GJKT010038892024

Exh.
Received on
Registered on
Decided on
Duration Y M Days

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUX.) & 7TH ADDITIONAL DISTRICT JUDGE, KACHCHH – BHUJ.

M.A.C.P. No.415/2024

LEGAL HEIR OF HARVINDER SINGH S/O. GYANCHAND SINGH

1. **AMANDEEPKAUR W/O. HARVINDAR SINGH**
   Wife, Aged: 37 years, Occu. Household,

2. **ANKIT SINGH S/O. HARVINDAR SINGH**
   Son, Aged: 14 years,

3. **JASKARAN SINGH S/O. HARVINDAR SINGH**
   Son, Aged: 7 years,
   (Being minor through their guardian i.e. Appl. No. 1)

R/o. Ramdev Faliyu,
Galpadar, Tal. Gandhidham
Dist. Kachchh **....Applicants**

Vs.

PARTIES OF DUMPER NO. GJ-12-BZ-2584

1. **NEW KANDLA SALT AND CHEMICAL PVT. LTD**

Plot No. 18, Maitra Bhavan,
Sector 8, Gandhidham

2. **ICICI LOMBARD GENERAL INS. CO.LTD.**
Opp. G.K.General Hospital, Bhuj

3. **NODAL OFFICER,**
ICICI LOMBARD GENERAL INS. CO.LTD.
Opp. G.K.General Hospital, Bhuj **….Opponents**

Claim u/s.166 of the M.V. Act for getting compensation of Rs.80,00,000/-....

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
3. L.A. **Mr. D.K.Buch** for the opponent No. 2 & 3

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

1. The claimants have filed the present claim petition U/s. 166 of the Motor Vehicles Act, 1988, claiming compensation of ***Rs. 80,00,000/- [Rs. Eighty Lakh Only]*** for the fatal injuries sustained by the deceased *late Harvindar Singh S/o. Gyanchand Singh* in the vehicular accident dated 07.08.2024, along with the costs and interest from the date of petition till realization, against the opponents.

2. Brief facts of the present claim petition are that, on 07.08.2024, the deceased, Harvindar Singh S/o. Gyanchand Singh was going to home on the Motor cycle bearing Registration No.GJ-12-ED-2114 at slow speed and on the correct side of the road and when he reached at the place of accident, the driver of Dumper came on back side by driving Dumper No.GJ-12-BZ-2584 in full speed, rash and negligent manner and due to over speed, he lost control over the steering dashed with Motor cycle in back side thereby accident had occurred, as such, the rider of the Motor cycle sustained serious injuries and he passed away due to it. Therefore, the claimants have filed the present claim petition for getting compensation from the opponents.

2.2 Upon service of notices, the opponent No. 1 did not appear nor filed written statement.

2.3. The opponents No. 2 & 3- Insurance Company and its Nodal Officer has appeared through Ld. Advocate Mr. D.K.Buch and filed written statement at Exh. 36 *interalia* denied the facts of the accident. It is denied the age, income and occupation of the deceased. It is submitted that applicants have not joined the driver of Dumper and therefore, in absence of driver of the concerned vehicle, the issue of negligence cannot be decided. It is submitted that there is a delay of 2 days in filling the FIR however, no satisfactory explanation is sought for. It is submitted that, driver of the Dumper was not holding valid and effective driving licence to drive the offending vehicle at the time of an accident and therefore, there is clear breach of terms and condition of the Insurance Policy. It is submitted that deceased was not wearing protective headgear at the time of an accident. It is further submitted that, deceased who was riding the Motor cycle in negligent manner and therefore, he has also contributed for an accident to some extent. It is therefore prayed to exonerate the Insurance Company.

3. In view of the pleadings of the parties, the following issues were framed at Exh. 18 :-

(1) Whether the applicants prove that deceased died due to rash and/or negligent act of the driver of vehicle involved in the accident ?

(2) Whether applicants are entitled to compensation from the opponents or any of them? If yes, what amount and from whom?

(3) What Award ?

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, the parties have produced the following oral and documentary evidence on record:

Exh. No.	Particulars
	Oral Evidence
23	Affidavit of examination in Chief of Amandeep Kaur W/o. Harvindar Singh
	Documentary Evidence
25	FIR
26	Panchanama of place of accident.

27	Inquest Panchanama
28	P.M. Report
29	Charge sheet
30	Driving Licence of Driver of Dumper
31	R.C.Book of Dumper
32	Insurance Policy of Dumper
33	Driving Licence of Deceased

The opponent No. 2- Insurance Company has produced the copy of the Insurance Policy along with terms and conditions of offending vehicle/ Dumper at Exh. 38.

ISSUE NO.1 & 2 COLLECTIVELY :

6. Heard Ld. Advocates for the parties and perused the record. Ld. Adv. for the claimants has argued as per their pleading in the claim petition whereas Ld. Adv. for the Insurance Company has produced the written arguments at Exh. 43 and has argued as per the reply filed by them. This tribunal has duly considered the arguments produced by Ld. Adv. for the Insurance company.

7. So far as the negligence is concerned, claimants have relied upon the FIR, Panchnama of the scene of offence and charge sheet. Upon perusal of the FIR (Exh. 25), it transpires that, the same was came to be lodged by one Kuldeepsinh Gyanchand Singh against the Driver of Dumper bearing Registration No.GJ-12-BZ-2584. The deposition of the claimant is recorded *vide* Exh.23 and in her chief examination, she has reiterated the facts as per her case. During the cross examination, she has admitted the fact that, she was not seen the accident personally and she was not having knowledge who was negligent. She has not filed the police complaint.

8. At this stage, it is worthy to note that, 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.**

9. I have perused the copy of the FIR (Exh. 25) which was laid against the driver of Dumper bearing registration No. GJ-12-BZ-2584. It also appears from the FIR that, the driver of Dumper came on the back side from the Motor cycle and dashed with Motor cycle, the said Motor cycle was driving by deceased, caused injuries and he succumbed due to it. To substantiate the said fact, the claimants have relied upon the Inquest Panchanama and P.M. report of the deceased at Exh. 27 & 28 from which it transpires that, due to the injuries sustained in the accident, injured lost his innocent life. Further, the claimant has relied upon the panchanama of place of accident at Exh. 26 from which it transpires that, blood stain were found from the place of accident and plastic parts of vehicles were also found. It also found that both the vehicles were lying and out of them, the Motor cycle was found in damaged condition. Further, the claimant has relied upon the charge sheet (Exh. 29) from which it transpires that, after completion of the investigation, the Investigating Officer has filed the charge sheet against the driver of Dumper bearing Registration No.GJ-12-BZ-2584.

10. Therefore, considering the FIR, Panchnama of place of accident and charge sheet, it is proved that, the accident took place due to negligent driving by driver of Dumper GJ-12-BZ-2584. Therefore, this Tribunal decide Issue No.1 in AFFIRMATIVE.

ISSUE NO.2 :

11. It is pleaded by the claimant that, deceased was 43 years old and he was driver and was driving the heavy vehicles and thereby earning more than Rs.25,000/- per month as salary and also getting Rs. 500/- as Bhatta per trip and thus, the deceased was earning total Rs. 40,000/- per month. However, to prove actual income from driving, the claimant has failed to produced any documentary evidence nor examined any witness. The said fact has been admitted by the claimant in her cross examination (Exh. 23) taken by the Ld. Advocate for the Insurance Company. However, the claimants have produced the Driving Licence of deceased at Exh. 33 from which it appears that, deceased was holding valid and effective driving licence to drive Transport as well as Non Transport vehicles. However, in absence of any cogent evidence in respect of the income of the deceased from driving, this Tribunal has gone through the Minimum wage of skilled person for determining the income of deceased. The accident took place on 07.08.2024 and considering the minimum wage for skilled person, the income of deceased is taken at Rs. 12,900/- per month and thus, annual income comes **Rs.1,54,800/-**

12. So far as age of the deceased is concerned, the claimant has pleaded that age of the deceased was 43 years. To prove the age of deceased, the claimants have relied upon the Driving Licence of deceased at Exh. 33 wherein the Date of Birth is shown as 11.04.1981 and accident took place on 07.08.2024 and thus, the age of the deceased was 43 years at the time of accident. Against that the Insurance Company has not produced any rebuttal evidence. Hence, the deceased would fall under the age group 41 to 45 and, therefore, the claimants would be entitled to get compensation calculated on the basis of the multiplier of **14.**

13. As above discussed age of the deceased at the time of death was around 43 years and he was not doing any permanent job, 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 **25%** i.e. **Rs.38,700/-.[Rs. 1,54,800 x 25%]** Doing so, the amount would come to around **Rs.1,93,500/-.**

14. Since the present claim petition is filed by wife and two sons of the deceased and in view of law laid down by the

Hon'ble Supreme Court in Pranay Sethi case, 1/3rd i.e. Rs.64,500/- [Rs. 1,93,500 x 1/3] is required to be deducted towards personal expenses of the deceased. Hence, the amount would come to around **Rs.1,29,000**/-. Since the deceased was aged about 43 years, applying the multiplier of **14**, the amount would come to **Rs.18,06,000/-**

15. As this Tribunal is deciding the claim petition in the year 2026, 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 six 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 20%. Therefore, as per the directions of Hon’ble Supreme Court in Pranay Sethi's case, petitioners are entitled for **Rs.18,000/-** towards loss to estate and **Rs.18,000/-** towards funeral expenses.

15.1 Herein this case, the applicant No. 1 is wife and applicants No. 2 & 3 are sons of the deceased, they are entitled to get Rs. 48,000/- each under consortium in view of the ratio laid down by 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. Hence, the applicants are entitled to the total amount of compensation as under :

PARTICULARS	AMOUNT
FUTURE LOSS OF DEPENDENCY	RS.18,06,000/-
LOSS TO ESTATE	RS.00,18,000/-
FUNERAL EXPENSES	RS.00,18,000/-
CONSORTIUM	RS.01,44,000/-
TOTAL AMOUNT OF COMPENSATION	**RS.19,86,000/-**

LIABILITY :

16. As held hereinabove the accident took place due to rash and negligent driving on part of driver of Dumper bearing registration No.GJ-12-BZ-2584. Herein the claim petition, the opponent No. 1 is owner, opponent No. 2 is the Insurance Company and opponent No. 3 is the Nodal officer of Insurance Company of Motor cycle. The claimant as well as the Insurance Company has produced the Insurance Policy of Dumper at Exh. 32 from which it transpires that, the Insurance Policy was valid and effective at the time of the accident and it was ***" Carrying Vehicle Package Policy"***. The Insurance company admits the Policy. Herein the present case, the deceased was being third party for owner and Insurance Company. Hence, the opponent No. 1 to 3 are jointly and severally liable to pay compensation to the claimants.

INTEREST :

17. The claimant has prayed for interest at the rate of 18% per annum. On the other hand, Ld. Adv. for the opponent has argued to award interest at the rate of 6% per annum. Tribunal has a power to deal with rate of the interest. Considering the prevailing rate of interest in the Nationalized Banks, current trend of economy, date of occurrence, this Court is of the considered view that it would be just and proper to award interest at the rate of 7% per annum. Hence, it is held that the petitioner-claimant is entitled to interest at the rate of 7% on the amount of compensation, from the date of filling of the present claim petition till its realization. Therefore, the Issue No.2, is answered accordingly and the following final order is passed in the interest of justice in respect of Issue No. 3.

-: O R D E R :-

1. The claim petition No. 415/2024 filed under Section 166 of the M.V. Act is hereby **"Partly Allowed"** in **the following terms.**

Sr. No.	**Claim Case Number**	**Amount**
(1)	**MACP NO.415/2024**	**Rs.19,86,000/-**
	(Rupees Nineteen Lakh Eighty Six Thousand Only)	

2. The opponent No. 1 to 3 are held jointly and severally liable to pay the above amount of compensation to the applicants and they are directed to deposit the said amount with 07% 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.

3. The aforesaid opponents are directed to deposit the awarded amount within one month from today in this Tribunal.

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. The awarding amount shall be disbursed as the applicant 1 shall get 60% whereas applicants No. 2 & 3 shall get 20%-20%.

5. Out of the deposited amount, 60% shall be invested in fixed deposit scheme in any Nationalized Bank in the name of major claimant for a period of Five years and remaining 40% amount be paid by way of Account Payee cheque to the said claimant. So far as minor claimant is concerned, his entire amount shall be invested in FDR in any nationalized Bank in the name of the minor claimant through his guardian for the period of five years or till he attains majority whichever is later.

5.2 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.

5.3 However, the claimants will be entitled to draw quarterly interest on the amount of deposit in the F.D.Rs.

6. 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.

7. Award shall be drawn accordingly.

Signed and pronounced in the open Court today i.e. 10th Day of August, 2026.

Dtd. 10.08.2026
Place: Bhuj

(Tushar N. Khandhadiya)
7th Additional District Judge &
M.A.C. Tribunal (Auxi),
Bhuj-Kachchh
Code No. GJ-00953

/Rajesh Vaghela/