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**IN THE COURT OF PRINCIPAL DISTRICT JUDGE
AT ANAND**

**MAC PETITION NO. 333 OF 2007.
U/S. 166 OF M.V. ACT**

Petitioner:

1. Bharvad Bhimabhai Mohanbhai, AGE: 39 himself and as a guardian of minor
Bhurkhi Ta. Dholka, Dist. Ahmedabad
2. Minor Bharvad Vipulbhai Bhimabhai, AGE: 14
Bhurkhi Ta. Dholka.
3. Minor Bharvad Mehulbhai Bhimabhai, AGE: 14
Bhurkhi, Ta. Dholka, Dist. Ahmedabad

VERSUS

Respondent:

1. Tata Motors Pvt. Ltd
Bombay-Nasik Road, Survey No. 46, Saroli Gau,
Bhivandi. Maharastra
2. The New India Insurance Co. Ltd.
Amul Dairy Road, Anand.

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Anand.

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Appearance:

Y.I.VAHORA For Petitioner 1, 2, 3
H.J.PATEL For Respondent 2

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

1. These are fatal and non-fatal accident cases.
2. The case is that, BHIMABHAI MOHANBHAI PARMAR was going driving motorcycle No. GJ 23 F 3248 along with his minor son Vipul and wife Amaratben as pillion rider on 30/4/2007. When they reached in outskirts of village Boriyavi, the opponent No. 1 came driving Temp. Reg. No. MH 04 T.R.A. 187, Chases No. 415206 D.S.Z. 210310 and Engine No. 70762560782 speedily, carelessly, came on wrong side, hit the motorcycle heavily and caused the accident. In the accident, his wife sustained serious injuries and died, whereas his son sustained injuries.

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3. For the death of Amratben, alleging her age as 30,

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monthly income as Rs. 3,000, her husband and two minor son claims Rs. 5 lacs from the owner and insurer of the Temp. Reg. No. MH 04 T.R.A. 187 inter alia joining Ranchhodbhai Kalabhai Bharvad, owner of motorcycle No. GJ 23 F 3248.

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4. Minor Vipul Bhimabhai Bharvad sustained injuries of fracture in right leg. Alleging his age as 14, monthly income as Rs. 3,000, claim Rs. 1.50 lacs therefrom.
5. The opponent No. 1 is ex-parte.
6. The defence of opponent No. 2 the New India Ins. Co. Ltd. vide written statement Exh. 20 is of total denial. The driver did not possess effective and valid license to drive. For the breach of policy also the insurance company is not liable. The accident occurred for the negligence of motorcyclist only. The company is not liable.
7. The following issues are framed at Exh. 31 in MACP No. 333/2007.

1. Whether the applicant/s proves that deceased died due to rash and negligent driving of the driver of the vehicle involved in the accident ?

2. Whether the applicant/s are entitled to any compensation ? if yes, what amount

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and from whom ?

3. What order and award ?

8. The following issues are framed at Exh. 14 in MACP No. 334/2007.

1. Whether the applicant/s proves that he suffered injury due to rash and negligent driving of the driver of the vehicle involved in the accident ?

2. Whether the applicant is entitled to any compensation ? if yes, what amount and from whom ?

3. What order and award ?

9. My findings on the above issues are as under.

1. In affirmative.

2. MACP NO. 333/2007 Rs. 5,70,000 from the opponents No. 1 and 2.

MACP NO. 334/2007 Rs. 43,250 from the opponents No. 1 and 2.

3. As per final order.

10. It is for following reasons:

:: R E A S O N S :

Heard Advocate. Shri Y.I. Vora for the claimants.

Shri H.J. Patel for the New India Ins. Co. Ltd.

ISSUE NO. 1 :

11. BHIMABHAI MOHANBHAI PARMAR (PW1) deposes vide affidavit Exh. 33 that he was going driving

motorcycle No. GJ 23 F 3248 with his wife Amaratben and son Vipul as pillion rider thereon from his village to Vaso on 30/4/2009. He was driving it on correct side, slowly, observing the traffic rules. When he reached in outskirts of village Boriyavi on Samarkha - Nadiad road, opponent No. 1 came driving vehicle temporary registration M.H 04 T.R.A. 187 Chases No. 415206 D.S.Z. 210310 and Engine No. 70762560782 speedily, carelessly, came on wrong side, hit the motorcycle from behind, heavily and caused the accident. Damages occurred to the motorcycle. His wife sustained serious injuries, succumbed to death, whereas his son sustained serious injuries. In cross examination he answers that he was driving motorcycle No. GJ 23 F 3248, his wife and son were sitting as pillion rider, Vipul was aged 8 years. It is true that truck came from behind and therefore cannot say how the accident occurred and came to know of the accident when the truck and motorcycle collided. It is true that after the accident both the vehicles were on the pakka road but it is not true that he was driving the motorcycle speedily or that accident did not occur for the negligence on the part of the truck. Now, the F.I.R. being I C.R. No. 74/2007 lodged with Boriyavi Police station by Bhimabhai Bharvad goes to

read the same thing that when he was going driving his motorcycle No. GJ 23 F 3248 with his wife and son Vipul aged 13, near Boriyavi station motorcycle was hit from behind by a truck bearing No. M.H. 04 T.R.Q. 187 heavily. His wife sustained injuries and died on the spot whereas his son Vipul sustained injuries. Panchnama reads the motorcycle GJ 23 F 3248 facing Nadiad on the North with its steering etc. damaged, lying 5' away from the Western edge of the road. The flash lying from middle of the road and going towards Western edge. Now, when the flash is from middle of the road to the Western edge, and the motorcycle was hit from behind, it is clear that though vehicles were in middle of the road, 100 per cent negligence would be found on the part of the truck driver and nothing with the motorcyclist. Holding so, I answer issue No. 1 accordingly in affirmative that accident occurred for the entire negligence on the part of the truck driver only.

ISSUE NO. 2 :

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12. He answers that he has not produced any proof to show age of his wife or son Vipul. In P.M. Report Exh. 35 she was shown as 38. He was 39. Therefore she would fall between age group of 36 and 40 years, 15 would be the multiplier and dependents being 2 to

3, 1/3rd would be towards personal deduction vide Sarla Verma's case.

13. He deposes that she was doing husbandry and earning Rs. 3,000 a month. In cross examination he admits that he has no proof to show that she was earning Rs. 3,000 by doing husbandry work or any proof to show of her depositing a milk from husbandry. There is no proof of her doing such work or earning also. However she being a housewife, value of her services to family irrespective of her status requires to be considered at Rs. 3,000 a month vide New India Assurance Co. Ltd. V/s. Babubhai Dipubhai Chauhan 2006 (2) GLR 1514 and she being between 30 and 40 years of age, 50% of prospective income needs to be added to.

14. She died on the spot therefore nothing towards pain, shock and suffering could be granted.

15. The claimants would also be entitled to Rs. 10,000 for loss of estate, Rs. 5,000 for funeral expenditure, Rs. 5,000 for transportation; and the husband to Rs. 10,000 towards loss of consortium.

16. The claimant would therefore be entitled to following amount of compensation.

Rs.	8,10,000	Loss of future income
	((Rs. 3,000 + 50%))	X 12 X
	15)	
Less Rs.	<u>2,70,000</u>	1/3rd personal expenses
Rs.	5,40,000	2/rd future loss of

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dependency

Rs.	--	pain, shock & suffering
Rs.	10,000	loss to estate
Rs.	5,000	funeral expenses
Rs.	<u>5,000</u>	transportation expenses
Rs.	5,60,000	Total
Rs.	10,000	loss of consortium to husband _____ only
Rs.	5,70,000	Total

17.Claimant No. 1 - the husband would first be entitled Rs. 10,000 towards loss of consortium and from the rest to 80%, whereas claimants No. 2 and 3 to 10% each.

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18.Minor Vipul Bhimabhai Bharvad sustained close fracture middle 3rd tibia right side, was affixed with nail for which permanent disability of 27% for right lower limb is assessed vide disability certificate by Dr. Yogesh Parikh of Tulsi Hospital. Pursis Exh. 40 is passed to consider it at 11% for body as a whole. It is endorsed with no objection for the company. It being just is accepted.

19.He was minor aged 13 therefore 15 would be the multiplier and notional income Rs. 15,000 p.a. vide IInd schedule to Section 163-A of M.V. Act.

20.He was affixed with nail for which Rs. 7,500 towards pain, shock and suffering and 2 months loss of current income needs to be granted though he was

minor. He remained as indoor patient for which Rs. 100 a day for attendant charges for 15 days, Rs. 3,000 for special diet, Rs. 1,500 for transportation would be just.

21.No bills are produced but the treatment being with private hospital, it would be just to grant Rs. 2,000 towards medical expenses.

22.The claimant would therefore be entitled for following amount of compensation.

Rs.	24,750	Future loss of income (Rs. 1,250 X 12 X 15 X 11%)
Rs.	2,500	Loss of current income (Rs. 1,250 X 2 months)
Rs.	7,500	Pain, shock & suffering
Rs.	2,000	Medical expenditure
Rs.	3,000	Special diet
Rs.	2,000	Transportation
Rs.	1,500	Attendant charges _____ (Rs. 100 X 15 days)
Rs.	43,250	Total

23.The vehicle bearing temporary registration No. M.H. 04 T.R.Q. 187 is insured with the New India Ins. Co. Ltd. vide Policy (Exh. 48) in the name of Tata Motors Pvt. Ltd. - opponent No. 1 as insured for the period from 30/12/2006 to 29/12/2007, so also is its certificate U/s. 64 1 (b) (Exh. 49) that Motor Road Transit Policy has been issued for aforesaid vehicle. It covers the date of accident. 30/4/2007. Pursis Exh. 16 is filed that they would forgo the amount for the liability of the motorcyclist for

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what is held in issue No. 1 above, it is not required to be acted upon. No breach is proved. Therefore opponents No. 1 and 2 would be liable to pay compensation.

24. The claimant would be entitled to interest at the rate of 7% p.a.

25. For the reasons stated hereinabove, issue No. 2 is answered accordingly.

ISSUE NO. 3 :

26. For the reasons stated, the petitions deserve to be partly allowed for which following final order is passed.

:: O R D E R ::

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1. The claim petition is hereby allowed.
2. The opponents No. 1 and 2 do jointly and severally pay the claimants **Rs. 5,70,000 Rupees five lacs seventy thousand only 00** less Rs. 50000 being principal amount of N.F.L. if paid, together with interest at the rate of 7 % p.a. from the date of application 14/5/2007 till realization.
3. The opponents No. 3 is held not liable.
4. The opponents No. 1 and 2 do pay cost of the claimants and bear that of their own.
5. Claimant No. 1 - the husband would first be entitled Rs. 10,000 towards loss of consortium and

from the rest to 80%, whereas claimants No. 2 and 3 to 10% each.

6. The opponents are directed to deposit the aforesaid amount together with interest and cost in this Tribunal within a period of one month from the date of this order. When deposited, after deducting deficit court fees, if any, out of their individual share, 30% amount be paid to the claimants by A/c payee cheque, and their rest 70% be fixed deposited in any nationalized bank for a period of five years in the name of claimants with a condition that no loan or advances shall be floated on the said FDR without prior permission of the Tribunal. However, the applicant will be entitled to get periodical interest which accrues on the said FDR.

7. Award be drawn accordingly.

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1. The claim petition is hereby allowed.

2. The opponents No. 1 and 2 do jointly and severally pay the claimant Rs. 43,250 Rupees fourty three thousand two hundred fifty only less Rs. 25,000 being principal amount of N.F.L. if paid, together with running interest at the rate of 7 % p.a. from the date of application 14/5/2007 till realization.

3. The opponents No. 3 is held not liable.
4. The opponents No. 1 and 2 do pay the cost of the claimant and bear that of their own.
5. The amount be deposited in court. When deposited, after deducting deficit court fees, if any, 30% amount be paid to the claimant by A/c payee cheque, and his rest 70% be fixed deposited in any nationalized bank for a period of five years in the name of claimant with a condition that no loan or advances shall be floated on the said FDR without prior permission of the Tribunal. However, the applicant will be entitled to get periodical interest which accrues on the said FDR.
6. Award be drawn accordingly.

Pronounced in open court today on 4/9/2012.

Date : 4/9/2012

Place : ANAND

**(S. N. VAKIL)
PRINCIPAL DISTRICT JUDGE
ANAND.**