurred in the year 2017 and the kind of work performed by the deceased along with the age, in my opinion, income of deceased at **Rs.30,000/- p.m.** can be assessed for computing actual loss and future loss of income.

At this juncture, the ratio laid down in the case of ***National Insurance Co. Ltd. Vs. Pranay Sethi and Ors.*** in

Special Leave Petition (Civil) delivered on 31.10.2017 by the Hon'ble Supreme Court, is required to be considered and, it has been held that …..

58 The seminal issue is the fixation of future prospects in cases of deceased who is self-employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.

59 Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self-employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated Under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be in apposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self-employed person; and that apart there is always an incessant effort to enhance one's income for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better *efficiency from the employees. Similarly, a person who is self-employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self-employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree-test is imperative. Unless the degree-test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.*

60 The controversy does not end here.The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an *addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.*

61 In view of the aforesaid analysis, we proceed to record our conclusions:

(i) The two-Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.

(ii) As Rajesh has not taken note of the decision in Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced herein before.

(vi) The selection of multiplier shall be as indicated in the

Table in Sarla Verma read with paragraph 42 of that judgment.

(vii) The age of the deceased should be the basis for applying the multiplier.

(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.

Hence, considering the ratio laid down in the case of **Pranay Sethi(Supra)** and further considering the fact that deceased was not having permanent job and hence, accordingly, prospective income is required to be added.

As far as the age of the deceased is concerned, the petitioners have stated that deceased was aged 45 years at the time of accident and in order to substantiate their say, no documentary evidence like school leaving certificate or aadhar card has been produced on record, but, the age of the deceased as per P.M.Note produced vide Exh.33, the age is mentioned as 45 years and hence, the age of the deceased is considered 45 years at the time of accident and so, as per the ratio laid down in afore stated judgment , 25% addition is required to be made in the monthly income of the deceased. So, the monthly income of the deceased comes to **Rs.37,500/- (Rs.30,000/- + 25%).** Thus, the yearly income of the deceased is **Rs.4,50,000/- (Rs.37,500/- x 12)**.

Now, we have to deduct the living expenses of the deceased. As per the judgment of the Hon'ble Supreme

Court delivered in the case of ***Sarla Verma v. Delhi Transport Corpn. (Supra),*** in para 14 it has been specifically stated that ***'Having considered several subsequent decisions of this court, we are of the view that where the deceased was married, the deduction towards personal and living expenses of the deceased should be one-third (1/3rd) where the number of dependent family members is 2 to 3; one-fourth(1/4th) where the number of dependent family members is 4 to 6; and one-fifth (1/5th) where the number of the dependent family members exceed six'.*** Here, the deceased was married and having two children. Petitioner no.1 is the wife of the deceased and the petitioner no.2 is the married daughter of the deceased and petitioner no.3 is the son of the deceased. Now, as per settled principle of law, married daughter cannot be considered dependent on parents in normal cases because, she is dependent on her husband as after marriage, her dependency shifts to husband's family. Therefore, as there are total two dependents, 1/3rd amount is required to be deducted as personal expenses of the deceased. 1/3rd amount of Rs.4,50,000/- is Rs.1,50,000/-, hence, **Rs.3,00,000/-** (Rs.4,50,000/- less Rs.1,50,000/-) can be considered as pecuniary loss to the petitioners. In the judgment given in the case of ***Sarla Verma Vs. Delhi Transport Corpn. (Supra),*** the Hon'ble Supreme Court has restructured the multiplier column of Schedule - II and according to this restructured column of multiplier the person belonging to the age group 41 to 45 years is entitled for a **multiplier of 14**. Here, the deceased was aged about

45 years, and therefore, the petitioners are entitled for a multiplier of 14, and hence, if **Rs.3,00,000/- is multiplied by 14** then **Rs.42,00,000/- will come which can be considered as prospective loss of income to the petitioners because of death of the deceased.**

<u>NON PECUNIARY LOSS :</u>

Non-pecuniary loss includes compensation under the head of loss of estate; loss of expectancy of life; pain, shock and suffering; etc.

The petitioners have asked the amount towards, loss of consortium; compensation to family; members for loss of love and affection; medical; attendant and transportation charges; funeral charges etc.

The petitioners have urged to grant amount towards, loss of consortium; compensation to family members for loss of love and affection; medical; attendant and transportation charges; funeral charges etc

Considering the decision of Hon'ble Apex Court rendered in the case of **National Insurance Company Limited Vs.Pranay Sethi & Ors., reported in 2017 ACJ 2700, Rs.18,000/- (Rupees Eighteen Thousand Only) is awarded towards Loss of Estate and Rs.18,000/- (Rupees Eighteen Thousand Only) is awarded towards funeral expenses.**

In the case rendered by the Hon'ble Apex Court, in the case of ***United India Insurance Co. Vs. Satinder Kaur @ Satwinder Kaur & Ors.*** *delivered in* ***Civil Appeal No. 2705 of 2020,*** wherein, following observations have been made:-

In Magma General Insurance Co. Ltd. v. Nanu Ram & Ors., 12 this Court interpreted "consortium" to be a compendious consortium, term, parental which encompasses consortium, as well spousal as filial consortium. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

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.

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 12 (2018) 18 SCC 130 child during their lifetime. Children are valued for theirlove and affection, and their role in the family unit.

Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is the compensation for loss of love and affection, care and companionship of the deceased child.

The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of 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.

Parental Consortium is awarded to the children who lose the care and protection of their parents in motor vehicle accidents.

The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi (supra).

At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and lossof love and affection.

The Constitution Bench in Pranay Sethi (supra), has recognized only three conventional heads under which

compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.

In Magma General (supra), this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

I have taken into consideration the aforesaid decision of the Hon'ble Apex Court as well as decision rendered by the Hon'ble Apex Court in case of the **Magma General Insurance Co. Ltd. Vs. Nanu Ram and Ors.** In the present case the applicant no.1 is the wife of the deceased and the applicant no. 2 and 3 are the daughter and son of the deceased. Therefore, in view of the aforesaid decisions, **the petitioner no.1 being the wife of the deceased, is entitled to Rs.48,000/- towards spousal consortium and petitioner no.2 and 3 being the married daughter and son of the deceased is entitled to each Rs.48,000/- (Rs.48,000/- + Rs.48,000/-) towards parental consortium.**

So, under the afore stated conventional heads, in all, **Rs.1,80,000/-** is granted to the petitioners.

In view of the above referred discussions, petitioner is entitled for following amount as compensation:-

Sr.No.	Different heads	Amount(Rs.)
01.	As prospective loss of income.	42,00,000=00
02.	As loss of Estate, loss of consortium, filial consortium and love and affection, as funeral expenses, medical expenses.	1,80,000=00
	TOTAL	43,80,000=00

13. <u>LIABILITY</u>:-

While deciding Issue No.1, this Tribunal has held that the opponent no.1-the driver of Innova Car No.GJ.21.AH.2117 was solely negligent for committing the accident, and the said car was under the ownership of opponent no.2, which is evident from the copy of R.C.Book of the vehicle produced on record vide mark 21/5, perusing which it appears that the name of the said owner is appearing in the column of ownership and no dispute has been raised by him regarding he not being the owner of the car. Further perusing the insurance policy produced on record vide mark 21/6, the name of Opponent No.2, appears in the column of insured and the vehicle number is stated as GJ.21.AH.2117, and period of policy of the said vehicle is from 08/03/2016 to 08/03/2017, and the said accident had occurred on 06/02/2017 and therefore said policy was in force and was an active policy at the time of accident. As discussed earlier, as claim petition against opponent no.2 has already been dismissed vide order passed below Exh.1, no liability can be fastened upon the opponent no.2. Therefore, the Opponent Nos.1 and 3 are jointly & severally liable to pay compensation to the petitioner/s and therefore, I answer the Issue no.2 accordingly.

<u>INTEREST</u>

The petitioners have prayed for interest at the rate of 12% per annum. As regards the said contention is concerned, considering the judgment of the Hon'ble Constitutional Bench of the Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)***, the Hon'ble Apex court has allowed interest at the rate of 9% per annum. Hence, I hold that the petitioners are entitled for interest at the rate of **9% per annum** from the date of the petition till the realization of the amount.

ISSUE NO.3

On the basis of the discussion made above and considering the answers given to the Issue No. 2, I pass the following final order:

O R D E R

The petition is hereby partly allowed with proportionate costs and interest against the **opponent nos.1 and 3.**

The petitioners do recover **Rs.43,80,000/-(Rupees Forty Three Eighty Thousand Only)** from the **Opponent nos.1 and 3,** jointly and/or severally,together with running interest at the rate of **9% p.a.** from the date of petition till realization of the amount along with proportionate costs of the petition.

The opponents are hereby directed to comply with the provisions of Section 194-A of the Income Tax Act and deposit the afore stated amount of award after deducting the amount of interim compensation, if any paid u/s 140 of M. V. Act directly by RTGS or NEFT to the following bank account of this tribunal within 30 days from the date of this order;

A/C Holder Name :- Motor Accident Claims Tribunal, Navsari.
Bank Name :- State Bank of India
Account Number :- 40756379884
IFSC Code :- SBIN0000439
MICR Code :- 396002061

The opponents shall instruct their bank to remit the payment with the following information.

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

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

The opponents shall make such deposit, shall also send a copy of the aforesaid payment advice to the Claims Tribunal concerned and serve the copy of the said on the petitioners or her/his advocate as the case may be.

In so far as tax deduction at source is concerned, Form 16-A of the IT Act should be provided to the petitioners on whose behalf the deduction has been made so as to enable him to seek refund of the tax deducted if any.

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

After above deductions, **60%:20%:20%** amount be given to the petitioner Nos.1, 2 and 3 respectively. As far as the petitioner nos.1,2 and 3 are concerned, after above deductions, **70%** be deposited as Fixed Deposit in any nationalized bank situated near the residence of the said petitioners for a period of 5 years and the remaining **30%** amount be paid by RTGS or NEFT directly in the bank account of the said petitioners after due verification.

Opponents shall to bear their own cost and to pay the cost to the petitioners.

The copy of this Judgment and the award to be drawn shall be uploaded on the site.

Award be drawn accordingly.

Investments, as above, shall be encumbered with following terms and conditions :-

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

(2) 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 petitioners.

(3) 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.

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

(5) 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.

(6) At the end of the period aforesaid, the Bank shall pay the principal amount to the payee the concerned petitioners.

Pronounced in the open Court on this 22nd day of July, 2026.

PLACE : NAVSARI
DATE:22.07.2026

[Pratik Jaysukhbhai Tamakuwala]
Chairman,
M.A.C.Tribunal (Main.)
Navsari.
(Code No. GJ00581)

jas/-