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**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUXI.)
AT GONDAL**

MOTOR ACCIDENT CLAIMS PETITION NO.382 OF 2007

APPLICANTS:-

**LEGAL HEIRS OF DECEASED DINESHBHAI GOVINDBHAI
PARVADIYA:-**

1. JAYABEN GOVINDBHAI PARVADIYA(DELETED)
2. SANGITABEN DINESHBHAI PARVADIYA,
Hindu, Adult, House Work,
3. AMAN DINESHBHAI PARVADIYA,
Hindu, Adult, Study,
All residing at
"Jay", Opp. GIDC Office,
Wadhwan City, Surendranagar.

VERSUS

OPPONENTS:-

1. JINNATBEN AKBARBHAI PANJAWANI,
Diamond Society, Opp. Laxmi Baug,
Jintan Road, Surendranagar.
2. BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD.,
601, "Prasham", Near Dharam Cinema,
Kasturba Gandhi Road,
Rajkot.

**CLAIM TO RECOVER AN AMOUNT OF RS.40,00,000/-
UNDER SECTION 166 OF THE M. V. ACT**

Appearance:

A.A.SAHEDANI, The Learned Advocate for Applicants.

P.B.MAKAWANA, The learned Advocate for Opponent No.1

S.H.MODHA, The Learned Advocate for opponent No.2.

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

1. The applicants have filed the present petition to get the compensation to the tune of Rs.40,00,000/- with running interest at the rate of 18% p.a. thereupon against the opponents jointly and severally stating *inter alia* that on 17/12/2006, the deceased Dineshbhai Govindbhai Parvadiya was travelling in Maruti Omni Car No.GJ-13F-4264 alongwith his friends and going from Surendranagar to Shirdi for Darshan and on 18/12/2006 early in the morning at about 04:00 a.m. when they reached on Ahmedabad Surat National Highway Road near the outskirts of village Sava near Shital Hotel at that time, the driver of Maruti Omni Car No.GJ-13F-4264 had driven his vehicle with full speed, rash and in negligent manner to endanger the human life, without observing traffic rules and ultimately lost the control over the vehicle and turned turtle and hence, the accident has happened. Due to this accident, the deceased had sustained grievous bodily injuries and ultimately succumbed to the injuries. It is averred that the accident has happened due to sole and sheet negligence on the part of driver of offending vehicle and hence, the applicants are entitled to get compensation from the opponents.

2. The opponents were duly served with the process of the Tribunal. The opponent No.1 has filed her written statement at Ex.10 and denied all the averments made in the petition. It is contended that the accident has not happened due to negligence on the part of car driver and car driver has also not driven his vehicle so as to endanger human life. It is also contended that due to rough road, the driver of the car has lost the control over the vehicle and hence, accident has happened and therefore, there was no negligence on the part of car driver. Hence, the opponent No.1 is not liable to pay any compensation to the applicants and lastly, it is prayed to dismiss the claim petition with costs.

3. The opponent No.2 Insurance Company has filed its written statement at Exh.19 and opposed and resisted the contentions and averments which are made in the petition in toto. It is averred that the application of the claimant is not bona fide, legal and proper and therefore, the same deserves to be dismissed. It is contended that the interest of opponent No.1 in Maruti Omni Car No.GJ-13F-4264 was covered at the material time under the policy of insurance issued by the opponent No.2 subject to the terms and conditions. It is contended that Maruti Omni Car No.GJ-13F-4264 is a private car and the deceased, at the time of accident was travelling as occupant on the vehicle and therefore, the risk of

the occupant in car is not covered under the policy and therefore, the insurance company cannot be held liable to pay any compensation. It is further contended that driver of the vehicle was not holding valid and effective driving license and hence, the opponent insurance company is not liable to pay compensation. Lastly, opponent No.2 has requested to dismiss the petition of the applicants with costs.

4. The issues are framed at Ex.25, which are as under:

1. Whether the accident was caused due to rash and negligent driving on the part of the driver of Maruti Omni Car No.GJ-13F-4264 as alleged?
2. Whether the applicant is entitled to recover any compensation? If yes, how much and from whom?
3. What order and award?

5. After leading the evidence by the parties and hearing learned advocates for both the sides, my findings on the above issues are as under:

1. Partly in the affirmative & as per final order.
2. In the affirmative.
3. As per final order.

// - R E A S O N S - \\\

6. The factual as well as legal aspects are common and, therefore, to avoid the repetition, all

the issues are discussed and decided jointly.

ISSUES NOS.1 TO 3:-

7. In order to prove this petition, the applicants have produced the following documents:

Sr. No.	Particular	Exh.No.
1.	Certificate of incorporation of PF Wires Pvt.Ltd.	38
2.	Memorandum & Articles of Association of PF Wires Pvt.Ltd.	39
3.	Copy of resolution passed by PF Wires Pvt.Ltd.	40
4.	Copy of appointment letter	41
5.	Certificate issued by PF Wires Pvt.Ltd. to deceased Dineshbhai	42
6.	Copy of resolution dated 29/06/2005 of PF Wires Pvt.Ltd.	43
7.	Copy of certificate issued by PF Wires Pvt.Ltd. to deceased Dineshbhai	44
8.	Copy of resolution dated 28/03/2006 of PF Wires Pvt.Ltd.	45
9.	Copy of certificate issued by PF Wires Pvt.Ltd. to deceased Dineshbhai	46
10.	Statement of account of	47

	salary of deceased Dineshbhai	
11.	Statement for Cash Account of P.F.Wires Pvt.Ltd.	48
12.	Receipt of payments	49
13.	F.I.R.	50
14.	Panchnama	51
15.	Inquest Panchnama	52
16.	Post mortem note	53
17.	Charge sheet	54
18.	R.C.Book of Maruti Omni Car No.GJ-13F-4264	55
19.	Income Tax returns of the deceased from 2004-2005, 2005-2006, 2006-2007 and	56 to 58
20.	Form No.16-A of deceased	59
21.	Birth date certificate of the deceased	60

NEGLIGENCE:

8. Sangitaben Dineshbhai Parvadiya, the wife of the deceased Dineshbhai Govindbhai Parvadiya has filed her affidavit vide Ex.29 and reiterated the facts narrated in the main Claim Petition and she has been cross examined by the Learned Advocate for the opponent No.2 Insurance Company. In her cross examination, she has admitted that at the time of accident, she was not present and she does not know that how the accident has happened. She has further stated that her husband was working as Director in P.F. Wires Limited Company since 1995. She has

admitted that she has not produced any resolution to show that her husband was getting pay as Director. She has further admitted that she has no any evidence to show that her husband was the Director in the P.F.Wires Company. She has further admitted that she has not produced any pay slip or vouchers of salary of her husband. She has also admitted that the income return for the year 2007-2008 has been filled in after death of her husband. Opponent No.1 was not present for cross examination when called out. Now, looking to the FIR and panchnama of scene of offence produced at Ex.50 and 51 that on dated 18/12/2006 early in the morning at about 04:30 a.m. at the time of accident, the deceased Dineshbhai was travelling in Maruti Omni Car No.GJ-13F-4264 and going from Surendranagar to Shirdi for darshan and due to rash and negligent driving, the driver of Maruti Omni Car No.GJ-13F-4264 has lost the control over the vehicle and hence, the car turned turtle and accident has happened. Due to the said accident, the deceased Dineshbhai has sustained grievous injuries and ultimately succumbed to the injuries. It also appears from the panchnama produced at Ex.51 that Maruti Omni Car No.GJ-13F-4264 is lying at the place of accident in accidental condition. It also appears from the post mortem report produced at Ex.53 that cause of death of the deceased was cardiac respiratory failure due to head injury leads to shock and death. Hence, there is reason to believe the fact that the deceased

died due to injuries sustained in the accident and the accident has happened due to sole and sheer negligence on the part of the driver of Maruti Omni Car No.GJ-13F-4264. Moreover, the opponents have not examined any of Driver of the offending vehicle involved in the accident to rebut the evidence on the point of negligence. Hence, adverse inference is drawn that the accident is caused due to the rash and negligent driving of the Driver of the offending vehicle Maruti Omni Car No.GJ-13F-4264. Therefore, I hold that opponent No.1 being the owner of the offending vehicle Maruti Omni Car No.GJ-13F-4264 and opponent No.2 being the insurance company of offending vehicle Maruti Omni Car No.GJ-13F-4264 are jointly and severally liable to pay the compensation to the applicant.

QUANTUM:

9. It is submitted on behalf of the applicants that at the time of accident, the deceased was working as Director in P.F.Wires Company Limited and he was earning Rs.25,000/- per month. To prove the income of the deceased, the applicants have examined Dhirajkumar Shankarbhai Adalja at Ex.37 and he has produced appointment letter as Director in P.F.Wires, salary certificate issued by P.F.Wires. In his cross examination, he has stated that he has joined the company in December, 2007 and he has no information of previous years. Moreover, it appears from the

record that the applicants have produced income tax returns of the deceased for the year, 2005-2006 wherein, his income has been shown as Rs.20,880/-. While, the income tax return for the year, 2006-2007 shows the income of Rs.76,200/-. While, income tax return for the year 2007-2008 has been filed after the date of accident. Hence, the said income tax return filed after the death of the deceased cannot be taken into consideration. So, considering the income of the deceased for the year 2005-2006 as Rs.20,880 and income for the year 2006-2007 as Rs.76,200/-, average income of the deceased of Rs.48,540/- i.e. Rs.48,500/- can be assessed as just and proper to determine the compensation. It also appears from the record that at the time of accident, the deceased was married and he would have spent some amount behind his personal expenses and therefore, 1/3rd amount requires to be deducted from Rs.48,500/- and therefore, the annual loss of dependency of the applicants comes to Rs.32,333/-. So far as the multiplier is concerned, to prove the age of the deceased, the applicants have produced copy of school leaving certificate of the deceased at Ex.60 wherein, the birth date of the deceased is shown as 23/07/1970. So, at the time of accident, the deceased was aged about 36 years and therefore, multiplier of 15 years is required to be applied in this case. Hence, the amount of future loss of dependency would work out as Rs.4,84,995/- i.e. Rs.4,85,000/-

(32,333x15). The applicants are also entitled to get Rs.40,000/- towards consortium, Rs.15,000/- towards loss to the estate and Rs.15,000/- towards funeral ceremony charges. Hence, in all the applicants are entitled to get the compensation of Rs.5,55,000/-

10. Therefore, the applicants are entitled to compensation under various heads:

Rs.	4,85,000/-	Future loss of dependency
Rs.	40,000/-	Consortium
Rs.	15,000/-	Loss to the estate
Rs.	15,000/-	Funeral Ceremony
Rs.	5,55,000/-	Total Compensation

LIABILITY:

11. So far as liability is concerned, as discussed above, the opponent No.1 is the owner of Maruti Omni Car No.GJ-13F-4264 and opponent No.2 is the insurance company of offending vehicle Maruti Omni Car No.GJ-13F-4264. It appears from the copy of the insurance policy produced by the opponent No.2 at Ex.66 that the policy covers the date of accident. Hence, as discussed above, opponents No.1 & 2 are jointly and severally liable to pay the compensation of Rs.5,55,000/- to the applicants. Hence, in view of above discussion, the issue No.1 is replied in the affirmative and as per final order and issue No.2 partly in the affirmative.

INTEREST:

12. Learned Advocate for the applicant has prayed to award 18% p.m. interest on the awarded amount, whereas Learned Advocate for the opponents has argued to award 7.5% p.m. interest. But looking to the Judgment of Hon'ble Supreme Court in the case of Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy reported in 2012 A. C. J. – 48 and looking to the prevailing rate of Bank interest, I concluded that it would be just and proper the awarded 9% rate of interest. Hence, I held that the amount of compensation shall carry interest at the rate of 9% per annum from the date of filing of the application till its realization.

13. In view of the above discussion and in reply to issue No.3, I pass the following Order:

// - O R D E R - \\

1. This Claim Petition is hereby partly allowed. The applicants are entitled for Rs.5,55,000/- (Rupees Five Lakh Fifty Five Thousand only) to the tune of compensation u/s. 166 of M. V. Act 1998.

2. The opponents No.1 & 2 are jointly and severally liable for the accident and ordered to pay the compensation to the applicants.

3. The opponents are hereby directed to deposit amount of compensation jointly and severally with running interest @ 9% p.a. from the date of filing of the petition within 1 month from date of the order of this petition.

4. After the amount is deposited in the office of Tribunal, the office is directed to deduct the requisite court fees and amount of interim compensation paid if any and thereafter from the remaining amount, 30% amount be paid to the applicants by Account payees cheque and 70% amount be invested in the name of the applicants in any Nationalized Bank for the period of 5 years of the choice of the applicants. The applicants are entitled to withdraw interest accrued on the said fixed deposit. The applicants will not entitle to take any loan or advance against this fixed deposit and the Bank shall not borrow any loan or advance against the said fixed deposit without permission of this Court. A specific note to that effect is to be made on the receipt of Fixed Deposits by the Tribunal.

5. The opponents shall follow the guidelines of Hon'ble Gujarat High Court in the case of Hansagouri Prafulchandra Ladhani and others Vs. the oriental Insurance Co. Ltd. reported in 2007 A. C. J. - 1897 regarding income tax liability.

6. The opponents have to pay the cost of the petition to the applicants and shall bear their

7. Award to be drawn accordingly.

Signed and pronounced in the open court to day on this 31st DAY OF AUGUST, 2018 at Gondal.

Date :-31/08/2018

(MANISH PRADHYUMAN PUROHIT)

M. A. C. T. (AUXI.)

Place:- GONDAL

G O N D A L

Code No. GJ00604