सत्यमेव जयते

Exh.	36
Received on	05/09/2022
Registered on	05/09/2022
Decided on	07/02/2026
Duration	Y M Days 03 05 06

IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL

(AUX) & 6TH ADDITIONAL DISTRICT JUDGE,

KACHCHH – BHUJ.

M.A.C.P. No. 433/2022

HEIRS OF DECEASED KHAMBHALA DEVABHAI DALABHAI

(1) KHAMBHALA RATUBEN DEVABHAI,
Wife, Aged 44, Occupation : Household,

(2) KHABHALA AAHABHAI DEVABHAI,
Son, Aged 22, Occupation : Labourer,

(3) RABARI MASHARU DEVA,
Son, Aged 18, Occupation : Pvt. Service,
All Residing at Ganeshnagar,
Bhuj-Kachchh **.....Claimants**

Vs.

(1) AASHUTOSH TRANSPORT CO.
(Owner of Truck No.GJ-12-Y-9373)
Office at : S.222, Plot No. 25
Saini Complex, Sector 8
Gandhidham-Kachchh

(2) BAJAJ ALLIANZ GENERAL INSURANCE CO.LTD
[Insurance Co. of Truck No.GJ-12-Y-9373]
Office at : Katira Commercial Center,
RTO Relocation Site,
Bhuj-Kachchh **......Opponents**

Claim u/s.166 of the M.V. Act for getting compensation of Rs.29,00,000/-.

A P P E A R A N C E :

1. L.A. **Mr. M.B.Khatana** for the claimants.
2. Served but remained absent for opponent No. 1
4. L.A. **Mr. Y.P.Sharma** for opponent No. 2

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

(1) The claimants have filed the present claim petition under Section 166 of the Motor Vehicles Act, 1988, seeking compensation of **Rs. 29,00,000/- (Rupees Twenty Nine Lakh Only)** for the fatal injuries sustained by the deceased, *late Khambhala Devabhai Dalabhai*, in the vehicular accident dated 27.07.2022. They claim costs and interest at 12% per annum from the date of filing the petition until realization, against the opponents.

(2) *The brief facts of the present claim petition are that* on 27.07.2022, the deceased, ***Khambhala Devabhai Dalabhai***, was employed as a Security Guard at the Godown of B.S.R.K. (CPL) company. While performing his duty during the night shift, he was responsible for overseeing the vehicles. He was resting on a cot place at the designated resting spot for security guards in the parking area. At that time, the driver of the Truck No.GJ-12-Y-9373 drove the vehicle in rash, negligent and careless manner, without regard for human life. The driver lost control over the Truck and rammed into the spot where the deceased was resting on the cot. This caused a serious accident and due to the severe injuries sustained, he passed away. This accident occurred solely due to the high speed and negligent driving of the Truck driver. The claimants have therefore filed the present claim petition against the opponents under Section 166 of the Motor Vehicles Act, 1988.

(2.2) Upon service of notice, Opponent No. 1 neither appeared nor filed a written statement.

(2.3) Opponent No. 2, the Insurance Company of the offending Truck, appeared through the learned Advocate Mr. Sharma and filed a written statement at Exhibit 31, *inter alia* denying the factum of the accident. It also denied the age, income, and occupation of the deceased at the time of the accident. It is submitted that, the driver of the offending vehicle did not hold a valid and effective driving licence, constituting a clear breach of the insurance policy terms and conditions, entitling the Insurance Company to exoneration on this ground. It therefore prayed that the Insurance Company be exonerated from liability to pay compensation

(3) In view of the pleadings of the parties this Tribunal had framed the following issues at Exh.13.

[1] Whether petitioner prove that alleged death caused due to the rash and negligent use of the Motor vehicle ?

[2] Whether petitioners prove that they are entitled for any compensation from the opponents ? If yes, what amount of compensation should be allowed ?

[3] What is order ?

(4) My findings to the above Issues are as under:-

[1] In the affirmative.

[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, claimants and opponents have produced following oral and documentary evidence on record:

Exh.	Particulars
14	Affidavit filed by Rabari Mashru Deva under O.18, R. 4 of C.P.C

Exh.	Description of Documents
17	FIR
18	Panchanama of place of offence.
19	Inquest Panchanama
20	P.M. Report
21	Driving Licence of Driver of Truck
22	R.C.Book of Truck
23	Insurance Policy of Truck

24	Aadhar card of Deceased
25	Pan Card of Deceased
26	Revenue Record like Form No,. 7/12, 8A and 6

The opponent No. 2- Insurance Company has produced the status of Driving Licence driver of Truck at Exh. 35 and thereafter, produced the closing pursis at Exh. 34

ISSUE NO.1 & 2 COLLECTIVELY :

(6) Heard Ld. Advocates for the parties and perused the record.

(7) I have heard Ld. Advocates for the parties on the point of negligence of the driver of the vehicle. The claimant Rabari Mashru Deva, son of the deceased has deposed on oath *vide* Exh. 14 and stated that, on 27.07.2022, the deceased, ***Khambhala Devabhai Dalabhai***, was employed as a Security Guard at the Godown of B.S.R.K. (CPL) company and while performing his duty during the night shift, he was responsible for overseeing the vehicles. He has further stated that, deceased was resting on a cot place at the designated resting spot for security guards in the parking area and at that time, the driver of the Truck No.GJ-12-Y-9373 drove the vehicle in rash, negligent and careless manner, without regard for human life. The driver lost control over the Truck and rammed into the spot where the deceased was resting on the cot. This caused a serious accident and due to the severe injuries sustained, he passed away.

(8) While determining the issue of negligence, it must be borne in mind that negligence need only be established in a claim petition under Section 166 of the Act on the touchstone of preponderance of probabilities, and not beyond reasonable doubt. The aforementioned principle has been laid down by the Hon'ble Apex Court in ***Bimla Devi v. H.R.T.C., AIR 2009 SC 2819, and Parmeshwari Devi v. Amir Chand, (2011) 11 SCC 635.***

(9) I have carefully examined the FIR (Exh. 17). It clearly establishes that the FIR was lodged against the driver of the Truck bearing Registration No. GJ-12-Y-9373. A plain reading of the FIR reveals that the driver of the Truck No.GJ-12-Y-9373 drove the vehicle in rash, negligent and careless manner, without regard for human life and due to over speed, he lost control over the Truck and rammed into the spot where the deceased was resting on the cot and caused a serious accident and due to the severe injuries sustained, deceased passed away. Additionally, the claimant has produced the panchanama of the accident site (Exh. 18), which reflects that blood stain were found near the cot/ resting place. Furthermore, the claimants have produced the Inquest Panchanama and Post-Mortem Report of the deceased (Exh. 19 & 20 respectively), which establish that the deceased succumbed to the injuries sustained in the accident.

(9.2) At this stage, it is noteworthy that the Insurance Company of the offending vehicle has not examined the driver of the Truck to lead evidence in rebuttal. Therefore, in accordance with 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 must be drawn against them.

(9.3) In light of the aforesaid facts and circumstances, as emerging from the FIR, the panchanama of the accident site, I hold that the accident occurred solely due to the negligence of the driver of the Truck bearing Registration No. GJ-12-Y-9373. Accordingly, Issue No. 1 is decided in affirmative.

ISSUE NO.2 :

(10) The claimant has pleaded that the deceased was earning Rs. 20,000/- per month from security Guard in the company. It is further stated that the deceased was hale and healthy at the time of the accident, had inherited cultivable land and was engaged in agricultural activities, earning Rs. 1,20,000/- per annum. This witness was thoroughly cross-examined by the Learned Advocate for the Insurance Company at Exh. 14, wherein he admitted that he has not produced documentary evidence regarding the income of Rs. 20,000/- derived by the deceased as Security Guard from the company. He has admitted that, he has not produced document to show the income from agricultural activity. He has admitted that, at present, the agricultural land is still exists and they are cultivating and earned the income from it and therefore, there appears to be no loss in respect of the income from agricultural activity. So far as income from Security Guard is concerned, the claimant has admitted that, he has not produced any document to show exact income of deceased from Security Guard nor produced the appointment letter. Hence, in absence of any cogent evidence in respect of the income of the deceased, this Tribunal has gone through the Minimum wage for determining the income of deceased. The accident took place on 27.07.2022 and considering the minimum wage, the income of deceased is taken at Rs. 9,100/- per month and thus, annual income comes **Rs.1,09,200/-**

(11) So far as age of the deceased is concerned, the claimants have pleaded that age of the deceased was 52 years. To which, the claimant has produced the copy of Pan Card of deceased at Exh. 25 wherein the Date of Birth is shown 01.01.1969 and accident took place on 27.07.2022. Therefore, it is clear that, at the time of accident, the age of the deceased was 52 years. Hence, the deceased would fall under the age group 51 to 55 and, therefore, the claimants would be entitled to get compensation calculated on the basis of the multiplier of **11.**

(12) As above discussed age of the deceased at the time of death was around 52 years and he was not salaried person and as per 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,** income of the deceased shall be increased by 10**%** i.e. **Rs.10,920/-.[Rs. 1,09,200/- x 10%]** Doing so, the amount would come to around **Rs.1,20,120/-.**

(13) The present claim petition has been filed by the wife and two sons of the deceased and they are dependent upon the income of the deceased. Therefore, in accordance with the law laid down by the Hon'ble Supreme Court in Pranay Sethi, one-third (1/3rd) of the annual income, i.e., Rs. 40,040/- [Rs. 1,20,120 × 1/3rd], stands deducted towards the deceased's personal expenses, leaving a balance of Rs. 80,080/-. Considering the deceased's age of approximately 52 years, the multiplier of 11 applies, yielding a total of **Rs. 8,80,880/-.**

(14) As this Tribunal is deciding the claim petition in the year 2025, the Hon'ble Supreme Court in Pranay Sethi [Para 61(viii)] has held that, reasonable figures under conventional heads namely, loss of estate (Rs. 15,000/-), loss of consortium (Rs. 40,000/-), and funeral expenses (Rs. 15,000/-) should be enhanced by 10% every three years. Six years having elapsed since the pronouncement of Pranay Sethi, enhancement at 20% is appropriate. Accordingly, the petitioners are entitled to **Rs. 18,000/- towards loss of estate and Rs. 18,000/- towards funeral expenses.**

(15) Regarding the grant of consortium to the applicants, the Hon'ble Apex Court has categorically held in ***Magma General Insurance Co. Ltd. v. Nanu Ram @ Churhu Ram, (2018) 18 SCC 130***; ***United India Insurance Co. Ltd. v. Satinder Kaur @ Satwinder Kaur, 2020 SCC OnLine SC 410 (FB); and New India Assurance Co. Ltd. v. Smt. Somwati, (2020) 9 SCC 644***, that in addition to the spouse, children are entitled to parental consortium upon the death of a parent. Filial consortium represents the parents' right to compensation upon the death of a child, with the amount fixed as per Pranay Sethi. The Hon'ble Apex Court has directed Tribunals and High Courts to uniformly award compensation under loss of consortium as a legitimate conventional head.

(15.2) In the present case, Applicant No. 1, being the wife of the deceased, is entitled to Rs. 48,000/- towards spousal consortium. Applicants Nos. 2 and 3, being the sons of the deceased, are each entitled to Rs. 48,000/- towards parental consortium. Hence, the applicants are entitled to the total compensation as detailed below:

PATICULARS	AMOUNT
FUTURE LOSS OF DEPENDENCY	RS.08,80,880/-
LOSS TO ESTATE	RS.00,18,000/-
FUNERAL EXPENSES	RS.00,18,000/-
CONSORTIUM	RS.01,44,000/-
TOTAL AMOUNT OF COMPENSATION	**RS.10,60,880/-**
ROUNDED OFF	**RS. 10,60,900/-**

<u>LIABILITY :</u>

(16) As held hereinabove the accident took place due to rash and negligent driving on part of driver of Truck bearing Registration No.GJ-12-Y-9373. Herein the present case, the opponent No. 1 was the owner and opponent No.2 is the Insurance Company of the Truck. The claimants have produced the Insurance Policy of the offending vehicle at Exh. 23 from which it transpires that, the Insurance Policy of the offending vehicle was valid and effective at the time of the accident. It also appears that, the Insured had taken the Insurance Policy of " **Liability Only Policy for commercial Vehicle Certificate cum Policy"** wherein the risk of the deceased being third party was covered. Hence, the opponent Nos. 1 & 2 are jointly and severally liable to pay compensation to the claimants.

(17) Ld. Advocate for the Insurance Company has vehemently argued that, the driver of the offending vehicle Truck bearing

Registration No.GJ-12-Y-9373 was not holding valid and effective driving licence and therefore, due to the breach of a fundamental condition of the policy, the Insurance Company is not liable to pay compensation. It is therefore requested to exonerate the Insurance Company. Upon perusal of the record, it transpires that, the claimant has produced the driving licence of Driver of Truck at Exh. 21 from which it transpires that, the Driver was holding the licence to drive only Light Motor Vehicle only. But herein the present case, the driver had drove the Heavy vehicle/ Truck. In this case, the Ld. Advocate for the Insurance Company has produced the Driving Licence Status at Exh. 35 from which it transpires that, the Driver was holding the licence to drive Transport vehicle from 11.10.2022 to 11.10.2027 but herein the present claim petition, the accident occurred on 27.07.2022 and thus, on that day, the driver of the Truck was not holding licence to drive any heavy vehicle and therefore, it clearly breached the fundamental terms and condition of the very Insurance Policy. Hence, this Tribunal deems it fit to first pay the amount by the Insurance Company and then Insurance Company can recover the same from the driver and/ or owner of the offending vehicle. Thus, considering this fact, the opponent Nos. 1 & 2 are jointly and severally liable to pay compensation to the claimants.

<u>INTEREST :</u>

(18) The claimants have prayed for interest at the rate of 18% per annum. Therefore, I have gone through the judgment delivered by the Hon’ble Apex Court in the case of **Hanumantharaju B (Dead) By Lr Vs. M. Akram Pasha and**

Anr reported in **2025 INSC 682** wherein Tribunal had awarded 9% interest which was reduced by the Hon'ble High Court to 6% and the Hon'ble Supreme Court granted rate of 7% may be more appropriate to ensure fairness. Hence, considering the above judicial pronouncement, the claimant is entitled to get an interest @ 7% p.a., from the date of filling of the present claim petition. 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.10,60,900/- [Rupees Ten Lakh Sixty Thousand Nine Hundred Only]** from opponents No. 1 & 2 are jointly and/ or severally, along with proportionate costs and interest at the rate of 07% (Seven Percentage) per annum from the date of filing the claim petition, till the amount is realized.

The Insurance Company is directed to pay the compensation amount to the claimants first and then recover the same from the driver and/or owner of the vehicle with due process of law.

(3) The aforesaid opponents are directed to deposit the awarded amount within 30 days. Out of the amount deposited in the office of this Tribunal, deficit Court Fees, if any, and the amount of interim relief, if any, awarded under Section 140 of the M.V.Act be deducted first from the amount.

(4) The amount of compensation shall be disbursed among the applicants in the proportion that the applicant No. 1 shall get 60% whereas the applicant Nos. 2 & 3 shall get equally.

(5) Out of the deposited amount, 60% shall be invested in fixed deposit scheme in any Nationalized Bank in the name of claimants for a period of Five years and remaining 40% amount be paid by way of Account Payee cheque to the said claimants.

(6) 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) In compliance with Circular **No. 9182/2021**, which was issued pursuant to the directions of the Hon'ble Supreme Court in **Writ Petition (Civil) No. 534/2020 dated 16.11.2021**, the opponent is required to deposit the amount as directed.

(8) Interest awarded in motor accident claim cases by tribunals or appellate courts is compensation, not taxable income, so no tax should be deducted at source under Section 194A of the Income Tax Act; insurance companies and vehicle owners must deposit the full awarded amount—including interest—without deducting TDS, as confirmed by the Gujarat High Court in The Oriental Insurance Co. Ltd. v. Chief Commissioner of Income Tax (TDS) in Regular Special Application No. 4800 of 2021, Dtd. 05.04.2022.

Award be drawn accordingly.

Signed and pronounced in the open Court today i.e. 7th February, 2026.

Date: 07/02/2026
Place: Bhuj

[Veerat Ashok Buddha]
JUDGE
M.A.C. Tribunal (Auxi.) &
6TH Additional District Judge,
Bhuj.
(*GJ00702*)

/Rajesh Vaghela/