Exh.	46/A
Received on	10.10.2014
Registered on	10.10.2014
Decided on	04.10.2022
Duration	Y M Days
	07 11 24

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL

***(MAIN) & PRINCIPAL DISTRICT* JUDGE,**

KACHCHH – BHUJ.

M.A.C.P. No.407/2014

Legal representatives of
Late Shri Tarshi Meghabhai Ravtani (Koli);

1. Rudiben Tarshi Ravtani (Koli),
Wife, Age 55, Occupation : Household,

2. Hasmukh Tarshi Ravtani (Koli),
Son, Age 20, Occupation : Study,

3. Haresh Tarshi Ravtani (Koli),
Son, Age 18, Occupation : Study,

4. Dinesh Tarshi Ravtani (Koli),
Son, Age 28, Occupation : Labourer,

5. Mahesh Tarshi Ravtani (Koli),
Son, Age 28, Occupation : Labourer,

6. Mavji Tarshi Ravtani (Koli),
Son, Age 22, Occupation : Labourer,

R/o. at present : house of Shri Rupesh M. Salani,
Near Shidhnath Temple, Sanskar Nagar,
Bhuj - Kachchh. ....Claimants

Vs.

1. Premjibhai Vibhabhai Koli,
Age Adult, Occupation : Transport Operator,
R/o. Kakarva Vadi Vistar,

Village Juna Kakrava,
Tal. Bhachau - Kachchh.

2. Iffco Tokio General Insurance Co. Ltd.,
201, Gold Coin, Second Floor,
Plot No.21, Ward No.12-B,
Gandhidham - Kachchh. .....Opponents

Claim u/s.166 of the M.V. Act for getting compensation of Rs.21,00,000/-....

A P P E A R A N C E :

1. L.A. **Mr. H. S. Suchday** for claimants.

2. L.A. **Mr. A. A. Sahedani** for opponent No.2.

3. Opponent No.1 served.

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

1. Claimants have preferred the present claim petition under Section 166 of the Motor Vehicles Act, 1988 ('the M V Act') claiming compensation of Rs.21,00,000/- for the fatal injuries sustained by the deceased, late Shri Tarshi Meghabhai Ravtani (Koli), in a vehicular accident dated 29/01/2014, along with the costs and interest at the rate of 18% per annum from the date of petition till realization, against the opponents.

2. Brief facts of the present claim petition are that, on 29/01/2014, deceased late Shri Tarshi Meghabhai Ravtani (Koli) was returning from village Nilpar in Bolero Pick-Up bearing registration No. GJ-12-AV-7329 alongwith goods. When the said vehicle reached near the place of accident, at that time the opponent No.1 was driving the said Bolero Jeep at fast speed in rash and negligent manner therefore, the he lost control over the

steering and the vehicle capsized. The deceased was crushed in the driver's cabin and after the great efforts he was taken out from the driver's cabin and ultimately the deceased died on 18.03.2014 during the course of treatment.

3. The opponent No.2 – insurance company of Bolero Pick-Up bearing registration No. GJ-12-AV-7329 filed written statement *vide* Exh. 13 and denied the facts with respect to accident, negligence of driver of the insured vehicle, age, income and nature of work of the deceased. It is further averred that driver was not holding valid and effective driving licence to drive the vehicle on the date of accident. It is further pleaded that, the deceased was unauthorized passenger. On the basis of these pleadings, the insurance company has prayed to reject the present claim petition.

4. In view of the pleadings of the parties this Tribunal had framed the following issues.

[1] Whether the claimants prove that deceased died due to rash and negligent driving on the part of the driver of the offending vehicle involved in the accident?

[2] Whether the claimants are entitled to get compensation? If yes, what amount and from whom?

[3] What award and Order ?

4.1 My findings to the above Issues are as under:-

[1] In the affirmative. As per final order.

[2] As per the final order.

[3] As per the final order.

-: R E A S O N S :-

5. To prove the pleading of the claim petition and disprove the contents of the claim petition, the parties have produced the following oral and documentary evidence on record:

Exh.	Particulars
18	Affidavit for evidence of claimant
22	Affidavit for evidence of Mohanbhai Sadulbhai Koli
Exh. / Mark	**Description of document**
23	Inquest panchnama
24 to 27	Treatment papers
28	Cause of death certificate
29	Post-mortem report
30,31,32	Medical bills
33	Election card of deceased - 42 years as on 01.01.1995
35	FIR
36	Panchnama of scene of offence
37	Chargesheet
38	Insurance policy of Bolero

ISSUE NO.1 & 2 COLLECTIVELY :

6. Heard Ld. Advocates for the parties. Read the written arguments submitted by the Ld. Advocate for the claimants which are produced at Exh.41 and perused the record.

6.1 The claimant No.5 namely Mahesh Tarshi Ravtani (Koli) - son of the deceased has deposed on oath *vide* Exh.18 that, on 29/01/2014, deceased late Shri Tarshi Meghabhai Ravtani (Koli) was returning from village Nilpar in Bolero Pick-Up bearing registration No. GJ-12-AV-7329 alongwith goods. When the said vehicle reached near the place of accident, at that time the opponent No.1 was driving the said Bolero Jeep at fast speed in rash and negligent manner therefore, the he lost control over the steering and the vehicle capsized. The deceased was crushed in the driver's cabin and after the great efforts he was taken out from the driver's cabin and ultimately the deceased died on 18.03.2014 during the course of treatment.

6.2. However, he has admitted in his cross examination that he has not seen the accident personally.

6.3. 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 **Bimla Devi v/s H.R.T.C., reported in AIR 2009 SC 2819 and Parmeshwari Devi v/s Amir Chand, reported in 2011 (11) SCC 635.**

7. I have perused the FIR (Exh.35) and chargesheet which are lodged against the opponent No.1 - driver of Bolero Pick-Up bearing registration No.GJ-12-AV-7329 and same are not challenged by the driver before the higher forum *inter alia* alleging that false complaint is lodged against him. The bare perusal of the panchnama of scene of offence (Exh.36) depicts the fact that the said Bolero was lying at the place of accident in the damaged condition. There is no involvement of any other vehicle in the accident. Therefore, it becomes clear from the above referred undisputed documents that the driver of Bolero was driving the vehicle at rash and negligent manner.

8. At this juncture, I would like to note that the owner and Insurance company of the dumper have not examined the driver to lead evidence in rebuttal. Therefore, as per the decision of the Hon'ble Gujarat High Court reported in **2001 (2) GCD 1448**

(Guj.), Ahmedabad Municipal Transport Service Vs. Hansaben Natvarlal Dabgar, an adverse inference is required to be drawn against the driver and owner.

9. Considering the above referred facts and circumstances of the case and in absence of involvement of any other vehicle in the accident, I hold that the above referred accident occurred because of the sole negligence of the driver of Bolero Pick-Up bearing registration No. GJ-12-AV-7329 and I decide Issue No.1 accordingly.

ISSUE NO.2 :

10. The claimant No.5 – Mahesh Tarshi Ravtani (Koli) - son of the deceased, has filed the affidavit of the examination in chief and same is recorded at Exh.18. Claimants have pleaded and deposed that at the time of accident, deceased was earning his livelihood by doing agricultural work. It is also pleaded that the deceased was also doing the business of agricultural instruments mechanic. Hence, the claimants have pleaded that by doing these activities, the deceased was earning around Rs.1,00,000/- p.a. But the claimants have not produced any cogent and reliable oral and documentary evidence to prove income of the deceased and also not examined any witness to prove income of the deceased. At this stage, it is worthy to note that claimants have produced copies of revenue record *vide* M.16/16 which depicts the fact that the deceased was possessing the agricultural land in the joint names with as many as eight family members. At this stage it is also worthy to note that though the claimants have produced the copies of revenue record and bills of sale of agricultural products in the name of deceased *vide* M.16/17, the claimants have failed to prove

the said documents by examining the authors of the said bills and, therefore, this Tribunal holds that the claimants have failed to prove the nature of work and income of the deceased. Further the claimant No.5 has admitted in his cross examination that at present they are taking crops from the agricultural lands and the agricultural lands still registered in the joint names of the family members.

10.1 This Tribunal is required to make good to the claimants by considering the loss of the income sustained by them, owing to the death of the deceased. So far as the income from agricultural lands are concerned, it is an admitted fact that the lands of the deceased remained with the applicants and they are taking crops from the agricultural lands at present. It is not the case of the applicants that after the demise of the deceased the above mentioned agricultural lands have been disposed of, as they could not perform the work which the deceased used to perform in the said fields, therefore, there is a reason to believe that the agricultural lands are continued to be cultivated either by the applicants themselves or by engaging someone else as supervisor or labourer to perform the duties / work the deceased used to perform prior to his death and, therefore, it can be said that the claimants have to part with some money for engaging someone else as supervisor or labourer to perform the duties / work the decease18.03d used to perform prior to his death.

10.1 As it has revealed from the deposition of the applicant No.5 Mahesh Tarshi Ravtani (Koli) (Exh.18) that the agricultural lands are running in the joint names and, therefore, there is a reason to believe that they are taking crops from the agricultural lands and the agricultural work is continued by the claimants or with the help of labourer or supervisor. It is also required to be noted that herein this case the claimants have failed to prove income of the deceased from the agricultural.

11. The next question which this Tribunal is required to answer is what amount of compensation the claimants are entitled to get. To answer these issues, reference is required to be made to the ratio laid down by the Hon'ble Supreme Court in the case of **New India Insurance Com. v/s Yogesh Devi, reported in 2012 ACJ 702.** Wherein it is held in para 11 to 13 as under...

> *11. Coming to the case on hand, the claim is based on the assertion that the deceased owned agricultural land apart from the abovementioned three mini-buses. The High Court rejected the claim insofar as it is based on the income from the land, on the ground that the income would still continue to accrue to the benefit of the family. Unfortunately, the High Court failed to see that the same logic would be applicable even to the income from the abovementioned three buses. The asset (three mini-buses) would still continue with the family and fetch income. The only difference, perhaps, would be that during his life time the deceased was managing the buses, but now, the claimants may have to engage some competent person to manage the asset, which, in turn, would require some payment to be made to such a manager. To the extent of such payment, there would be a depletion in the net income accruing to the claimants out of the asset. Therefore, the amount required for*

engaging the service of a manager and the salary payable to a driver - as it is asserted that the deceased himself used to drive one of the three buses - would be the loss to the claimants. In the normal course the claimants are expected to adduce evidence as to what would be the quantum of depletion in the income from the abovementioned asset on account of the abovementioned factors. Unfortunately, no such evidence was led by the claimants.

12. In the circumstances, the Judgment under Appeal cannot be sustained as the finding of the High Court that the claimants lost an amount of Rs.16,000/- per month due to the death of Vijender Singh is neither based on any evidence nor the logic adopted by the High Court for arriving at such a conclusion is right. In the normal course, the matter should have been remitted to the Tribunal for further evidence for ascertaining of the basis upon which the compensation is to be determined. But having regard to the fact that the accident occurred a decade ago, we do not propose to remit the matter for further evidence.

13. The High Court opined that the deceased would have contributed an amount of Rs.16,000/- per month to the dependents, whereas the Tribunal opined that the deceased would have contributed an amount of Rs.5,000/-. Both the Courts below proceeded to arrive at the abovementioned amounts on the basis that as a driver of one of the buses, he was getting a salary of

> *Rs.3,900/- per month. In the circumstances, making a reasonable conjecture that somebody to be employed for the purpose of managing the business of the three mini-buses, would certainly demand a higher salary than a driver, we think it reasonable to notionally fix the salary of such manager at Rs.10,000/- per month.*

11.1 As held hereinabove the claimants have failed to prove agricultural income of the deceased, and there is evidence on record that after the demise of the deceased, said land is being cultivated by the claimants. Therefore, taking into the consideration the ratio laid down in the case of **Yogesh Devi (supra)**; age of the deceased; nature of the work which was actually performed by the deceased; the amount required for engaging the service of a manager and/or supervisor and/or labourer for the carrying out and execute agricultural work which actually deceased was doing, the notional loss of income sustained by the claimants from the agricultural income can be assessed as **Rs.6,000/-** per month and **Rs.72,000/- p.a.**

12. So far as the age of deceased is concerned, it is the case of the claimants that the deceased was 60 years at the time of accident and for the same the claimants have relied upon the age mentioned in the post-mortem report. But at the same time, the bare perusal of the copy of Identity card issued by Election Commission of India (Exh.33) depicts that the age of the deceased was 42 years, as on 01.01.1995. Since the accident occurred on 29/01/2014, the age of the deceased could be assessed as 61 years. At this stage I would like to clarify that the age mentioned in the

post-mortem report is being mentioned on the guess work and upon the information provided by the family members of the deceased and therefore, the age mentioned in the post-mortem report is not the conclusive proof of evidence of age of the deceased. Whereas, the age mentioned in the identity card of the deceased issued by the Election Commission of India can be said to be conclusive proof of age of the deceased. Therefore, I hold the age of the deceased as 61 years and therefore, deceased would fall under the age group 61 to 65 and the claimants would be entitled to get compensation calculated on the basis of the multiplier of **07.**

13. As discussed hereinabove, the age of the deceased, at the time of death was around 61 years, in view of the ratio laid down by the Larger Bench of the Hon'ble Supreme Court rendered in the case of **National Insurance Company vs. Pranay Sethi, 2017 (16) SCC 680,** no rise can be given to the income of the deceased.

13.1 The deceased left behind him, his wife and five sons. All the sons of the deceased were major at the time of accident and, therefore, technically they cannot be said to be dependent upon the income of the deceased. Further, the claimants No. 5 and 6 were aged 28 and 22 years, respectively at the time of accident and they were doing labour work. However, bare perusal of the memo of petition, depicts the fact that the claimant No.4 is handicapped therefore, he can be said to be dependent upon the income of the deceased. Hence, in above view of facts and circumstances, and relying on the ratio laid down in the case of **Paranay Sethi (supra)**, 1/3 amount out of the total annual income i.e. **Rs.24,000/-** can deduced as the personal expenses of the deceased.

Hence, the amount would come to **Rs.48,000/-.** Since the deceased was aged about 61 years, applying the multiplier of **07**, the amount would come to around **Rs.3,36,000/-.**

14. As this Tribunal is deciding the claim petition in the year 2021, as held in para No.61(viii) of the Pranay Sethi's case that 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. As three years have been passed form the date of the pronouncement of the Pranay Sethi's case, I deem it fit to enhance the amount to be paid under the conventional head at the rate of 10%. Therefore, as per the directions of Hon’ble Supreme Court in Pranay Sethi's case, petitioners are entitled for **Rs.16,500/-** towards loss to estate and **Rs.16,500/-** towards funeral expenses.

14.1 So far as grant of consortium to the applicants is concerned, the Hon’ble Apex Court in the latest judgment in case of **Magma General Insurance Com. Ltd. V/s. Nanu Ram @ Churhu Ram, 2018 (18) SCC 130 and United India Insurance Co. Ltd. V. Satinder Kaur @ Satwinder Kaur, 2020 SCC Online 410 (SC) (FB) and N.I.A Com. V/s. Smt. Somwati, 2020 (9) SCC 644** has categorically held that in addition to spouse, the children are entitled for parental consortium in case of death of a parent and Filial consortium is the right of the parents to compensation in case of death of a child and the amount to be awarded for loss of consortium will be as per the amount fixed in Pranay Sethi's case.

14.2 At the cost of repetition, it is observed that the Hon'ble

Supreme Court has categorically held in Pranay Shethi's case that there shall be 10% rise in the conventional heads i.e. loss of estate, loss of consortium, funeral expenses, after the lapse of every three years. Hence, this Tribunal has incorporated 10% rise in the said conventional heads as per the directions of the Hon'ble Supreme Court in Pranay Shethi case.

14.3 Considering the fact that deceased was having wife and five sons, **Rs.2,64,000/- (Rs.44,000/- X 6)** can be awarded under the head of Spousal Consortium and Parental Consortium, respectively.

14.4 Herein this case, the accident took place on 29.01.2014 and the deceased died on 18.03.2014 and he was under constant treatment and he took his last breathe on 18.03.2014 i.e. he lived for 01 month and 18 days after the accident. That as the deceased was constantly under treatment and taking treatment till he lived, it is but obvious that his whole family would have been paralyzed for looking after him as well as for his treatment. The family members of the deceased would have been constantly engaged in his treatment and would have suffered great pain and mental agony as well as the deceased himself would have suffered great pain, shock and sufferings. Hence, considering the injury sustained by the deceased and the period of treatment and the evidence of medical treatment taken by the deceased, if **Rs.1,00,000/-** is allowed under the head of Pain, Shock and Sufferings and for attendant charges, transportation and rich diet, then it would be just and proper ***(F.A. No.23/2014 Gujarat High Court, Royal Sundaram Alliance Insurance Co. Ltd. Vs. Jayantibhai Hemchandbhai Panchal, considered)***.

14.5 Claimants have also produced medical bills amounting to Rs.12,63,488/- *vide* Exh.30, Exh.31, 32, which are original bills with respect to the treatment of the deceased and are not rebutted by the opponents. Therefore, considering the treatment of the deceased, claimants are entitled to get **Rs.12,75,000/-** under the head of medical Expenses.

14.6. Hence, the applicants are entitled to the total amount of compensation as under :

PATICULARS	AMOUNT
FUTURE LOSS OF DEPENDENCY	RS.3,36,000/-
LOSS TO ESTATE	RS.00,16,500/-
FUNERAL EXPENSES	RS.00,16,500/-
CONSORTIUM	Rs.02,64,000/-
Pain, shock and sufferings, Rich died, attendant, etc.	Rs.00,75,000/-
Medical Expenses	RS.12,75,000/-
TOTAL AMOUNT OF COMPENSATION	**RS.19,83,000/-**

<u>LIABILITY :</u>

15. Ld. Advocate for the claimants submitted that from evidence available on record and from the deposition recorded in the claim petition, it clearly appears that the deceased was travelling with the goods in the above referred Bolero Pick-Up and, therefore, the opponent No.2 – insurance company of the Bolero Pick-Up may be held liable to pay the amount of compensation. He further submitted that, as it is proved by the claimants that the deceased was travelling in the vehicle, as an owner of the goods, therefore, the insurance company of the vehicle cannot be exonerated from its liability to pay compensation.

16. Ld. Advocate for the opponent No.2 - insurance company of Bolero submitted that the deceased was an unauthorized passenger and was travelling in the said vehicle not as the owner of the goods and, therefore, he urged this Tribunal to exonerate the insurance company. Ld. Advocate for the opponent No.2 further submitted that from the evidence adduced by the claimants, insurance company has proved that the deceased was travelling in the goods vehicle, as an unauthorized passenger, there is no need to prove the said fact by leading separate evidence in this connection by the insurance company.

17. I have heard Ld. Advocates for the respective parties on the point of liability of the opponent No.6 - insurance company.

18. At the outset it is required to be noted that in the claim petition, insurance policy of Bolero Pick-Up is produced by the claimants (Exh.38) and if the insurance policy is carefully perused, it becomes clear that the seating capacity of the said vehicle is only 03 and the insurance company had not received the extra premium covering risk of non fare paying passenger. It is also required to be noted that there is no evidence on record to suggest that the deceased had specifically hired the vehicle for transportation of the so called goods i.e. agricultural seeds. At this stage it is worthy to note that the claimants have not produced the copy of FIR and panchnama of scene of offence as well as charge-sheet but it were produced by the insurance company. The bare perusal of the complaint (Exh.35), depicts the fact that as many as 15 to 20 persons including the complainant and the deceased namely, Shri Tarshi Meghabhai Ravtani (Koli) were traveling in the said Bolero Pick-Up after attending post death ceremony of their near relative.

There is no mention in the FIR that the deceased was traveling in the said Bolero Pick-Up along with goods. At this stage it is worthy to note that the claimants have examined Shri Mohanbhai Sadulbhai Koli *vide* Exh.22 who has deposed that after performing the post death ceremony of his near relative he was traveling in the said Bolero Pick-Up along with other persons and fare per head was negotiated with the driver of the said Bolero Pick-Up. He has also deposed that when the Bolero Pick-Up reached near the bus stop of village Nilpar, at that time the person standing on the road with the bale had occupied the seat near the driver, after fixing the fare and the bale was kept in rear the portion of the Bolero Pick-Up. He has also deposed that later on he came to know that the said person was the deceased, Tarshibhai Meghabhai. In his cross examination he has categorically admitted that they had visited any place for the purpose of purchasing any articles or items and they were returning from the *Smashanyatra*. He has also admitted that there were no goods in the jeep and only human being were travelling. Hence, the evidence of this witness is not corroborated from the averments mentioned in the FIR and it appears that this witness is afterthought witness and he has given deposition to help the claimants to prove their case that the deceased was traveling in the said Bolero along with a single bale. Considering the FIR, this Tribunal holds that the deceased was already traveling in the said Bolero along with others after returning from the post death ceremony of his near relative. It is also worthy note here that the bare perusal of the panchnama of scene of offence, depicts the fact that no goods i.e. bale full of seeds was lying at the place of accident or in the body of the offending vehicle. Therefore, there is ample evidence available on record to suggest that the deceased was travelling in the above referred vehicle as an unauthorized passenger and not as the owner of the so called goods. It is also worthy to note that there is no evidence available on record to suggest that the deceased had specifically hired the Bolero Pick-Up for the transportation of a bale filled with seeds. In fact as per the case of the claimant the deceased boarded from the Nilpar village and he had hired the Bolero Pick-Up for transportation of a bale filled with seeds.

19. It is also required to be noted that from the FIR, it clearly appears that about 20 persons were travelling in the above mentioned Bolero Pick-Up and as per the claim of the claimants only a bale filled with seeds was being carried in the said Bolero Pick-Up. Therefore, the facts of the present case is identically similar to the case, which was there before the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd. Vs. Chholleti Bharatamma, 2008 (1) SCC 423** where in it has been categorically held that the amended provisions of the M. V. Act, 1994 does not contemplate that a goods carriage shall carry a large number of passengers with small percentage of goods, as considerably the insurance policy covers the death or injuries either of owner of goods or his authorised representative.

20. In view of the ratio laid down in the case of **Chholleti Bharatamma (supra)** the contention raised by the Ld. Advocate for the claimants is turned down and contention raised by the Ld. Advocate for the opponent No.2 - insurance company is accepted and, therefore, the opponent No.2 - insurance company is required to be exonerated from its liability by holding that the deceased was travelling in the goods vehicles as unauthorised passenger and the

claimants have failed to prove that the deceased was travelling in the offending vehicle with the goods, as defined u/s 2(13) of the M V Act.

21. At this stage reference is required to be made to ratio laid down by the Full Bench of the Hon'ble Supreme Court in the case of **New India Assurance Company Ltd. v/s. Asha Rani, AIR 2003 SC 607**, wherein it has been held that the insurer is not liable to pay compensation to the dependents of the deceased passenger while the deceased passenger was travelling in a goods vehicle. Even Hon'ble Supreme Court has not passed an order of Pay and Recover in the said case.

21.2 In view of the above referred discussion, it becomes clear that claimants have failed to prove that the deceased was travelling in the said vehicle as an owner of the goods and, therefore, no liability can be fastened upon the insurance company. Therefore, in above view discussion of facts and evidence, since the deceased was traveling, as an unauthorized passenger in the said vehicle which is admittedly a goods vehicle and as the risk of the deceased was not covered under the insurance policy, I hold that opponent No.2 - Insurance Company of the offending vehicle is not liable to pay compensation to the claimants. Bare perusal of the insurance policy of dumper (Exh.38) depicts the fact that the opponent No.1 is the owner of the said vehicle and the said fact is not denied by the opponent No.1 and hence, only opponent No.1 - driver cum owner of the offending vehicle is liable, whereas, opponent No 2 - insurance company of the offending vehicle is exonerated.

22. One more issue, which is worth noting here is, it is the specific case of the claimants that the deceased was traveling with a bale filled with seeds. It is also pleaded and deposed by the claimants that deceased used to earn his livelihood by doing agricultural work and it is not the case of the claimants that deceased was doing the business of selling and buying the agricultural seeds. Thus, it becomes clear that the deceased was not engaged in buying and selling of the agricultural seeds and, therefore, the bale filled with the seeds cannot be treated as goods as defined under Section 2(13) of the M. V. Act.

22.1 Reference is required to be made to the definition of goods as provided under Section 2(13) of the Act, which reads as under.

> *2(13) "goods" includes livestock, and anything (other than equipment ordinarily used with the vehicle) carried by a vehicle except living persons, but does not include luggage or personal effects carried in a motor car or in a trailer attached to a motor car or the personal luggage of passengers travelling in the vehicle."*

22.2 Bare perusal of the definition of the goods depicts the fact that goods are different than the luggage. The goods denotes is identifiable article known in the market as goods and marketable in the market as such and also to become goods, it must be something which can ordinarily come to market, to be bought and sold and is known to the market as such. Admittedly, in the present case, the bale filled with the agricultural seeds was not meant for the purpose of sell in the market, as the deceased was not engaged in buying and selling of agricultural seeds. Along with this, it is also required to be observed that it is the specific case of the applicant that deceased was traveling with a single bale filled with agricultural seeds and, therefore, it becomes clear that the deceased was not traveling with many bales filled with the agricultural seeds. Thus, a single bale filled with seeds cannot be termed as goods as defined under Section 2(13) of the Act and, therefore, I do not agree with the submission advanced on behalf of the Ld. Advocate for the claimants that deceased was traveling in the offending vehicle along with goods.

INTEREST :

23. The claimants have prayed for interest at the rate of 18% per annum. Therefore, I have sought guidance from the judgment of the Hon'ble Constitutional Bench of the Hon'ble Apex Court, in the case of **Pranay Sethi (supra)**, wherein, the Hon'ble Apex Court has allowed interest at the rate of 09% p.a. Hence, I hold that the claimants are entitled for interest at the rate of 09% p.a. The Issue No.2, is, therefore, answered accordingly and the following final order is passed in the interest of justice.

-: O R D E R :-

[1] The present Motor Accident Claim Petition is partly allowed.

[2] The claimants are entitled to recover the amount of **Rs.19,83,000/- (Rupees Nineteen Lac Eighty Three Thousand Only)** from **opponent No.1,** along with proportionate costs and interest at the rate of **09% (Nine Percentage)** per annum from the date of filing the claim petition, till the amount is realized.

The opponent No.2 is exonerated.

[3] The aforesaid opponent is directed to deposit the awarded amount within 30 days.

[4] The amount of compensation shall be disbursed among the applicants in the proportion that the applicant No.1 shall get 50% whereas the rest of the applicants shall get 10% each.

[5] Considering the huge amount of medical treatment, out of the deposited amount, 40% of major applicants shall be invested in fixed deposit scheme in any Nationalized Bank in the name of claimant for a period of Five years and remaining 60% amount be paid by way of Account Payee cheque to the said claimants.

[6] In case of minor claimants, if any, out of the deposited amount, 100% shall be invested in fixed deposit scheme in any Nationalized Bank in the name of claimants through their natural guardian for a period of Five years or minor become major whichever comes later.

The claimants shall not be entitled to get any loan, advance or withdrawal or can create any encumbrances on the aforesaid FDR without prior permission of this Tribunal. However, interest accrued from time to time on the said FDR may be paid in cash to the claimants.

[7] **The Claimant/s are directed to submit following details within one week from today:**

1. Name of the claimant(s)/ victim(s) with address

2. Name of the Bank & Branch Bank IFSC Code Account No(s). of the claimant(s)/victim(s)

3. The first page of the bank pass-book, which will compulsorily contain the photograph of the claimant(s)/victim(s), duly attested by the Bank concerned, should be made available.

4. Wherever the claimant(s)/victim(s) are impleaded as respondents, before the claims tribunal, their account details, as above, will have to be furnished.

[8] The insurance companies and transport corporations and such other entities shall deposit the amount as directed in circular dated 27.12.2021 in Account Name:- M**ACT District Court BHUJ, Account No.00000040691817448, IFS Code: SBIN0000334** and on such deposits being made, the insurance companies and transport corporations and such other entities shall submit a letter to the Registry of District Court enclosing a copy of the said bank advice, in prescribed format as above, as per which the deposit was made to the bank account of the Claims Tribunal, to enable the Claims Tribunal to keep tab on the deposits made and the MACPs for which they were made, which is a fundamental need for a smooth implementation. The Payment advice for remittance of compensation is as under:

PAYMENT ADVICE FOR REMITTANCE OF COMPENSATION From:

.... Bank ....

To:

.... Court ....

We confirm remittance of compensation as follows on instructions of .... (insurance company/transport corporation):-

1. MACP Number
2. On the file of (Claims Tribunal Name)
3. Place
4. Date of award
5. Amount Deposited
6. Income Tax Deduction at Source, if any Unique Transaction Reference (UTR) No.

8.1 The Insurance Companies, Transport Corporations and such other entities making such deposit, shall also send a copy of the payment advice in the aforesaid Clause to the Claims Tribunal concerned and serve a copy of the same on claimants or their counsel as the case may be.

8.2 Insofar as tax deduction at source is concerned, Form 16-A of the Income Tax Act should be provided to the claimant/victim on whose behalf the deduction has been made so as to enable him to seek refund of tax deducted.

Award be drawn accordingly.

Pronounced in open Tribunal today on this 4th of October, 2022.

Sd/-

(H. S. MULIA)
Motor Accident Claims Tribunal,
(Main), Kachchh at Bhuj.
(Code : GJ00915)