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**BEFORE THE COURT OF 6TH ADDITIONAL DISTRICT & SESSIONS JUDGE MR. K. J. MODI AND MOTOR ACCIDENT CLAIMS TRIBUNAL, (AUXI.8) AHMEDABAD (RURAL) @ MIRZAPUR.**

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***M.A.C.P No. 828 of 2002.***

***Exh.***

**APPLICANTS :**

The heirs of deceased Gandabhai Dhanjibhai Patel :-

1) Savitaben Gandabhai Patel wife of Kaniyalal Patel, Age about 35 years, Hindu by Religion, occupation : House hold, Residing at Village : Aahundra, Taluka : Kadi, District : Mehsana.

2) Mandaben Gandabhai Patel wife of Ghanshayambhai Patel, Age about 32 years, Hindu by Religion, occupation : House hold, Residing at : Aangol, Taluka : Kadi, District : Mehsana.

3) Naynaben Gandabhai Patel wife of Sureshbhai Patel, Age about 30 years, Hindu by Religion, occupation : House hold, Residing at : Khavda, Taluka : Kadi, District : Mehsana.

**VERSUS**

**OPPONENTS :**

1) Ramesh Ranaji Thakor (Driver)
Residing at : Nr. Water Tank, Khodiyar nagar, Taluka : Daskroi, Dist. Ahmedabad.

2) Kamleshkumar Jugalkumar Gupta (owner), Residing at : 1762, Kamdhenu Society, Village : Oagnej, Taluka : Daskroi, District : Ahmedabad.

3) United India Insurance Co. Ltd. DO-3, Unior Co-op. Investment Building, Ashram Road, Ahmedabad.

Claim Petition Under Section-166 of Motor Vehicle Act, 1988 for claim of Rs.07,00,000/- (Rupees Seven Lac only).

**APPEARANCE:**

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1. Mr. D. T. Dave, Ld. Adv. for applicant.
2. Opponent No. 1 party in person.
3. Mr. J. R. Jaiswal, Ld. Adv. for opponent no. 2.
4. Mr. Y. N. Shah, Ld. Adv. for opponent no. 3

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## J U D G M E N T

**1)** Present claim petition is preferred by the applicants/claimants under Section-166 of Motor Vehicle Act, 1988 (hereinafter referred as 'the Act') for getting compensation of Rs.07,00,000/- (Rupees Seven Lacs only only).

**2)** The present claim petition emanates from the following facts :

**2.1)** That on 24.06.2002 at noon about 1.45 hrs. the deceased Gandabhai Dhanjibhai Patel was pillion rider on scooter no. GJ-V-3483 and the said scooter was plying by his friend Vishnubhai Joitaram Patel with due care and caution at moderate speed and on the left side of the road and when they were passing near the Bus Stand of Village : Dantali the opponent no. 1 has driven his Jeep registration No. GJ-1-HH-1451 in full speed and in rash and negligent manner came from the wrong side and dashed front side of his Jeep with the said scooter and in result the Vishnubhai as well as Gandabhai Dhanjibhai Patel were fallen down from the scooter on to the road and both have sustained grievous injuries and Gandabhai Dhanjibhai was succumbed to said injuries during the course of treatment. The offence was registered at I-Cr No. 142 of 2002 in Sarkhej Police Station.

**3)** The process of the claim petition was served upon the opponents. The opponent No. 1, has appeared party in person and has filed written statement at Exh. 23, wherein it has been contended that applicant claim is excessive, exorbitant and illegal. It is contended that he was driven his Jeep at his side in moderate speed, where as the driver of scooter has driven his scooter in full speed in rash and negligent manner and dashed with his Jeep. It is admitted that accident was occurred between his Jeep and Scooter but has denied all other contentions of the present application. Whereas, the opponent no. 2 has filed his written statement at Exh. 18, whereas the opponent no. 3 has filed it's written statement at Exh. 16. These both opponent have denied the age, income and fact of the claim petition and averments made in the claim petition. Over and above that aforementioned defences it is also averred by the opponents that accident was occurred due to rash and negligent act of the plier of the motor cycle - scooter and as the accident was not occurred due to rash and negligent driving on the part of the driver of the Jeep i.e. opponent no. 1 So, the opponents are not liable to pay any compensation to applicant.

**3.1)** From the above referred pleadings, this Tribunal had framed following issues at Ex. 24.

**ISSUES**

1. Whether the applicants prove that, deceased died due to rash and negligent driving of the driver of the vehicle involved in the vehicular accident as contended ?
2. Whether the applicants are entitled to get compensation? If yes, what amount and from whom ?
3. What award and order ?

**4)** My findings to the above issues are as under :

1. In affirmative.
2. Party in affirmative, as per final order.
3. As per final order.

**REASONS**

**5) Issue No.1 :-**

I have heard learned Advocate for the claimant as well as opponents and took into the consideration the written argument produced on record by the claimants. Read the R&P and took into consideration the evidence as well as citations produced by the parties. The issue No.1 is pertaining to negligence on the part of driver of offending vehicle Jeep and the plier of the motorcycle-scooter. Negligence means failure to exercise required degree of care expected from prudent driver. It is settled principle of law that the burden to prove negligence on the part of driver of offending vehicle is on the claimants who asserts it. The claimants have to produce reasonable evidence to show that the accident took place due to negligence on the part of driver of the vehicle involved in the accident. Thereafter, burden shifts upon the other side to explain the circumstances under which the accident occurred. In the claim petition for the accident under the Motor Vehicle Act strict proof of negligence is not necessary. Negligence can be established even on the basis of preponderance of probabilities. It is true that sometimes direct evidence to prove the negligence is not available and therefore, principle of res ipsa loquiter i.e. things speak for themselves is required to be kept in mind at the time of deciding negligence. This settled principle of law has been frequently and exhaustively discussed in various judgments of Hon'ble Superior Courts as well as our Hon'ble High Court, as for instance Hon'ble Apex Court in the case of **Gujarat State Road Transport Corporation v/s Kamlaben Valjibhai Vora reported in 2001(3) GLR 2528.** In the backdrop of above discussion, let us now decide whether the driver of the vehicle involved in the accident i.e. Jeep registration no. GJ-1-HH-1451 was solely negligent in driving on the date of accident as alleged by the claimants or the plier of the motorcycle-scooter has also played his negligent part in the occurrence of the said accident.

In order to prove negligence, the applicants/ claimants have produced the following documents :-

| Sr.No. | Particulars of Evidence | Exh. Marks |
|---|---|---|
| 1 | An affidavit of chief examination of applicant no.1 along-with cross examination on behalf of opponent | 28 |
| 2. | A copy of FIR | 41 |
| 3. | A copy of Panchnama | 42 |
| 4. | A death certificate of deceased Gandalal Dhanjibhai Patel. | 43 |
| 5. | A copy of P.M. Report. | 44 |
| 6. | A copy of pedigree of deceased Gandabhai Dhanjibhai Patel. | 45 |

**5.1)** The applicant has submitted closer pursis at Ex. 33, whereas the opponent no. 3 Insurance Co. has submitted closer pursis at Ex. 37. The opponent no. 3 Insurance Co. has produced the copy of policy at Ex. 36.

**5.2)** To decide the negligency in the said accident, first of all pleadings of the applicants are required to be looked in to. It is pleaded That on 24.06.2002 at noon about 1.45 hrs.

the deceased Gandabhai Dhanjibhai Patel was pillion rider on scooter no. GJ-V-3483 and the said scooter was plying by his friend Vishnubhai Joitaram Patel with due care and caution at moderate speed and on the left side of the road and when they were passing near the Bus Stand of Village : Dantali the opponent no. 1 has driven his Jeep registration No. GJ-1-HH-1451 in full speed and in rash and negligent manner came from the wrong side and dashed front side of his Jeep with the said scooter and in result the Vishnubhai as well as Gandabhai Dhanjibhai Patel were fallen down from the scooter on to the road and both have sustained grievous injuries and Gandabhai Dhanjibhai was succumbed to said injuries during the course of treatment.

**5.2)** 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.

**5.3)** Claimant no. 1 has filed an affidavit at Exh.28 and supported the averments made in the claim petition. The claimant no. 1 has been cross examined on behalf of opponent no. 3 Insurance Co.. In the cross-examination the claimant has admitted that she was not eyewitness to the accident and also admitted that claimants are the married daughter of the deceased and they are married prior to the accident. She has also admitted that they have not produced any documents to establish the age of deceased as well as the income of deceased. She has also admitted that they have not produced any documents to establish the future income of the deceased. She has also admitted that they have not produced any documents to establish the various cost which are described in her affidavit-cum-examination-in-chief. Now, if we appreciate the evidence in the present case the eye witness to the accident has not been examine by either parties i.e. on behalf of the applicant or on behalf of the opponent. The claimants have also produced the copy of F. I. R at Exh. 41. The first information has been lodged by the opponent no. 1 who is the driver of offending vehicle and in FIR it has been clearly mentioned by himself that as the break is not applied to his vehicle, his vehicle went to the wrong side and dashed with the scooter and it is also mentioned that one man is died on the spot. Hence, bare reading of F. I. R, clearly depict the fact opponent no. 1 has driven his vehicle in rash and negligent manner and as the break is not applied the same is went wrong side and dashed with the scooter. Hence, the driver of the offending vehicle i.e. Jeep has driven his bus in full speed and in negligent manner dashed with the scooter and in result the plier of the scooter and deceased who was pillion rider were fall down and deceased scummed to injuries sustained by him. Further the opponent no. 3 Insurance Company has not examined the opponent No.1, driver of the offending vehicle to prove and point out that he was not negligent in causing the said accident. Since Insurance Company has failed to examined the driver of offending vehicle namely, opponent no. 1, the driver of the Jeep, adverse inference is required to be drawn, accordingly same is drawn. Therefore, I held that the opponent No.1, driver of the offending vehicle Jeep was solely negligent in causing the accident. In view of the above referred discussions, I decide issue No.1 in affirmative.

**6) Issue No. 2 :**

While discussing the Issue no.1, it is proved that driver of the Jeep bearing registration No. GJ-1-HH-1451 was solely negligent for the happening of this accident and because of the negligent driving of the driver of the Jeep, present accident occurred, thus, he is wrong doer and his act is a tortuous act, and therefore, the claimants are entitled for compensation. It is submitted on behalf of the Insurance Co. that as the claimants are married daughter to the deceased and they are married prior to the accident, they are not to dependents of the deceased. Therefore, they are not entitled for the compensation but this contentions has no merits in it because even if there was no dependence, there is a loss to the estate and a person who is a legal representative but not dependent can yet be a beneficiary of the estate. As per Sec. 165(c) provides that an application for compensation arising out of an accident may be made where death has resulted from the accident, by all or any of the legal representatives of the deceased. Hence, married daughter is a legal representative and she is certainly entitled to claim compensation. Hence, the principles contained in the verdict of the Hon'ble SC in case between Manjuri Bera Vs. Oriental Insurance Co. Ltd. and Anr. reported in 2007(10) SCC 643 is not helpful to the present claimants because in para - 9 & 10, the Hon'ble SC has observed that :-

"*9. According to Section 2(11) of CPC, "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued. Almost in similar terms is the definition of legal representative under the Arbitration and Conciliation Act, 1996 i.e. under Section 2(1)(g).*

*10. As observed by this Court in Custodian of Branches of BANCO National Ultramarino V. Nalini Bai Naique (1989)2 SCR 810, the definition contained in Section 2(11) CPC is inclusive in character and its scope is wide, it is not confined to legal heirs only. Instead it stipulates that a person who may or may not be legal heir competent to inherit the property of the deceased can represent the estate of the deceased person. It includes heir as well* *as persons who represent the estate even without title either as executors or administrators in possession of the estate of the deceased. All such persons would be covered by the expression* '*legal representative*'. *As observed in Gujarat State Road Transport Corporation v. Ramanbhai Prabhatbhai and Anr. (1987) 3 SCR 404, a legal representatives is one who suffers on account of death of a person due to motor vehicle accident and need not necessarily by a wife, husband, parent and child.*

Hence, this Tribunal is hereby hold that the claimants as legal representative of the deceased are entitled for compensation u/s. 166 of the Motor Vehicle Act. In a fatal case arising out of a vehicular accident compensation is broadly divided into pecuniary loss and non-pecuniary loss. Pecuniary loss consists of : Loss of income, expenditure incurred for funeral, medicines, treatment charges, if deceased has received treatment after the accident and before the death, transportation charges, etc., and non-pecuniary loss will include Pain, Shock and Suffering, if the deceased has survived for some time after the accident and before his death, loss of estate, loss of expectation of life, loss of consortium, etc.

**6.1)** It is the case of the claimants that at the time of accident deceased was doing the agricultural activities and was earning Rs.4,000/- per month. It is also stated that if the accident not occurred the deceased will live for atlest 85 to 90 years of his age and he would earned Rs.7,000/- per month in future. The claimants have not produced any documentary evidence to establish the income of deceased. However, it is required to be noted that Tribunal cannot expect from the poor labourer or small time vendor to maintain his books of account with respect to his monthly income and expenditure. Considering the fact that accident occurred in the year 2002 and further considering the nature of the work performed by the claimant, monthly income of the claimant is assessed Rs.3,000/- per month.

**6.2)** It is the case of the claimants that at the time of accident deceased was aged about 58 years. In support of their above referred claim, claimants have not produced any documentary evidence to establish that deceased was having the age of 58 at the time of accident but this fact has not been challenged by the opponents and hence, therefore, the age of the deceased at the time of accident is assessed as 58 years. Since the age of the deceased is assessed as 58 years, claimants are entitled for multiplier of 9.

**6.3)** Ld. Advocate for the claimants has submitted that claimants are entitled for compensation calculated on the basis of prospective income of the deceased. While the learned Advocate for the opponent has argued that no prospective income can calculated and granted. Considering the ratio laid down in the case of **National Insurance Co. Ltd. Vs. Pranay Sethi and Ors. In Special Leave Petition (Civil) delivered on 31.10.2017** by the Hon'ble Supreme Court, it has been held that .....

*58. The seminal issue is the fixation of future prospects in cases of deceased who is self employed or on a fixed salary. Sarla Verma (supra) has carved out an exception permitting the claimants to bring materials on record to get the benefit of addition of future prospects. It has not, per se, allowed any future prospects in respect of the said category.*

*59. Having bestowed our anxious consideration, we are disposed to think when we accept the principle of standardization, there is really no rationale not to apply the said principle to the self employed or a person who is on a fixed salary. To follow the doctrine of actual income at the time of death and not to add any amount with regard to future prospects to the income for the purpose of determination of multiplicand would be unjust. The determination of income while computing compensation has to include future prospects so that the method will come within the ambit and sweep of just compensation as postulated Under Section 168 of the Act. In case of a deceased who had held a permanent job with inbuilt grant of annual increment, there is an acceptable certainty. But to state that the legal representatives of a deceased who was on a fixed salary would not be entitled to the benefit of future prospects for the purpose of computation of compensation would be in apposite. It is because the criterion of distinction between the two in that event would be certainty on the one hand and staticness on the other. One may perceive that the comparative measure is certainty on the one hand and uncertainty on the other but such a perception is fallacious. It is because the price rise does affect a self employed person; and that apart there is always an incessant effort to enhance one's income* *for sustenance. The purchasing capacity of a salaried person on permanent job when increases because of grant of increments and pay revision or for some other change in service conditions, there is always a competing attitude in the private sector to enhance the salary to get better efficiency from the employees. Similarly, a person who is self employed is bound to garner his resources and raise his charges/fees so that he can live with same facilities. To have the perception that he is likely to remain static and his income to remain stagnant is contrary to the fundamental concept of human attitude which always intends to live with dynamism and move and change with the time. Though it may seem appropriate that there cannot be certainty in addition of future prospects to the existing income unlike in the case of a person having a permanent job, yet the said perception does not really deserve acceptance. We are inclined to think that there can be some degree of difference as regards the percentage that is meant for or applied to in respect of the legal representatives who claim on behalf of the deceased who had a permanent job than a person who is self employed or on a fixed salary. But not to apply the principle of standardization on the foundation of perceived lack of certainty would tantamount to remaining oblivious to the marrows of ground reality. And, therefore, degree test is imperative. Unless the degree test is applied and left to the parties to adduce evidence to establish, it would be unfair and inequitable. The degree test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude* *to follow a particular pattern of life, etc., an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.*

*60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.*

*61. In view of the aforesaid analysis, we proceed to record our conclusions:*

*(i) The two Judge Bench in Santosh Devi should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in Sarla Verma, a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate Bench.*

*(ii) As Rajesh has not taken note of the decision in*

*Reshma Kumari, which was delivered at earlier point of time, the decision in Rajesh is not a binding precedent.*

*(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*

*(iv) In case the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.*

*(v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of Sarla Verma which we have reproduced herein-before.*

*(vi) The selection of multiplier shall be as indicated in the Table in Sarla Verma read with paragraph 42 of that judgment.*

*(vii) The age of the deceased should be the basis for applying the multiplier.*

*(viii) 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.*

***<u>Further the Hon'ble SC in Civil Appeal No. 9581 of 2018 (arising out of SLP (Civil) No. 3192 of 2018) between Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors dated : 18.09.2018 has held that :-</u>***

*8.6 The MACT as well as the High Court have not awarded any compensation with respect to Loss of Consortium and Loss of Estate, which are the other conventional heads under which compensation is awarded in the event of death, as recognized by the Constitution Bench in Pranay Sethi (supra)*
*The Motor Vehicles Act is a beneficial and welfare legislation. The Court is duty-bound and entitled to award "just compensation", irrespective of whether any plea in that behalf was raised by the claimant.*
*In exercise of our power under Article 142, and in the interest of justice we deem it appropriate to award an amount of Rs.15,000/- toward Loss of Estate to Respondent no. 1 and 2.*

*8.7 A constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.*
*In Legal parlance, "consortium' is a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'.*
*The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual*

*relations with the deceased spouse.*

*Spousal consortium is generally defined as right pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection and aid of the other in every conjugal relation.*

*Filial consortium is the right of the parents to compensation if the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased The greatest agony for the parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

*Consortium is a special prism reflecting changing norms about the status and worth of actual relationship. Modern jurisdictions world-over have recognized that the value of the child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdiction therefore permis parents to be awarded compensation under loss of consortium on the death of child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*

*The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parents has lost their minor child,or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of of Filial Consortium.*

*Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.*

*A few High Courts have awarded compensation on this count. However, there was no clarity with respect to the principles on which compensation could be awarded on loss of Filial Consortium.*

*The amount of compensation to be awarded as consortium will be governed by the principles of awarding compensation under 'Loss of Consortium' as laid down by* ***Pranay Sethi (supra).***

*In the present case, we deem if appropriate to award the father and the sister of the deceased, an amount of Rs.40,000/- each for loss of Filial Consortium.*

**6.4)** In view of the ratio laid down by Hon'ble Apex Court in the case **National Insurance Co. Ltd. Vs. Pranav Sethi & Ors. SLP (Civil) No. 25590/2014 ,** as the deceased was aged 58 years at the time of accident, and as the deceased is self employed the claimants are entitled to get 10% prospective income. Therefore, the income of deceased would be Rs. 3300/- (Rs. 3000 + 300, 10% prospective income).

**6.5)** As the deceased have 3 dependents the deduction of 1/3 towards personal living expenditure is considered. Therefore, 1/3 amount is required to be deducted as personal expenditure of the deceased. 1/3 amount of Rs.3,300/-, comes to Rs.1,100/- and the net amount which falls in the share of claimants, comes to Rs.2,200/- (Rs.3,300/- minus Rs.1,100/-).

**6.6)** In view of the above referred discussion, claimants are entitled for following amount under the head of future loss of income : (Rs.2,200/- x 12 months x 9 multiplier) = Rs.02,37,600/-.

**6.7)** As per Judgement given by Hon'ble Apex Court in case of **National Insurance Co. Ltd. Vs. Pranay Sethi & ors. SLP (Civil) No. 25590/2014, decided on 31.10.2017 and and Magma General Insurance Co. Ltd. Vs. Nanu Ram Alias Chuhru Ram & Ors. SLP (Civil) No. 3192 of 2018,** claimants shall also to be entitled to get Rs. 15,000/- toward loss of estate, Rs.40,000/- towards loss of Consortium, Rs.15,000/- towards funeral expenses.

**6.8)** In view of the above referred discussions, claimants are entitled for following amount as compensation :

| | |
|---|---|
| Rs.02,37,600=00 | As loss of future income |
| Rs. 15,000=00 | As loss of estate. |
| Rs. 15,000=00 | As funeral expenses. |
| Rs. 40,000=00 | Amount of consortium. |
| Rs.03,07,600=00 | Total amount of compensation |

**7)** As decided in Issue No. 1, the alleged accident was occurred due to rash and negligent driving on the part of driver of Jeep i.e. opponent no. 1 and as the opponent no. 2 is the owner of the said vehicle Jeep, they are liable to pay the compensation to claimants. The said offending vehicle Jeep is insured with opponent no. 3 Insurance Co. and on the date of the accident the said policy was in existence. The said policy is produced at Ex. 36. The commencement of said policy for the purpose of the Act is from 15:20 o'clock on 26.02.2002 to Midnight of 25.02.2003. The accident in question was occurred on 24.06.2002. Hence, the opponent no. 3 Insurance Co. is liable to indemnify the dues by way of compensation of opponent no.

2. In view of above referred discussions claimants are entitled for Rs.03,07,600=00 (Rupees Three Lac Seven Thousand Six Hundred only) and, therefore, I decide issue No. 2 partly in affirmative.

**7.1)** Hence, on the basis of the discussion made above and findings on the issue 2, I pass the following final order:-

## O R D E R

1. This petition is hereby allowed with proportionate costs and interest against the opponent.
2. The claimants do recover Rs.03,07,600=00 (Rupees three lac seven thousand six hundred only) from the opponent, together with running interest at the rate of 9 % p.a. from the date of petition till realization of the amount along with proportionate costs of the petition.
3. The opponent is hereby directed to deposit in the office of this Tribunal the above awarded amount, after deducting the amount of interim compensation, if any, paid u/s.140 of M.V. Act, within one month from the date of this order. The opponent is directed to follow the ratio laid down in the judgment of **Hansaguri P. Ladhani Vs. Oriental Insurance Co. Ltd., reported in 2007 GLH 2291** as far as the TDS is concerned.
4. On depositing the above amount of award by the opponent in this Tribunal, the amount of Court Fee Stamp, if recoverable on the awarded amount, be

recovered from the awarded amount and the same be taxed as the costs of the petition. After above deductions remaining amount be distributed to claimants in equal share.

5. Out of mount of share of all the claimants 70 % be deposited in any nationalized bank situated near the residence of the respective claimants for a period of 5 years and remained 30 % amount be given to the claimants by account payee cheque after due verification.

6. Award be drawn accordingly.

7. Investments, as above, shall be encumbered with following terms and conditions :

   1. The said amount shall be invested with any of the nationalized Bank of the choice of the petitioners in Fixed Deposit Receipt Account.
   2. The interest on the above Fixed Deposit Receipt Account as and when it becomes payable monthly, quarterly, half yearly or annually, as agreed to, shall be paid to the claimant no. 1.
   3. No facility by way of loan, overdraft or cash credit shall be available on the above investment and the Bank shall not allow any such transaction, encumbering the investment or on the basis of the security of the same.
   4. The Bank shall not permit the petitioners to withdraw the said amount prior to its maturity or without prior permission of this Tribunal.
   5. The Bank shall intimate to this Tribunal the particulars of the investment viz., number of Fixed Deposit Receipt, name of holder and the date of maturity

immediately after issuance of Fixed Deposit Receipt in this case.

6. At the end of the period aforesaid, the Bank shall pay the principal amount to the payee, the concerned petitioners.

Pronounced in the open Court on this day of 12th day of October, 2018.

[Kaushikkumar Jashvantlal Modi]
6th Additional District & Sessions Judge & MACT (Aux..), A'bad (R),
*Code : GJ00597.*