

GJBK230007782022



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DURATION : Y. - M - D.

03 08 26

EXH. NO:-

**IN THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(AUXI.), THARAD, BANASKANTHA**

MACP No. 28/2022

Legal heirs of deceased Jayeshbhai Tarashankar

1. **Tarashankar Ganeshbhai Pandya (Kala)**

Age : Adult, Occupation : Farming,

2. **Shantaben Tarashankar Pandya (Kala)**

Age : Adult, Occupation : Household Work,

Both R/o. : Dheema, Vav, Vav-Tharad

...Claimants

V E R S U S

Owner & Insurance Co. of Vehicle No. GJ-14-X-8793

1. **Yunuskhan Hamirkhan Malik**

R/o. : Malvan, Dasara, Surendranagar

2. **Sahjanand Tours & Travels**

Chittalroad, Amreli

3. **National Insurance Company Ltd.**

First Floor, Vaishali Complex, Near IFC Bhawan,

Laal Bunglow, C. G. Road, Navrangpura, Ahmedabad

...Respondents

Appearance :

Mr. H. A. Patel – Ld. Advocate for the Claimants.

Mr. N. B. Chaudhary – Ld. Advocate for the respondent
No.1.

Mr. P. L. Kiri – Ld. Advocate for the respondent No.3.

None for the Respondent No.2.

CLAIM PETITION U/S.166 OF M.V.ACT
FOR COMPENSATION OF RS.64,00,000/-

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

- 1] The present claim petition was filed under Section 164 of the Motor Vehicles Act (Hereinafter referred to as M. V. Act). During the proceedings of the petition, the learned advocate for the claimants had moved an application to convert the present claim petition into the claim petition under Section 166 of the M. V. Act at Exh.16 which was granted by this Tribunal and the present claim petition was converted into the claim petition filed under Section 166 of the M. V. Act for grant of compensation of Rs. 64,00,000/- with interest for the death of the deceased caused in vehicular accident, which had taken place on 09.10.2016.
- 2] **Brief facts leading to the present Claim Petition are as under:-**

It has been averred in the claim petition that on 09.10.201, the deceased was going to Sanand from Ahmedabad on the motorcycle and at that time, one Tata Tourist Bus bearing registration no. GJ-14-X-8793 which was driven by its driver in rash and negligent manner, had hit the motorcycle of the deceased and the accident had occurred in which the deceased had died due to serious injuries sustained by him.
- 3] The summons was served upon the respondents. The respondent No.1 has appeared through Ld. Advocate Mr.

N. B. Chaudhary but has not filed any reply or written statement against the present claim petition.

- 3.1] The Ld. Advocate Mr. P. L. Kiri has appeared on behalf of respondent No.3 insurance company of vehicle No. GJ-14-X-8793 and filed written statement at Exh.31, *interalia* denying all the contentions of the Claimants made in their claim petition. Further, the respondent no.3 has also denied the age, income of the deceased. It is further submitted that the accident had occurred due to sole negligence of the deceased himself and there was no negligence on the part of driver of vehicle bearing registration No. GJ-14-X-8793. The involvement of vehicle was also denied by the respondent no.3. It is further submitted that the driver of vehicle bearing registration No. GJ-14-X-8793 was not holding valid and effective driving licence at the time of accident. It is further submitted that the motorcycle bearing registration no. GJ-13-LL-1913 was also involved in the accident but the claimants have not added the insurance company of such motorcycle. It is further submitted that if the tribunal comes to the conclusion that the driver of vehicle bearing registration No. GJ-14-X-8793 was negligent in his driving, then the contributory negligence may be considered. The respondent No.3 has raised many contentions on legal and factual aspects with prayer to dismiss the claim petition against it.

- 4] Before ascribing reasons for arriving at findings, the oral as well as documentary evidences, relied upon by the parties in support of their contentions are as follows :-

- A. On behalf of the Claimant, following oral as well as documentary evidence is produced:-

ORAL EVIDENCE

Sr. No.	Exh.	Particulars of document.
1.	19	Examination-in-Chief in form of Affidavit of claimant no.1

DOCUMENTARY EVIDENCE

Sr. No.	Particulars of documents	Exh.
1	Certified Copy of P. M. Report of the deceased	22
2	Certified Copy of complaint	23
3	Certified Copy of the Spot Panchnama	24
4	Certified Copy of inquest panchnama of the deceased	25
5	Copy of Death Slip	26
6	Bonafide Certificate of the deceased	27
7	Copy of R. C. Book of the vehicle No. GJ-14-X-8793	Mark 5/3
8	Copy of driving licence of driver of the vehicle No. GJ-14-X-8793	Mark 5/4
9	Copy of insurance policy of the vehicle No. GJ-14-X-8793	Mark 5/5

- B. Ld. Advocate for the respondent no.3 has also examined the owner of vehicle bearing registration no. GJ-14-X-8793 at Exh.35.

- 5] From the above pleadings and evidences, following points arise for determination of the present claim petition:

- Whether it is proved that the vehicle bearing registration no. GJ-14-X-8793 was involved in the accident which had occurred on 09.10.2016 at about 11:30 on the Sarakhej-Sanand highway road, near Ulariya Patiya, in the range of Changodar Police Station?

2. Whether it is proved that the deceased died in the above accident due to rash and negligent driving of driver of vehicle bearing registration no. GJ-14-X-8793 involved in the accident ?
 3. Whether the applicants are entitled for compensation ? If yes, what amount and from whom ?
 4. What order and award ?
- 6] My findings to the above stated issues, for the reasons stated below are as under:-
- 1 In the affirmative.
 - 2 In the partly affirmative.
 - 3 As per final order.
 - 4 As per final order.
- 7] I have heard submissions of Learned Advocates for the concerned parties. The Ld. Advocate for the claimants has filed the closing submissions at Exh.28. Along with oral arguments, Ld. Advocate for the respondent no.3 has filed its written arguments at Exh.40. I have carefully gone through the arguments and considered the material on record.

:-REASONS:-

- 8] All the points are inter-related to each other and therefore to avoid the repetition, all the points are decided together.
- 9] While deciding the point of negligence, it has to be borne in mind that negligence is required to be proved in claim Petition under Section 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 (1) Bimla Devi Vs.

H.R.T.C. Reported in AIR 2009 SC 2819 and (2) Parmeshwari Devi Vs. Amir Chand, report in 2011 (11) SCC 635.

- 10] The claimant no.1 has filed his evidence by the way of the affidavit at Exh.19 and reiterated the facts of the claim petition in his affidavit. Over and above affidavit of examination in chief, the claimant has also produced the documents in the form of copy of FIR at Exh.23, copy of spot panchnama at Exh.24, copy of inquest panchnama at Exh.25, copy of P.M. report at Exh.22 and other relevant documents. The claimant was duly cross-examined by the learned Advocate for the respondent no.3 insurance company and in cross-examination, the claimant has admitted that he is not the eye-witness of the present accident. He has further admitted that at the time of accident, two friends of the deceased were with him. The claimant no.1 has further admitted that he has not produced any educational documents of his deceased son. The claimant denied the suggestion that the accident took place due to negligence of his deceased son.
- 11] Having considered the arguments put forward, it is an undisputed fact that the deceased died in the vehicular accident and documents produced on record support the said contention. As regards the negligency is concerned, the documentary evidences are required to be considered. On perusal the FIR at Exh.23, it appears that it was registered against the rider of the motorcycle bearing

registration no. GJ-13-LL-1913 i.e. the vehicle from which, deceased was going but the perusal of FIR shows that it was lodged by another driver who drive the another bus of the respondent no.2 i.e. also the owner of offending vehicle bearing registration no. GJ-14-X-8793. It is stated in the FIR that the rider of motorcycle bearing registration no. GJ-13-LL-1913 was riding his motorcycle in rash and negligent manner and had dashed with the vehicle bearing registration no. GJ-14-X-8793 from back side. On perusal of the spot panchnama at Exh.24, there is description of the place of the accident as well as the description in which manner, the accident had occurred and the alleged motorcycle bearing registration no. GJ-13-LL-1913 found at the place of incident in damaged condition.

This tribunal is of the view that the driver of another bus who lodged the present complaint, was not the eye-witness of the present incident and he reached at the place of accident after occurrence of present accident. Further, in the spot panchnama at Exh.24, it is described that the alleged motorcycle was found at the spot while the offending vehicle bearing registration no. GJ-14-X-8793, was not found at the place of accident which shows that the driver of offending vehicle bearing registration no. GJ-14-X-8793, did not stop at the scene of the accident and drove away with the vehicle. Further, it has also to be noted that the driver of the offending vehicle bearing registration no. GJ-14-X-8793 has not appeared before

this tribunal, in the witness box to prove the fact that how, he was not negligent in his driving or how, the accident had occurred. Further, it has also not been proved from the evidence available on record that the said motorcycle was riding by the deceased himself or not. The claimants or respondent no.3 have not produced the copy of charge-sheet with regard to alleged accident to prove the manner in which the accident had occurred.

The Ld. Advocate for the respondent no.5 has filed written arguments at Exh.40 and has submitted that the FIR with reference to the alleged accident was lodged against the rider of alleged motorcycle and there was not cogent or reliable proof on record that the accident had occurred by rash and negligent driving of driver of vehicle bearing registration no. GJ-14-X-8793. It is further averred in the written arguments that to prove the original and cogent material on record, the respondent no.3 was tried to examine the I.O. of the present FIR but this tribunal has denied to examine the I.O. As far as this contention of the respondent no.3 is concerned, it appears that there is no application or purshis available on record, from which respondent no.3 had prayed to examine the I.O. of the present FIR. Further, it has been orally prayed by the respondent no.3 to examine the I.O. but when this tribunal asked the reason to examine the I.O., the Ld. Advocate for the respondent no.3 has submitted that he

want to examine the I.O. to produce the certified copy charge-sheet on record.

This tribunal is of the opinion that only to produce the certified copy charge-sheet on record, there is no reason to obstruct an Police Official in the discharge of its duty and a certified copy of the charge sheet can also be obtained directly by the insurance company and placed on record. Hence, this contention of the respondent no.3 has no merit and cannot be considered.

Further, the Ld. Advocate for the respondent no.3 has relied upon the judgment of Hon'ble Supreme Court in Sithara N. S. & Ors. vs. Sai Ram General Insurance Co. Ltd. through DE List at Exh.39 and argued that the liability under the Motor Vehicles Act must be established through credible evidence and the claimants have failed to establish credible evidence on record, hence, the respondent no.3 is not liable to pay any compensation. As far as this defence on behalf of respondent no.3 is concerned, I have considered the judgment relied upon by the Ld. Advocate for the respondent no.3 but it appears that in that case, the Hon'ble Court observed that there was nothing to indicate the basis upon which, it was drawn up or whose statement formed its foundation but in the case in hand, it is clearly mentioned in the FIR that the rider of motorcycle bearing registration no. GJ-13-LL-1913 was riding his motorcycle in rash and negligent manner and had dashed with the vehicle bearing

registration no. GJ-14-X-8793 from back side. Further, the owner of the vehicle bearing registration no. GJ-14-X-8793 who has been examined by the respondent no.3 itself at Exh.35, has clearly admitted in para no.2 of his testimony that the accident in question had occurred on 09.10.2016 at about 10:30 in the night and the said vehicle was driving by respondent no.1 Yunuskhan Hamirkhan and he had informed on mobile that when the bus braked due to a bump on the highway, a motorcycle carrying three people collided with it from behind. It is clearly established from record that the vehicle bearing registration no. GJ-14-X-8793 was involved in the alleged accident, hence, the facts of the judgment relied upon by the respondent no.3 cannot be considered similar to the case in hand.

Further, the respondent no.3 has not examined the respondent no.1 who was driving the offending vehicle at the time of accident to clarify the circumstances in which, the accident had occurred. Further, despite repeated attempts made by this tribunal for produce the charge-sheet with regard to present accident on record, the respondent no.3 has failed to do so.

The fact that the alleged motorcycle was riding by the deceased, is also not successfully proved by the available material. But it is also to be noted that as per available material on record, it appears that there were three persons riding on the alleged motorcycle but the

claimants have also not clarify that who had ridden the alleged motorcycle at the time of accident or not examined the two persons other than the deceased who were with him or not produced any documentary evidence in this regard.

Therefore, considering the above all discussion, this tribunal is of the opinion that the driver of the vehicle bearing registration no. GJ-14-X-8793 was 90% negligent in his driving while the deceased was 10% negligent in his riding for happening of the accident. Hence, the issue No.1 & 2 are answered accordingly.

Quantum of Compensation

- 12] As per well settled legal proposition of law by various judgments delivered by the Hon'ble Apex Court, the Tribunal is required to decide "Just" compensation under Section 168 of the Motor Vehicle Act.
- 13] Claimants pleaded that at the time of accident deceased was 18 years old and to prove this fact, the claimants have not produced any documentary evidence on record but the perusal of the copy of P. M. Report of the deceased shows that the age of the deceased is mentioned as 18 years in it, hence, considering the same, this Tribunal is of the opinion that at the time of accident, deceased was aged around 18 years. Hence, in view of Judgment of the Hon'ble Supreme court in the case of Sarla Verma v. Delhi Transport Corporation : 2009 ACJ 1298 and the Schedule-II of the M.V.Act, a multiplier of 18 is to be

taken for the purpose of computing loss of dependency, since, age of deceased was falling in the age group of age between 15 years to 20 years.

- 14] It is the case of claimants that at the time of accident, deceased was doing Computer Engineering Course from C.U. Shah Polytechnic University, Surendranagar by completing this course, he was set to earn a good income in the future. The claimants have also produced the Bonafide Certificate of the deceased at Exh.27. Accordingly, considering year of accident, age of the deceased, educational documents produced on record and nature of work done by deceased, notional income of deceased is derived as Rs. 10,000/- per month.
- 15] As per the judgment given by the Hon'ble Supreme Court of India in case of National Insurance Co. Ltd. Vs. Pranay Sethi & Ors. SLP (Civil) No. 25590/2014, it has been held that future/prospective income of the deceased is required to be taken into consideration, hence, looking to the entire facts, claimant is entitled to get 40% amount towards future prospectus i.e. about Rs. 4,000/- per month as future/prospective income. Hence, income of deceased may be considered as Rs. 14,000/- [Rs. 10,000/- + Rs. 4,000/-] per month for computing loss of dependency. It appears that deceased was a bachelor/un-married youth at the time of accident and the claimants are the parents of the deceased. Hence, 1/2 amount is required to be deducted towards personal and living expenses of the

deceased from his income, as per judgment rendered by Hon'ble Supreme Court of India in case of Sarla Verma (supra).

Annual income of deceased with annual addition to income for future prospect:-

Rs. 14,000/- x 12 = Rs 1,68,000/-

Annual amount of personal expenses incurred by the deceased in his own maintenance:

Rs. 1,68,000/- x 1/2 = Rs. 84,000/-

Annual loss of dependency:-

Rs. 1,68,000/- – Rs. 84,000/- = Rs. 84,000/-

Total Loss of Dependency :- Rs. 84,000/- x 18 = Rs. 15,12,000/-

- 16] Further, in **National Insurance Co. Ltd., vs. Pranay Sethi & Ors.**, (SLP (Civil) No.25590/2014 decided on 31/10/2017), the Hon'ble Supreme Court has held that in death cases, compensation would be awarded under three conventional heads viz. loss of estate, loss of consortium and funeral expenses. The Court has held that reasonable figures for conventional heads namely loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs.40,000/- and Rs. 15,000/-. Further, in **Magma General Ins. Company Ltd. vs. Nanuram and Others- (2018 ACJ 2782)** , the Hon'ble Apex Court had given a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Filial Consortium is the right of

parents to compensation in the case of accidental death of a child. Recently, the Hon'ble Apex Court in **United India Insurance Co. Ltd vs. Satinder Kaur @ Satwinder Kaur & Ors.** (Civil Appeal No. 2705 with 2706 of 2020, decided on June 30, 2020), while relying upon the **Pranay Sethi (Supra)** and **Magma General Ins. Company Ltd (Supra)** had awarded compensation on the ground of loss of consortium to wife as well as the children of the deceased. The Hon'ble Apex Court in its para no. 8 observed that :

..... “The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi (supra).

At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi (supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.

In Magma General (supra), this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is no justification to award compensation towards loss of love and affection as a separate head.”.....

Therefore, looking to the facts and circumstances of the case, and principles laid down by Hon'ble Supreme Court in above judgements, all the Claimants are also entitled to a sum of Rs.40,000/- each towards spousal consortium, parental

consortium, Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses.

Thus, while calculating the compensation including all the above heads same arrives at as follows :

<u>Award details are as under:</u>		
1.	Dependency loss	Rs.15,12,000/-
2.	Loss of Consortium to the claimants	Rs.80,000/-
3.	Funeral expenses	Rs.15,000/-
	Total Amount of Compensation	Rs.16,07,000/-

As this tribunal has decided 10% negligence on the part of the deceased himself, hence, 10% is required to be deducted out of the total compensation, which comes to Rs.1,60,700/-. Hence, Rs. 14,46,300/- (Rs.16,07,000/- - Rs.1,60,700/-) is awarded as final compensation.

LIABILITY :

- 17] As discussed above, the driver of the vehicle bearing registration no. GJ-14-X-8793 is held 90% negligent in his driving while the deceased is held 10% negligent in his riding for happening of the accident. The perusal of the copy of R. C. Book of vehicle bearing registration no. GJ-14-X-8793 at Mark 5/3 shows that the respondent no.2 was the owner of said vehicle at the time of accident. It is clearly established from record that the said vehicle was driven by the respondent no.1. The perusal of the copy of insurance policy of vehicle bearing registration no. GJ-14-X-8793 shows that the vehicle was insured with the respondent no.3 and the period of insurance is shown from

05.02.2016 to 04.02.2017 and the accident in question had occurred on 09.10.2016, hence, the policy of the said vehicle was in force at the time of accident.

INTEREST

- 18] Now so far as this issue is concerned, the Hon'ble Apex Court after considering various Judgments, has held that the award should be JUST COMPENSATION and not a BONANZA. By considering Section 171 of Motor Vehicle Act, the issue with regard to grant of interest has been discussed by the Honble Apex Court in the case of Dharampal Versus Uttar Pradesh State Road Transport Corporation, reported in 2008 (12) SCC 208, wherein, the Apex Court was of the view that Award of interest would normally depend upon the bank rate prevailing at the relevant time. Furthermore, the Apex Court in the case of Subulaxmi Versus M.D., Tamil Nadu State Transport Corporation reported in 2012 (10) SCC 177 has held that award of interest would normally depend on the bank rate prevailing at the time of accident. From the above, it can be culled out that award of interest would not only depend on the facts and circumstances of the case but also it would normally depend on bank rate prevailing at the time of accident and, hence, considering the Year of accident, claimants are entitled to 8% interest from date of filing of claim petition till realization.
- 19] Therefore, the respondents No.1, 2 & 3 being the driver, owner and insurance company of vehicle bearing

registration no. GJ-14-X-8793, are jointly and severally liable to pay the aforesaid 90% amount of compensation to the claimants with interest at the rate of 8% p.a. from the date of petition till realization. Hence, Issue No. 3 is answered accordingly and for issue No.4, the following order is passed.

// O R D E R //

- 1] The claim petition is hereby partly allowed.
- 2] The claimants are entitled to recover the amount of compensation of **Rs.14,46,300/- (Rupees Fourteen Lakh Forty Six Thousand Three Hundred Only)** from the respondents with interest at the rate of 8% per annum from the date of the claim petition till realization.
- 3] The respondents are hereby directed to deposit the above amount of award within one month from the date of this order.
- 4] On depositing of the above amount of award by the respondents in this Tribunal, the deficit amount of Court Fee Stamp, if any, on the awarded amount be deducted first and thereafter, the remaining amount be disbursed to the Petitioners/Claimants.
- 5] After deducting the above stated amount, out of the remaining deposited amount, claimant no.1 & 2 shall get 50% each of awarded compensation.
- 6] Out of total amount of compensation, 70% of the amount be deposited as FDR in the name of the claimants, in any nationalized bank of their choice for the period of

5 years and the remaining 30% be paid to them through NEFT/RTGS.

- 7] Respondents are hereby directed to deposit the aforesaid amount before this Tribunal within one month from the date of this order. Further, in view of the directions of the Hon'ble Supreme Court in the case of **Bajaj Allianz General Insurance Company Pvt. Ltd. Vs. Union of India & Ors.** in **W.P. (Civil) No.534/2020** and the directions of the Hon'ble High Court, respondents are directed to deposit the aforesaid amounts by way of Direct Bank Transfer through NEFT or RTGS only to the below mentioned Bank Account of this Claims Tribunal.

Account Name	Motor Accident Claims Tribunal, Tharad
Account No.	41072181340
Name of Bank	State Bank Of India
Name of Branch	Tharad Main Branch.
IFSC Code	SBIN0000560
MICR Code	385002118

- 8] Further, after deposit of the awarded amount, the respondents are instructed to ensure that deposit of the awarded amount, along with payment advice by way of direct bank transfer to the above said Bank Account in compliance of the Award passed by the Tribunal is accomplished by furnishing the following information in the format prescribed herein below to the Nazir Department of this Tribunal for maintaining the account MACP

Deposits by the Court, and also inform to the petitioner herein.

MACP No.	
On the file of Claims Tribunal Name	
Name of Petitioner	
Date of Award	
Compensation Amount	
Name of the bank who Deposit the amount	
Income Tax Deducted at Source	
Bank Transaction Reference No. / Unique Transaction Reference (UTR) No.	

- 9] The disbursal of compensation amount shall be made directly to the credit of the bank account of the petitioners/claimants by NEFT or RTGS.
- 10] The claimants shall produce copy of their Bank Passbooks, Adhaar Cards and PAN Cards within 1 (One) Month from the date of this Order.
- 11] The claimants shall be entitled to receive periodical interest on the Fixed Deposits, but shall not be entitled to raise loan or advance without the prior permission of this Tribunal.
- 12] The Respondents are directed to follow and comply with the directions and guidelines laid down by the Hon'ble Apex Court in case of **the Oriental Insurance Company Vs. Chief Commissioner of Income-Tax (TDS) in R/SPCA NO.4800/2021 decided on 05.04.2022** for the purpose of Income Tax.

- 13] Registry, Claimants, Respondents and the concerned bank(s) shall ensure compliance of the directions of the Hon'ble Supreme Court in the case of Bajaj Allianz General Insurance Company Pvt. Ltd. Vs. Union of India & Ors. in W.P.(Civil) No.534/2020.
- 14] Pending application(s), if any, shall also stand(s) disposed off accordingly.
- 15] Award be drawn accordingly. An authenticated copy of the award be sent to the opponents through e-mail.

Signed & Pronounced in the open court today on this 13th day of August, 2026 at Tharad, Banaskantha.

THARAD
DATE : 13/08/2026

(P. M. SAYANI)
CHAIRMAN, MACT (AUXI)
THARAD, BANASKANTHA
UIC No. GJ00575