

**Ex.:57**

Received on	20.09.2018
Registered on	20.09.2018
Decided on	29.11.2019
Duration	Y.01 M.02 D.09

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUX.2)
PATAN, AT RADHANPUR**

M.A.C.P. No.412 of 2018**Applicants:~**

Legal heirs and representative of Laxmanbhai Kanjibhai Patel(Chaudhari),

1. Lilaben Laxmanbhai Patel(Chaudhari),
Age:39, Occu:Household,
(Wife of the deceased)
2. Sureshkumar Laxmanbhai Patel(Chaudhari),
Age:21, Occu:Study,
(Son of the deceased)
3. Bharatbhai Laxmanbhai Patel(Chaudhari),
Age:20, Occu:Study,
(Son of the deceased)
4. Kanjibhai Bhembhai Patel(Chaudhari),
Age:68, Occu:Retired,
(Father of the deceased)
5. Meghaben Kanjibhai Patel(Chaudhari),
Age:68, Occu:Retired,
(Mother of the deceased)

All residing at Ratanpura, Ta.Kankrej,
Dist.B.K.

V E R S U S

Opponents:-

- 1 Rakeshkumar Deepakkumar Thakkar,
Age:Major,
Resi.at-D/109, Shakinagar, Ta.Gandhidham,
Dist.Bhuj-Kuchchh.
(Owner of Trailer No.GJ-12-AU-8433)
- 2 Magma HDI General Ins.Co.Ltd.,
Off.Add.-1st Floor, Sun City House, Opp.Kotak
Mahindra Bank, Mithakhali Six Road,
Navrangpura, Ahmedabad.
(Ins. Co.of Trailer No.GJ-12-AU-8433)

Appearance:-

For the Applicant	Ld.Adv. Mr.J.H.Chaudhari
For the oppo. No.1	Ex-parte
For the oppo. No.2	Ld.Adv. Mr.M.D.Pandya

**Petition u/S 166 of the M.V.Act.
Claim Valued at Rs.25,00,000/-**

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

1. Applicants have filed this claim petition u/s 166 of M.V.Act for getting compensation of Rs.25,00,000/-.

2. The present claim petition emanates from the following facts :-

According to applicants, on 5/8/2018 at about

8.00 p.m., the deceased Laxmanbhai was going to visit his farm on his motor cycle No.GJ-8-BE-6067 and when the deceased reached on Radhanpur-Thara National Highway road and far about 200 mtr. of village-Bhadiya towards Radhanpur, at that time the motor cycle slipped and due to that deceased sustained normal injuries and some one called 108 emergency van, then on stretcher 108 emergency van personnel and other individuals taking the injured into the 108 emergency van, at that time from Thara, the driver of trailer No.GJ-12-AU-8433 drove his trailer in rash and negligent manner and dashed behind the van from behind and due to that deceased succumbed to his injuries during the treatment.

3. The Notice of the claim petition have served upon the opponents. The opponent No.1 has served through news paper although not appeared, hence ex-parte order has been passed against opponent No.1. The Opponent No.2-insurance company appeared through its Id.Advocate and filed written statement vide Exh.50, wherein denied fact of petition, age, income of the deceased and also contended that from the it clearly transpires that an accident took place due to sole negligent on the part of stationary vehicle driver of the 108

van No.GJ-18-GA-0298 and so, the insurance company is not liable for any liability

4. Applicants have produced following evidence.

Sr. No.	Description of Document	Ex. / Mark
1	Oral Evidence of appl.No.1-Lilaben	18
2	Copy of FIR	19
3	Copy of Panchnamas	20 to 22
4	Copy of P.M.Report of deceased	23
5	Copy of injury cert.	24
6	Copy of receipt of laboratory test	25
7	Copy of medical bills	26
8	Copy of adhar card of deceased	27
9	Copy of village form No.8-A,7 & 12	28
10	Bills of sold goods	29 to 32
11	Cert.issued by Ratanpura Dudh Utpadan Sahkari Mandali Ltd. & details of filled milk	33
12	Copy of R.C.Book-GJ-08-BE-6067	34
13	Copies of adhar cards of applicants	35 to 39
14	Copy of ration card	40
15	Copy of R.C.Book-GJ-12-AU-8433	41
16	Copy of ins.policy-GJ-12-AU-8433	42
17	Copy of summons/notice in news paper	43
18	Copy of receipt from kutch uday	44
19	Copy of Final Report Abscond summary	56

5. Id.Advocate for the applicants has submitted Closing pursis for evidence vide Ex.46. Id.Advocate of opponent No.2 was present on 11/10/2019, but he has not given evidence and he

has also not given adjournment application, hence right for evidence of opponent No.2 has been closed. Heard, argument for ld.Advocate of applicant. Ld.Advocate of opponent No.2 was present on 15/11/2019, but he has not argued and he has also not given adjournment application for argument, hence right for argument of opponent No.2 has been closed on dtd.15/11/2019, but thereafter, ld.Advocate of applicant has submitted final police report (abscond summary) on 26/11/2019 on the stage of judgment and matter taken on board at that time, ld.Advocate from opponent No.2 proxi Advocate has made endorsement for no objection to production and no objection to exhibit, hence final report has exhibited as Exh.56 and ld.Advocate of applicants further argued in matter and ld.proxi advocate of opponent no.2 has also argued in the matter.

6. Following issues have been framed vide Ex.17.

1. Whether it is proved that the deceased sustained injuries and died on account of rashness or negligence in driving on the part of the driver of the vehicle involved in the accident?

2. What amount, if any, the claimant is

entitled to get by way of compensation and from which of the opponents?

3. What order and award ?

7. My findings to the above issues are as under :

1. Partly in affirmative,
2. Partly in affirmative,
3. As per final order.

~: R E A S O N S :~

8. Issue No.1 :-

It is the case of the applicants that on 5/8/2018 at about 8.00 p.m., the deceased Laxmanbhai was going to visit his farm on his motor cycle No.GJ-8-BE-6067 and when the deceased reached on Radhanpur-Thara National Highway road and far about 200 mtr. of village-Bhadiya towards Radhanpur, at that time the motor cycle slipped and due to that deceased sustained normal injuries and some one called 108 emergency van, then on stretcher 108 emergency van personnel and other individuals taking the injured into the 108 emergency van, at that time from Thara, the driver of trailer No.GJ-12-AU-8433 drove his trailer in rash and negligent manner and dashed behind the van from behind and due to that deceased succumbed to his injuries during the treatment.

9. While deciding the point of negligence, it has to be born 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.**

10. In support of the claim petition, applicant No.1 has filed affidavit of chief examination at Ex.18, wherein she reiterated the averments made in the claim petition. Applicants have produced copy of FIR at Exh.19 and panchnamas at Exh.20 to 22. Ld.Advocate of opponent No.2 has cross-examined the applicant No.1, wherein she deposed that, she having no knowledge about the accident. Opponents have not entered in the witness box and not examined witnesses to prove and point out that the driver of vehicle was not negligent in the accident and opponent No.2 has filed written statment, but opponent No.2 has not filed affidavit as per order 6 Rule 15(4) of C.P.C., and opponent No.2 has not complied provision of Order 6 Rule 15(4) of C.P.C., hence adverse inference is required to be drawn against

opponents and accordingly same are drawn. If we perused copy of FIR, it transpires that the complaint given by driver of 108 van driver, wherein he stated that on 5/8/2018 at about 20/09, he got order from Ahmedabad emergency Responce Center that at village Bhadiya patiya, Ta.Radhanpur on Thara highway road one bike rider got accident, so, they reached at the spot in 108 van No.GJ-18-GA-0298, at the spot a moter cycle No.GJ-08-BE-6067 was lying and a man oozing blood from his head, so, they lifting him on stretcher and other persons also reached to help in this act, at that time trailer No.GJ-12-AU-8433 came from Thara highway and dashed to the 108 van from behind and due to the accident Visabhai Ramabhai Patel, Samirbhai Shantilal Nayee, Kirtibhai Raysanbhai Prajapati, Prabhatbhai Hemabhai Thakor, Valabhai Desai sustained injuries, so, the complainant informed 108 Ahmedabad about it and thenafter Ambulance of Radhanpur Referral Hospital came with staff and taken injured to the Radhanpur and thereafter for further treatment referred to the Dharpur and driver of trailer no.GJ-12-AU-8433 left his trailer and fled from the spot and on the next day he came to know that, amongst the injured Visabhai Ramabhai Patel and Samirbhai Shantilal Nayee died during the treatment and said accident

occurred on 20.30 o'clock near village-Bhadiya patiya. Looking to the place of panchnama at Exh.20, it is transpires that the accident occurred on Radhanpur-Thara highway road at village Bhadiya patiya about 200 mtr. towards Radhanpur, looking to the said place, the road is 15 ft. widen in both sides and a divider is also situated in the middle of road and a dried blood stains in the extent of about 2 ft. on the road is visible and on the cut(Khancho) of village Bhadiya and on the middle of the road about 10 mtr long wheel marks of applied brakes are visible. Further, looking to the copy of panchnama at Exh.21 of trailer no.GJ-12-AU-8433, wherein a 14 wheeler trailer is situated and its front glass and door sides glasses are also not seen there, said trailer's left side iron of bumper side is appears in bent condition and its wheels are slightly rubbed from the divider and said trailer having damage of Rs.25,000/- whereas looking to the copy of panchnama at Exh.22 of Ambulance 108 van no.GJ-18-GA-0298, its front side no any damaged visible to the van, its back side a brake light part of right side visible in broken condition and the said van having damages of Rs.15,000/- due to the accident. At the spot a motor cycle No.GJ-08-BE-6067 is also lying, its

right side head light is visible in broken condition and no other damages to the said motor cycle.

Looking to the aforesaid discussion it is transpires that, the deceased Laxmanbhai Kanjibhai was already suffered head injuries at village Bhadiya patiya on 5/8/2018 due to his motor cycle No.GJ-08-BE-6067 got slipped on the road and thenafter someone called at about 20.09 o'clock to Ambulance 108 van No.GJ-18-GA-0298 for taking injured for treatment to hospital and a trailer No.GJ-12-AU-8433 came from Thara highway and dashed with the van, due to that, the driver of van and other persons who were helping the injured to lift in the van were injured, so, the driver asked help to 108 Ahmedabad and said accident occurred on 20.30 hrs., thus, as per FIR it is transpires that the deceased suffered injuries on first time on 20.09 hrs. due to motor cycle got slipped and when the van reached there, at that time the trailer dashed to the van on 20.30 hrs., in between about 21 minutes gap lapsed and looking to the final report of police at Exh.56 and looking to the p.m.report at Exh.23, wherein column No.17,18 & 19, therein mentioned other injuries over the body of the deceased. Looking to the medical certificate at Exh.24, wherein

mentioend due to accident occured with trailer, therefore, looking to the scenario of present case and peculiar facts and circumstances of present matter, I am of the opinion that the first time the deceased suffred head injury due to his motor cycle slipped on the road, but, thereafter trailer dashed to the van and due that accident, the deceased sustained grievous injuries and thenafter the deceased died, and looking to the second accident with trailer at that time much time lapsed to take him to hospital and as per injury certificate at Exh.24, it is also transpires that on 5/8/2018 at about 8.45 the deceased referred to Civil Hospital, Patan for further treatment and looking to the medical receipt dtd.6/8/2018 at Exh.25 and medical bills at Exh.26, and looking to the P.M.Report at Exh.23, it is also transpires that the deceased has took treatment and thereafter, post mortem conducted on 6/8/2018 at about 10.35 a.m. and cause of death is shock due to head injury is also mentioned. Therefore, over all discussion, it is transpires that, the first accident occurred due to motor cycle slipped and deceased was driving his motor cycle at the time of first accident and first time accident occurred due deceased's own negligence and second time accident was occurred

when 108 van was taking him to the hospital, a trailer dashed to van, and at that time as per FIR, the blood oozing from his head, therefore, deceased was sustained serious injuries from both the accident and thereafter, deceased died on next day i.e. 6/8/2018 during the treatment. Therefore, looking to the aforesaid discussion and first accident occurred due to negligence of the deceased and in present case second accident also occurred, hence, deceased was himself 33% negligent in the present matter and looking to the peculiar fact and circumstances of present case and driver and owner of 108 van have not joined and looking to the aforesaid discussion 108 van (vehicle) also involved in the incident, but driver and owner have not joined in the petition and for that applicants and opponents have not given any explanation, therefore, looking to the present scenario of accident and peculiar fact and circumstances and evidence of present case, it is the case of composite negligence between trailer No.GJ-12-AU-8433 and 108 van No.GJ-18-GA-0298 for 67% negligence in the accident and looking to the peculiar facts and circumstances of present case, this findings is considered and limited to only present matter. Therefore, considering above referred discussions, I decide **issue No.1 partly**

in affirmative.

Issue No.2 :

11. It is the case of the applicants that, at the time of accident, the deceased was doing farming and earning Rs.3,00,000/- per year and also involved in the business of animal husbandry and from that earning Rs.2,62,992/- per year and thereby in total the deceased was earning Rs.4,00,000/- per year, to prove it, applicants have produced village form No.8-A,7 & 12 at Exh.28, and looking to the said revenue record, it is transpires that village form No.8-A of the account No.344 of moje Ratanpura(Unn), village form No.7 of moje Ratanpura(Unn) of revenue survey No.235 and village form No.12 of moje Ratanpura(Unn) of revenue survey No.235 in the name of deceased, whereas other revenue records are on the name of Patel Kanjibhai Bhembhai, and looking to the most of the revenues, wherein entry of hypothecate with Dena Bank and the Ratanpur Seva Sahkari Mandali, the Ratanpura(Unn) Seva Sahkari Mandali Ltd. and Ratanpura Unn Seva Sahkari Mandali Ltd. over the agriculture land, and applicants have produced Bills of sold crops and produced certificate of Ratanpura(Unn) Dudh Utpadak Sahkari Mandali Ltd., wherein mentioned

deceased was filling milk in the dairy and in the year 2017-18 and filled milk of Rs.2,62,992/- and the applicants have not examined signatory authority of said issuance documents i.e. crop bills and certificate of Ratanpura Dudh Utpadak Mandali. Therefore, looking to the above mentioned documentary evidence and the applicant No.1 in her deposition denied that her husband's yearly income was Rs.4 lacs at the time of accident from animal husbandry and farming, and looking to the revenue record, it is not transpires actual yearly income of the deceased from revenue record and applicants also could not proved the income of deceased was earning Rs.4 lacs or more than Rs.4 lacs, and looking to the aforesaid bills and certificate issued by Ratanpura (Unn) Dudh Utpadak Sahkari Mandali Ltd. also could not proved and also could not proved that the deceased was skilled person. But, it is also cardinal principle of law that when there is no proof of income of victim of the motor accident, his/her monthly income can be assessed on the basis of the prevailing minimum wages. In the case of Govind Yadav v/s N.I.I.Com., reported in 2012 ACJ 28(SC), para No.17 it has been held that when there is no proof of income, income of the deceased or injured claimant shall be decided by taking into consideration prevailing

minimum wages. Since, accident occurred in the August of 2018, minimum wages for the month August of 2018 is required to be taken into consideration. As per the said notification Rs.8,117.20 ps. is minimum wages. Therefore, deceased's monthly income is assessed Rs.8,117.20 ps. and opponents have not produced any evidence to rebuttal this fact.

12. It is the case of the applicants, that at the time of accident, deceased was aged about 40 years. To prove it, applicant has produced copy of Adhar card vide Exh.27, wherein mentioned date of birth as 1/1/1976 and accident occurred on 5/8/2018, hence, at the time of accident deceased was 42 years 07 months and 04 days old and opponents have not produced any evidence to rebuttal the evidence on oath. Therefore, applicant would be entitled to get multiplier of '14', as held by the Hon'ble Apex Court in "**Sarla Verma & Ors. V/s. Delhi Transport Corporation & Anr.**" reported in" 2009 A.C.J. 1298."

13. Considering fact and circumstances of present case and Ratio laid down by Hon'ble Supreme Court in SLP (Civil) No.25590 of 2014, in case of "**National Insurance Company Ltd. Vs. Pranay Sethi & Ors.**", 25% amount is added monthly

income of the deceased, hence adding 25% i.e. Rs.2,029.30 ps. in Rs.8,117.20 ps., net amount comes to **Rs.10,146.5 ps.**

14. It is not in dispute that the present claim petition was preferred by five applicants and as per the ratio laid down in judgment of "**Sarla Verma & Ors. V/s. Delhi Transport Corporation & Anr.**" reported in" 2009 A.C.J. 1298." and the deceased was married person, $1/4^{\text{th}}$ amount of Rs.10,146.5 ps., comes to Rs.2,536.62 ps. and net amount which falls in the share of applicants, comes to Rs.7,609.88 ps. p.m. In view of the above referred discussion, the applicants are entitled for following amount under the head of future loss of income : $(\text{Rs.7,609.88 ps.} \times 12 \times 14 \text{ multiplier}) = \text{Rs.12,78,459.84 ps.}$ In round figure Rs.12,78,460/-.

15. Considering above discussion, evidence, peculiar fact and circumstances of present case and as per ratio laid down in in case of "**National Insurance Company Ltd. Vs. Pranay Sethi & Ors.,**" applicants are entitled **Rs.40,000/-** for loss of consortium, **Rs.15,000/-** under the head of loss of estate, and **Rs.15,000/-** towards funeral expenses. In view of the above referred discussions, applicants are entitled for following amount as

compensation :-

Rs.	12,78,460/-	Future loss of dependency.
Rs.	15,000/-	Loss of estate
Rs.	40,000/-	Loss of consortium
Rs.	15,000/-	Funeral expenses
Rs.	13,48,460/-	Total Compensation
Rs.	4,44,991.8 ps.	33% self negligence
Rs.	9,03,468.2	Total Compensation
Rs.	9,03,468/-	Total compensation in round figure

16. Therefore, applicants are entitled to get Rs.9,03,468/-.

17. It is noteworthy to mention at this stage that the present claim petition has been filed by five applicants. This Tribunal is empowered to distribute the awarded amount to the dependents. Therefore, on perusal of the entire record, looking the facts and circumstances of the case and in view of afore mentioned discussion, this Tribunal thinks that it would be appropriate if 40% awarded amount be granted to applicant No.1 i.e. widow of the deceased, 52% of the awarded amount be equally distributed between the applicants No.2, 3 & 5 and 8% of the awarded amount be granted to applicant No.4-father of the deceased.

18. **Liability:**~ So far the liability is concerned, as per discussion in Issue No.1, the trailer

No.GJ-12-AU-8433 & 108 Van No.GJ-18-GA-0298 are 67% composite negligent and applicants have not joined driver and owner of 108 Van No.GJ-18-GA-0298, whereas deceased himself 33% negligent, who was riding the motor cycle No.GJ-08-BE-6067, as per R.C.Book of trailer No.GJ-12-AU-8433 vide Exh.41, the Opponent No.1 is owner of trailer No.GJ-12-AU-8433, and said trailer No.GJ-12-AU-8433 and said trailer is insured with opponent No.2 and its policy is produced vide Exh.42 and it was in existence at the time of accident. Therefore, the Insurance Company i.e. opponent No.2 would be liable to indemnify the owner i.e. opponent No.1 in turn satisfy the award of this Tribunal. Therefore, the Opponents No.1 & 2 are jointly and severally liable to pay amount of the compensation.

19. INTEREST:~ In the case of New India Assurance Company v. Rajkumar Dharamsing, First Appeal No.73/2014 dated 18-02-2014, the Hon'ble High Court has granted 9% interest, and considering fact and circumstances of this case, I award simple interest at the rate of 9% per annum from the date of the application till realization. In view of above discussion I decide Issue No.2 partly in affirmative, and following is the order in the interest of justice for Issue No.3.

~: O R D E R :~

20. The claim petition is partly allowed.
21. Applicants are entitled for Rs.9,03,468/- (Rs.Nine Lac Three Thousand Four Hundred Sixty Eight Only) from the opponents. The opponents are jointly and severally liable to pay awarded amount to the present applicants with the proportionate cost and with simple interest at the rate of 9% per annum, from the date of the claim petition till realization.
22. The opponents are hereby directed to deposit awarded amount within 30 days of the order.
23. Deficit court fees stamp, if any, be recovered from the awarded amount and interim amount if paid be adjusted.
24. Applicant No.1 is entitled to get 40% of the awarded amount, 52% of the awarded amount be equally distributed between the applicants No.2, 3 & 5 and 8% of the awarded amount be granted to applicant No.4-father of the deceased.
25. Thereafter, out of the awarded amount of Applicants, 70% amount be invested as fixed deposit in any nationalized bank on the name

of applicants separately for period of five years. The remaining 30% amount be paid to the applicants separately by account payee cheque/s forthwith.

26. The applicants will not be entitled to get any loan, advance or withdrawal or can create any in encumbrances on the aforesaid fixed deposit receipt without prior permission of this Tribunal. However periodical interest accrued from time to time on the fixed deposits be paid to claimants.

27. Opponents to bear own cost.

28. Award be drawn accordingly.

Signed and pronounced in the open Court today.

Date:29.11.2019
Place: Radhanpur

(Hitesh Harilal Gandhi)
M.A.C.T.[Aux.2]
Patan at Radhanpur
Code No :GJ 00659

vss