

Exh. A.59
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**BEFORE THE MOTOR ACCIDENT CLAIMS
TRIBUNAL (MAIN) & PRINCIPAL DISTRICT JUDGE,
KACHCHH AT BHUJ.**

(1) **M.A.C.P. NO.413/2014 (MAIN)**

(2) **M.A.C.P. NO.415/2014**

(1) **M.A.C.P. NO.413/2014 (MAIN)**

(1) Gafurbhai Kasam Bhalot,
Age 43, Occupation : Labour,

(2) Kulsumben Gafurbhai Bhalot,
Age 40, Occupation : Household,

R/o. Both at Salt Port, Kandla, Tal. Gandhidham.

..... Applicants

**CLAIM FOR RS.35,00,000/- U.S. 166 OF THE
M.V. ACT.**

(2) **M.A.C.P. NO.415/2014**

Husain Hasambhai Bunchad,
Age 20, Occupation : Labour,
R/o. Salt Port, Kandla, Tal. Gandhidham.

..... Applicant

**CLAIM FOR RS.2,00,000/- U.S. 166 OF THE
M.V. ACT.**

VERSUS

- (1) Ram Khetaram,
Age Adult, Occupation : Driving,
R/o. C/o. Rishi Kira Roadlines,
Plot No.8, Sector No.8, Nr. Post Office,
Gandhidham – Kachchh.
- (2) Rishi Kiran Roadlines,
Plot No.8, Sector No.8, Nr. Post Office,
Gandhidham – Kachchh.
- (3) The New India Assurance Co. Ltd.,
Shanti Chambers, Station Road,
Bhuj – Kachchh.
- (4) Jusab Kasu Bhalot,
Age : Adult, Occupation : Business,
R/o. Tunavadi, Tal. Anjar.

..... Opponents

ADVOCATES:-

1. L.A. Mr. M. B. Khatana for the applicants.
2. L.A. Mr. K. H. Vaishnav for the opponent No.3.
3. L.A. Mr. M. P. Siju for the opponent No.4.
4. Opponents No.1 and 2 absent.

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

1. The present claim petitions have been filed by the claimants for the award of compensation u/s. 166 of the M.V. Act on account of the vehicular accident which occurred on 16.09.2014 involving Tanker No.GJ 12 AY 9336 and motorcycle No.GJ 12 BQ 9162. Since both these claim

petitions have arisen out of the same accident, the evidence is recorded in MACP No.413/ 14 and both matters are consolidated.

2. In order to understand and appreciate the case of the claimants, a few relevant facts are required to be highlighted.

The accident occurred on 16.09.2014 opposite Rishi Kiran Company on a road at Kandla. It is alleged that on the fateful day, the deceased Abdul Gafurbhai Bhalot, son of applicants in main claimant was going on motorcycle No. GJ 12 BQ 9162 carefully and observing the rules of the road and the applicant in the consolidated matter was a pillion rider. Around 10.30 A.M., they had reached near the place of accident. Meanwhile, the said Tanker No.GJ 12 AY 9336 came from the opposite direction in rash and negligent manner. He lost control over the steering, the tanker came on wrong side of the road and dashed and collided with the said motorcycle. Due to the impact, the deceased and the injured claimant sustained multiple injuries. Out of them, the motorcycle driver succumbed to the injuries and the other sustained grievous injuries. That

the accident took place due to the sheer negligence of the tanker driver.

3. Ld. advocate appearing for the opponent No.3, the insurance company of Tanker has submitted written statements in the respective claim petitions and the Ld. Advocate has vehemently contended the claim of the claimants. During the course of arguments, he inter alia contended that the fact regarding negligence on part of the driver was not admitted. The fact regarding the death of the deceased and injuries sustained by the applicant – claimant and regarding calculation of compensation were also not admitted. It is contended that the applicants have claimed higher side of the amount for the loss of income, medicines, etc., which cannot be allowed as prayed for. There was no negligence on the part of the driver. It is also contended that the driver of the said motorcycle himself was negligent and hence, the quantum of negligence on his part shall be considered. There is a breach of terms and condition of policy. The insurance company has prayed to dispose of the claim petition as dismissed against it.

4. The following issues are required to be decided for determination of the claim petition, which are as under.

[1] Whether the applicants prove that the deceased died and the injured claimant was injured by rash and/or negligent act of the driver of vehicle involved in the incident?

[2] Whether applicants are entitled to compensation from the opponents or any of them ? if yes, what amount and from whom?

[3] What Award ?

5. My findings to the above Issues, for the reasons given below, are as under:—

[1] In affirmative.

[2] Partly in affirmative. As per final order.

[3] As per final order.

—: R E A S O N S :—

6. Before I proceed to appreciate the evidence, I would like to make reference of the important evidence received by the Tribunal during the trial.

Particulars	Exh.
F.I.R.	38
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Charge—sheet	40
Driving licence of opponent no. 1	54

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Medical bills worth Rs.74,754/ –	57

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Affidavit of applicant	32
Injury treatment certificate	48
Discharge summary	49
CT Scan of brain	50
X-ray cervical spine lat view	51
Medical bills worth Rs.13,959	52
Gate pass of applicant	53

ISSUE NO. 1 & 2 COLLECTIVELY:

7. Heard Ld. Advocates for the parties and perused the record. I have also taken into consideration the written arguments submitted by the opponent insurance company.

So far as the factum of negligence is concerned, the F.I.R. is lodged against the opponent no.1 for causing the accident. The fact is also corroborated from the panchnama of local place of accident. Further, the police after investigation has submitted charge-sheet against the opponent no.1. Moreover, the opponents No.1 and 2 have not appeared before the Tribunal and the opponents have not led evidence in rebuttal. Whereas, the applicant in consolidated matter who is eye witness to the incident has also corroborated the facts of the petition in his evidence and from his cross examinations nothing rebuttal has come on record. Hence, in above view of facts and circumstances, I hold that the accident caused due to the sole negligence on the part of the opponent no.1 – driver of Tanker no.GJ 12 AY 9336.

QUANTUM :-

MACP No.413/2014 (Main)

8. Ld. advocate Mr. Khatana for the applicants submitted that at the time of accident the deceased was aged 22 years of age at the time of accident and he was working as a contractor cum supervisor at Kandla and

earning Rs.15,000/- p.m. and his income would have increased in future in due course of time. He has also submitted that after the accident the deceased was admitted in the Sterling Hospital at Gandhidham on 16.09.2014 and as there was no change in his condition, he was discharged from the hospital on 20.09.2014 for treatment at higher centre. But, the deceased died on 21.09.2014 while taking treatment at Shanti Multispeciality Hospital, Rajkot. The applicants have spent more than Rs.1,00,000/- for medical treatment of the deceased. They deceased had also suffered great pain, shock and sufferings. They also paid Rs.30,000/- for ambulance charge for bringing deadbody from Rajkot to Gandhidham. Hence, he has requested to allow compensation as prayed for.

9. The submission is vehemently opposed by Ld. Advocate for the insurance company and submitted that the applicants have not proved any cogent documentary or oral evidence regarding income of the deceased and also not produced sufficient medical bills or transportation

charge bills. Therefore, he submitted to reject the claim of the applicant.

10. I have heard Ld. Advocates for the parties and perused the papers on record of this matter. So far income of the deceased is concerned, the deceased was 22 years of age. Though it is claim of the applicants that the deceased was engaged in contractor cum supervisory work but they have not led any cogent evidence in this regard. Therefore, considering the year of accident and the age of the deceased, if the income of the deceased is believed to Rs.6,000/- p.m. and Rs.72,000/- p.a. then it would be just and proper.

11. Now, adding 40% towards future prospective income since the deceased was about 22 years of age and falling under the category of self employed as per Pranay Sethi case (supra), the amount would come to **Rs.1,00,800/-** p.a. At this juncture I would like to mention here that the deceased was unmarried and there are only parents as dependents of the deceased. Therefore, Hence, $\frac{1}{2}$ is required to be deducted from the above amount

towards his personal expenses. Therefore, the amount would come to **Rs.50,400/-** p.a.. Considering the age of the deceased, as per the judgment of the Hon'ble Apex Court in Sarla Verma's case, the multiplier of 18 could be applied. Hence, the future loss of income would come to **Rs.9,07,200/-**. Moreover, as per the ratio laid down by the Hon'ble Apex Court in Pranay Sethi's case, the applicants are also entitled for Rs.15,000/- towards loss to estate and Rs.15,000/- towards the cremation expenses. The applicants have produced medical bills for Rs.74,754/- Exh.57. Therefore, the applicants are entitled for **Rs.74,800/-** on this count.

12. At this juncture, it is worth to mention here that in the present case the deceased was immediately admitted in Sterling Hospital, Gandhidham and thereafter he was shifted to Rajkot. That the accident took place on 16.09.2014 whereas the deceased died on 21.09.2014. The post-mortem was performed at Rajkot. There is death certificate issued by Shanti Multispeciality Hospital, Rajkot Exh.46 dated 21.09.2014. Hence, the deceased would have suffered great pain, shock and sufferings during these

days. Hence, if **Rs.25,000/-** is allowed on this count then it would be just and proper. It is obvious that the deadbody of the deceased would be required to be brought to Gandhidham therefore, I also allow lumpsum **Rs.15,000/-** on this count. Hence, the applicants are entitled to the total amount of compensation as under :

Rs.9,07,200/-	Loss of dependency.
Rs.0,15,000/-	Loss to estate.
Rs.0,15,000/-	Cremetion expenses.
Rs.0,74,800/-	Medical bills.
Rs.0,25,000/-	Pain, shock and sufferings.
Rs.0,15,000/-	For Ambulance charge

Rs.10,52,000/-TOTAL

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13. Ld. Advocate Mr. Khatana has submitted that at the time of accident, the applicant was aged about 20 years of age and he was earning Rs.4,000/- p.m. at the time of accident by way of doing labour work at Kanla Port and due to accidental injuries, there is reduction in earning capacity of the applicant. The submission is vehemently opposed by the Ld. Advocate for the insurance company that the applicant has shown higher side of income and not led any evidence in this regard.

14. The applicant has tendered his affidavit for evidence and he has adhered to his version in the claim petition. It appears from the record that the applicant was admitted in Sterling Hospital, Gandhidham for two days. Various reports, X-rays had been performed. The fact is corroborated from the Injury certificate issued by Sterling Hospital at Exh.48. From the medical papers, it appears that the applicant had not sustained permanent injuries. The applicant has also not produced disability certificate. Therefore, the compensation as prayed for cannot be allowed. However, I would like to mention here that due to the accidental injuries, the applicant was treated as indoor patient for two days. He would have suffered mental pain, agony. The applicant has also produced medical bills worth Rs.13,959/- under Exh.52. Therefore, if lumpsum amount of Rs.25,000/- is allowed then it would meet the end of justice. Hence, I hold that the applicant is entitled for Rs.25,000/- as compensation.

15. The opponent No.1 was driver, No.2 was owner and the opponent No.3 was the insurer of the said vehicle therefore, hence, the opponents No.1, 2 and 3 are held

liable to pay the awarded amount to the claimants jointly and or severally together with interest at the rate of 09% p.a. Hence, I answer issue no.1 and 2 accordingly and the following order is required to be made in the interest of justice.

–: O R D E R :–

1. The claim petitions of this batch u/s.166 of the M.V. Act are allowed accordingly in the following terms.

<u>Claim Case Number</u>	<u>Amount</u>
(1) MACP NO.413/2014	Rs.10,52,000/–
(2) MACP NO.415/2014	Rs.00,25,000/–

2. The opponent No.1, 2 and 3 are held liable to pay the above amount of compensation to the claimants and they are directed to deposit the said amount with 09% p.a. interest from the date of institution of claim petitions until the said amount is realized with proportionate costs within one month from the date of the order.

The opponents No.4 is exonerated.

3. The aforesaid opponents are directed to deposit the interest amount as follows:–

- (a) First spread the interest amount over to the relevant financial years for the period from the date of filing the claim petition till the date of deposit,
- (b) Thereafter, if the interest for any particular financial year exceeds

Rs.50,000/–, separately deposit before this Tribunal the amount liable to be deducted at source under the provisions of Sec194A (3)(IX) of the Income Tax Act, 1961. Such amount shall not, however, straightway, be paid to the Income Tax Department.

- (C) Produce before this Tribunal a statement of computation of interest by spreading the amount over the relevant years from the date of claim petition till the date of deposit if the interest for any particular financial year exceeds Rs.50,000/– and also request the Tribunal to treat the amount as a separate deposit.

4. On such deposit being made, first of all deficit Court Fees and the amount of interim compensation paid to the claimants, if any, shall be deducted from the awarded amount.

5. So far as M.A.C.P. No.413/14 is concerned, the awarded amount shall be disbursed among the applicants in equal share.

Out of the deposited amount, 70% shall be deposited in the nearest Nationalized Bank in the name of the respective applicants for a period of 05 years and the remaining 30% share shall be paid By way of Account Payee cheque only.

The concerned Bank is directed not to grant any loan, advances or withdrawal against the said F.D.R. without obtaining prior permission of this Tribunal. However, the claimant will be entitled to draw quarterly interest on the amount of deposit in the F.D.Rs.

6. The claimant in MACP No.415/2014 shall be paid the awarded amount in cash by way of Account Payee Cheque.

7. Award shall be drawn accordingly.

:: Original of this judgment shall be kept in MACP No.413/2014 and copy thereof shall be kept in MACP No.415/2014.

Pronounced and signed in the open Tribunal on today 28th day of August, 2018 at Bhuj – Kachchh.

Sd/ –
(**Mehul M. Gandhi**)
Motor Accident Claim Tribunal
(Main), Bhuj–Kachchh.

Code : GJ–00210

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