GJVD010015052016

Received on	**26/02/2016**
Registered on	**26/02/2016**
Decided on	**09/04/2026**
Duration	**10 YY 01 MM 14 DD**

सत्यमेव जयते

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BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (AUXI.), AT VADODARA.

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Motor Accident Claim Petition No.156 of 2016

Exh.: ______

CLAIMANTS :
Legal heirs of deceased -
Rajkumar Shivnath Sharma

(1) Pinkiben Wd/o. Rajkumar Shivnath Sharma
Aged : 29 Years, Occupation : Housewife

(2) Anchal Rajkumar Sharma
Aged : 12 Years, Occupation : Study

(3) Priti Rajkumar Sharma
Aged : 10 Years, Occupation : Study

(4) Sunny Rajkumar Sharma
Aged : 09 Years, Occupation : -

Claimant Nos.2 to 4 through their legal guardian & Mother - claimant No.1.

All R/o. Near Kalali Phatak,
Bapunagar Society,
Near Tanspek Company,
Kalali, Vadodara.
Originally R/o. Gendamade,
Ta. Derapur, Dist. Kanpur (Rural), Uttarpradesh.

VERSUS

OPPONENTS

(1) Ankur Lalitbhai Shah
Aged : Adult, Occupation : Driver
R/o. Darwaja Faliyu, At Po. Por,
Ta. Dist. Vadodara,

(2) Rahulkumar Rajnikantbhai Patel
Aged : Adult, Occupation : Business
R/o. Bharthaniya Vago,
Undi Khadki, At Po. Varnama,
Ta. Dist. Vadodara.

(3) Bajaj Allianz General Insurance Co. Ltd. -
Office at : 2nd Floor,
Shree Gokulesh Building,
R.C. Dutt Road,
Alkapuri, Vadodara.

(4) Shivnath Sharma
Aged : 65 Years, Occupation : Labour,

(5) Basantidevi Shivnath Sharma
Aged : 60 Years, Occupation : Housewife
Both Nos.4 & 5 R/o. Gendamade,
Ta. Derapur, Dist. Kanpur (Rural),
Uttarpradesh.

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Advocates :-

- Ld. Advocate Mr.Mr.C.B. Raval for the claimant.
- Ld. Advocate Mr.J.J. Vakil for the opponent No.1.
- Ld. Advocate Mrs.Nandini Joshi, for the opponent No.3.

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:: JUDGMENT ::

1. The heir and legal representative of deceased - Rajkumar Shivnath Sharma, who died in a motor vehicular accident, which occurred on 15.01.2016, Near Kalali Phatak, on

road Opp. Transpek Company, have filed this claim petition against the opponents seeking a sum of Rs.15,00,000/-/- (Rupees Fifteen Lacs Only) towards compensation under Section-166 of the Motor Vehicle Act, 1988.

2. The facts related to the filing of the present claim petition are as under :

2.1 It is case of the claimant that, on 15.01.2016, deceased – Rajkumar Shivnath Sharma was on his Panipuri Stall which is situated near Kalali Phatak, Opp. Tanspeck Company at that time opponent No.1 came by driving his Hyundai i20 Car bearing registration No.GJ.06.JE.1443 in rash and negligent manner and dashed his car with one lady who was selling balloons and thereafter dashed with the customers who were standing near the Panipuri Stall of deceased and also dashed with the deceased and his brother who were selling Panipuri on their stall, thereby causing accident in which deceased and his brother sustained grievous injuries and they were immediately taken to SSG Hospital and admitted in ICU Ward where he expired during the course of treatment. The FIR was came to be registered with Manjalpur Police Station vide CR.No.I.18/2016. It is the case of the claimants that, accident occurred due to rash and negligent driving of opponent No.1. It is submitted that, at relevant time deceased was aged about 41 years and was doing Panipuri busniess since last 15 to 17 years and was earning about Rs.40,000/- per month by doing the said work. Had the deceased not died, he would have earned more income in a years to come. It is further pleaded that the claimants were dependent upon the income of the deceased, but due to unfortunate death of the deceased, they have lost their sole bread earner in the family. The claimant No.1 has lost the company of her husband, whereas the claimant nos.2 & 4 have lost the love and guidance of their father. The claimants have suffered great pain, shock and anguish due to untimely death of deceased. The claimants have also claimed compensation for the expenses incurred to them while observing the last rites of deceased. Therefore, the claimants being widow and children of the deceased have claimed Rs.15,00,000/- as compensation together interest and commensurate cost. The opponents No.4 & 5 being father and mother of the deceased have been joined as necessary party.

3. The summons of the claim petition were served upon the opponents. Opponents Nos.1 & 2 being driver and owner of the alleged Car have appeared before this Tribunal through their Ld. Advocate and filed their reply vide Ex.17. It is stated by the opponent Nos.1 & 2 in their written statement that, accident has not occurred due to rash and negligent driving of the alleged car. It is stated that, there was no negligence on their part.

3.1 Opponent No.3 – Bajaj Allianz General Insurance Co. Ltd. have appeared through their Ld. Advocate and have filed Written Statement at Exh.19 and denied the age, income and facts of the claim petition and averments made in the claim petition. It is further submitted that, as per the FIR there is no negligence on the part of opponent No.1 - Car Driver and therefore claim petition should be dismissed against opponents. Ld. Advocate for the opponent No.3 - Insurance Company has filed an application for amendment vide Ex.20, wherein it is contended that, the alleged offending vehicle is implanted in the accident as the alleged insured vehicle driver denies any occurrence of such accident taken place by the alleged offending vehicle. It is further contended that, the present claim petition has been filed merely to grab money from the insurance company. The opponent No.3 - insurance company has denied the involvement of the alleged vehicle and submitted that the whole story of the accident taking place is false and concocted. Thereafter opponent No.3 has filed amended written statement vide Ex.21, wherein it is contended that, all the material allegations made in the claim petition are false and the petition is not maintainable either on facts or in law against the opponent. It is accordingly prayed to reject the claim of the claimants.

The opponent No.3 has filed an application vide Ex.23 under Section-211 of Motor Vehicles Rules, 1989 to dismiss the claim petition for non-compliance of the mandatory requirements as prescribed under the law.

However, the Tribunal rejected the application of the opponent No.3 - Insurance Company.

3.2 The claimant had also filed an application U/s.140 of M.V. Act seeking interim amount of compensation on the principle of No Fault Liability, which was allowed by the Tribunal on 17.01.2023.

4. From the above referred pleadings, the Tribunal had framed following issues vide Ex.38.

ISSUES

1. Whether the petitioners prove that, deceased sustained injuries and died in a vehicular accident due to rash and negligent driving by the driver of the vehicle involved in the accident ?

2. Whether the petitioners are entitled to get any compensation ? If yes, what amount and from whom ?

3. What Order and Award ?

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

1. In Affirmative.

2. As per final order.

3. As per final order.

REASONS

6. **Issue No.1** :

In order to prove negligence, the claimant has produced the following oral and documentary evidence :

Sr. No.	Documents	Exh. Marks
1	An affidavit of chief examination of Pinkiben Wd/o. Rajkumar Shivnath Sharma.	39
	Documentary Evidence.	
1	Certified copy of FIR.	5/1
2	Certified copy of Panchnama of Place of accident.	5/2
3	Copy of death certificate of deceased.	5/3
4	Copy of Inquest Panchnama.	5/4
5	Copy of P.M. Note.	5/5
6	Copy of receipt of handing over the body of deceased.	5/6
7	Copy of Driving License of Opponent No.1.	5/7
8	Copy of R.C. Book of alleged Car.	5/8
9	Copy of Bill of alleged vehicle car.	5/9
10	Copy of Election Card of deceased.	5/10
11	Copy of Aadhar Card of deceased.	5/11
12	Copy of Chargesheet.	33/1
13	Copy of complaint filed by complainant JashubenPappubhai Dantani being CR.No.I.18/2016 with Manjalpur Police Station.	33/2
14	Panchnama of Muddamal vehicle I.20 Car No.GJ.06.JE.1443.	33/3
15	Statement of eye witness Hardikbhai Devendrabhai Desai.	33/4
16	Statement of eye witness Shaileshbhai	33/5

	Arvindbhai Gohel.	
17	Paper cutting of Divya Bhaskar newspaper showing news regarding the accident.	33/6

The Opponents have produced the following oral as well as documentary evidences :

Sr. No.	**Documents**	**Exh. Marks**
1	An affidavit of chief examination of Ankur Lalitbhai Shah.	44
2	An affidavit of chief examination of Anilbhai Keshavrao Jadhav - Investigator.	48
3	An afffidavit of Forensic Expert - Mr.Nivrtee Raosaheb Magar.	50
	Documentary Evidence.	
1	Copy of Insurance Policy of alleged I.20 Car No.GJ.06.JE.1443.	30/1
2	Compact Disc.	30/2
3	Letter by Bajaj Allianz General Insurance Co. Ltd. to the Addl. Director General of Police (Crime-1).	37/1
4	Copy of Compact Disc produced by opponent No.1.	46/1
5	Authorization Letter dated 27.05.2025	57
6	Degree Certificate of Mr.Nivrtee issued by University of Mumbai.	55
7	ICS Assure Service Pvt. Ltd.	56
8	Computer Print of Email sent by Bajaj Allianz on 07.04.2025 to ICS Team.	58
9	Copy of CD with Certificate U/s.63 of Bharatiya Sakshya Adhiniyam, 2023 for Video CD of CCTV Footage.	45/2
10	Primary Report given by ICS Assure Services Pvt. Ltd.	53

7. Ld. Advocate for the claimants has filed written arguments vide Ex.35 & Ex.63, therefore, I do not repeat it here, but, I have carefully gone through it and taken it into consideration at the time of deciding this petition on merit. Ld. Advocate has also produced following authorities in support of the claim petition :

(1) Gujarat Motor Vehicle Rule-1989, Rule-211, Sub-Clause 1.

(2) 1998(0) AIJEL-HC 210503, Gujarat High Court, Ratilal Ranchhodbhai Mudethiya Vs. Oriental Insurance Company Ltd.

(3) 1994(0) AIJEL-HC 208678, Gujarat High Court, New India Assurance Co. Ltd. Vs. Mithakhan Dinakhan Notiyar.

(4) 2000(0) AIJEL-HC 213383, Urmila J. Sangani Vs. Pragibhai Mohanlal Luvana.

(5) 2024(0) AIJEL-HC 249648, HDFC Ergo General Insurance Co. LTd. Vs. Ranjitsing Avtarsing Chavla.

(6) 2025(0) AIJEL-SC 74499, ICICI Lombard General Insurance Co. Ltd. Vs. Rajani Sahoo.

(7) 2022(0) AIJEL-SC 70210, Rajwati @ Rajjo Vs. United India Insurance Co. Ltd. Vs. United India Insurance Co. Ltd.

(8) 2009(0) AIJEL-HC 221519, United India Insurance Co. Ltd. Vs. Moghiben Wd/o. Baldevbhai Devabhai Bharwad.

(9) 2019(0) AIJEL-SC 63622, Sunita Vs. Rajasthan State Road Transport Corporation.

(10) 2018(0) AIJEL-SC 62403, Mangla Ram Vs. Oriental Insurance Co. Ltd.

(11) 2019(0) AIJEL-HC 240828, Oriental Insurance Co. Ltd. Vs. Ramdas Madanlal Saini.

(12) 2007(0) AIJEL-SC 39245, Oriental Insurance Co. Ltd. Vs. Premlata Shukla.

(13) 2021(0) AIJEL-SC 67797, National Insurance Co. Ltd. Vs. Chamundeshwari.

7.1 Ld. Advocate for the opponent No.1 has filed written arguments vide Ex.75 therefore, I do not repeat it here, but, I have carefully gone through it and taken it into consideration at the time of deciding this petition on merit.

7.2 Ld. Advocate for the Opponent No.3 - Insurance Company has filed their written arguments vide Ex.32 & Ex.73, therefore, I do not repeat it here, but, I have carefully gone through it and taken it into consideration at the time of deciding this petition on merit. Ld. Advocate has relied upon the following authorities produced with list vide Ex.72 :

(1) 2025 (16) JT 233, Sithara N.S. Vs. Sri Ram General Ins. co. Ltd.

(2) Judgment of Hon'ble Karnataka High Court passed in Misc. First Appeal 201361 of 2017 (MV) and group matters.

8. **<u>ISSUE NO.1 :</u>**

(Involvement of Vehicle & Negligence) :

8.1 In the present case, the issue of negligence is highly contested by opponent-Insurance company. Ld. Advocate for the claimant submits that, the accident has taken place due to the negligence of opponent No.1 i.e. Hyundai i20 Car bearing registration No.GJ.06.JE.1443. It is submitted that, on 15.01.2016, deceased – Rajkumar Shivnath Sharma was on his Panipuri Stall which is situated near Kalali Phatak, Opp. Tanspeck Company at that time opponent No.1 came by driving his Hyundai i20 Car bearing registration No.GJ.06.JE.1443 in rash and negligent manner and dashed his car with one lady who was selling balloons and thereafter dashed with the customers who were standing near the Panipuri Stall of deceased and also dashed with the deceased and his brother who were selling Panipuri on their stall, thereby causing accident in which deceased and his brother sustained grievous injuries and they were immediately taken to SSG Hospital and admitted in ICU Ward where he expired during the course of treatment. The FIR was came to be registered with Manjalpur Police Station vide CR.No.I.18/2016. It is submitted that in claim petition only the involvement of the vehicle is to be seen and looking to the FIR, Panchnama, Inquest Panchanama, the fact with regard to accident having taken place and Hyundai i20 Car bearing registration No.GJ.06.JE.1443 being involved in the accident is clearly made out and therefore opponent No.1 should be held negligence in causing the accident.

Claimant No.1 being widow of the deceased has produced her examination-in-chief on record vide Ex.39 wherein she has stated the facts as per the claim petition. In her cross-examination by the Ld. Advocate for the Insurance Company, she has admitted that, she has not seen the accident and she does not know with which vehicle the accident occurred. She denies that, they have filed false case to get money from the opponents. Ld advocate for the opponent no.1 and 2 has adopted the cross-examination done by insurance company.

8.2 Opponent No.1 being driver of the alleged vehicle was called for to explain the manner in which the accident occurred and opponent No.1 has been examined vide Ex.49, wherein he has stated that, on 15.01.2016 at about 7.40 to 8.15 PM, he was present at Gayatri Petrol Pump situated near Varsoda Village and he was getting diesel filled in his vehicle. He has further submitted that, he has also collected CCTV footage of his presence at the petrol pump on the date and time.

8.3 Opponent No.1 has been cross-examined by the Ld. Advocate for the claimants, wherein he has admitted that, he was arrested by Manjalpur Police Station on 17.01.2016 and Police had also interrogated him and the Hon'ble Court had released him on bail. He has admitted that, Criminal Case No.28582/2016 had proceeded against him in the Court and during the proceedings of the said case he had not produced any such CD of CCTV footage before the Court or Police, nor he mentioned any facts regarding the same. He admits that, in his written statement vide Ex.17 he has not mentioned anything regarding his presence at the Petrol Pump for getting diesel filled in his vehicle. He denies that, he is disclosing false facts.

8.4 Opponent No.3 has also been cross-examined by the Ld. Advocate for the opponent No.3 - Insurance Company, wherein he has stated that, on 15.01.2016 he was at the petrol pump getting diesel filled in his vehicle and the said petrol pump is situated at Varsada village which is about 30 kms. from Kalali. He has further stated that, he has not pleaded guilty of the offence in the said case and he had disclosed the facts to the Investigator of the Insurance Company. The investigator has recorded his statement in his own handwriting on 17.06.2016 and opponent No.1 had affixed his signature and has further stated that, no accident had occurred with the vehicle No.GJ.06.JE.1443 on 15.01.2016 and the said vehicle was in his custody on that day.

8.5 Opponent No.3 - Insurance Company has produced examination-in-chief of Investigator namely Anilbhai Keshavrao Jadhav. In his examination in chief he has stated that, as per the contents of compact disc of CCTV Footage, the alleged car No.GJ.06.JE.1443 was not present on the accident spot near Kalali Fatak, opposite road of Transpek Co. on date and time of accident mentioned in the Police papers and claim petition of applicant and in fact alleged car was present at Gayatri petrol pump, near Varsada village, Vadodara to Por Highway No.8 on date and time of accident. He has further stated that, looking to the contents of said compact disc i.e. CCTV footage of said petrol pump, no accident was taken place by insured car No.GJ.06.JE.1443 and said car was not involved in alleged accident. It is further stated that, to confirm the veracity and genuineness of the contents of CD, the same was sent to ICS Assure Services Pvt. Ltd. for audio / video authentication test i.e. Forensic analysis and as per the said report the provided media is found to be authentic and not altered.

8.6 This investigator has also been cross-examined by the Ld. Advocate for the claimants. In his cross-examination, he has stated that, normally the investigation may take one month to one year. He admits that, on 15.01.2016, when the said accident occurred, he was not working with Bajaj Allianz Company. He states that, he does not know that, the Police has to conduct the investigation in the accident matters within 3 months and submit the report before the Court. He denies that, he does not know within what time period the Police should file chargesheet. He does not know whether the opponent No.1 had produced CD before the Police. He admits that, he was not called by the Court but he has come on behalf of the Insurance Company. He denies that, CD was oby opponent No.1 - Ankur Shah and that, he has not done any investigation about the accident. He denies that, he is giving false deposition.

8.7 Opponent No.3 - Insurance Company has also produced on record the affidavit of Forensic Expert, wherein he has stated that, as per analysis conducted, it was concluded that the provided media is found to be authentic and not altered. He has been examined by the Ld. Advocate for the Insurance Company, wherein he has mentioned all the facts as stated in his affidavit.

8.8 This witness - Forensic Expert has been cross-examined by the Ld. Advocate for the claimants. He admits that, he does not know who had produced the CD and who had submitted the CD. He admits that, he has done the analysis of the CD and submitted his report. He admits that, the rear side of the car is visible and front side of the car is not visible in the CD. The witness states that, the registration number of the car is visible. He admits that, editing can be done with the help of A.I. He admits that, he has not given the CD to the Police for investigation. He denies that, he has prepared the report as per the say of Insurance Company. He admits that, the charge of his service is paid by the Insurance Company.

8.9 Heard Ld. Advocate for both the parties and I also gone through the oral and documentary evidence produced on record by both the parties. I have also gone through the authorities relied upon by the Ld. Advocates for both the parties. It is undisputed fact that, the accident occurred on 15.01.2016 and deceased lost his life in the accident. It is important to note that, the opponent No.1 being driver of the alleged vehicle I-20 Car has contended that, at the relevant date and time of accident i.e. on 15.01.2016 at about 7.40 to 8.15 PM, he was present at Gayatri Petrol Pump situated near Varsoda Village and he was getting diesel filled in his vehicle. He admitted in his cross-examination that he has not pleaded the fact of non involvement of vehicle in his written statement ex-17. Thus his deposition regarding the non involvement of vehicle is without pleadings. Therefore, evidence without pleading can not be relied upon and can validly be said that evidence is afterthought.

8.10 He has further submitted that, he has also collected CCTV footage of his presence at the petrol pump on the date and time when he was there. It is further important to note that, opponent No.1 has produced the said CD of CCTV Footage on record of the matter on 30.04.2025 and the alleged accident occurred on 15.01.2016. It is also important to note that, the FIR for the alleged accident was also lodged against the opponent No.1 and he was arrested and released on bail. Thereafter chargesheet was filed and Criminal Case No.28582/2016 proceeded and Judgment in the matter was passed on 07.10.2025, however in the said matter also the opponent No.1 has not raised any such contention nor produced any such CCTV Footage. It is also important to note that, the opponent No.1 has not even submitted any such CCTV Footage before the Court, Police or Investigating Officer and has not even mentioned a word about it in his statement recorded before the Police at relevant time. It is also important to note that, the opponent No.1 has submitted his reply to the claim petition of the claimants vide Ex.17 and in the said reply also the opponent No.1 has not mentioned anything regarding his not being present at the place of accident and being somewhere else at the time of accident, which clearly shows that, this is the afterthought of the opponent No.1.

8.11 The CCTV-footage CD obtained by the insurance-company investigator from the driver of the offending vehicle, without taking it from the responsible person of the petrol-pump, cannot be treated as cogent or reliable evidence to establish that the vehicle was at the petrol pump and not at the accident site. As per Section 65B of Evidence Act, a certificate from the custodian/manager of the CCTV system is mandatory for secondary-electronic evidence such as a CD; its absence is a bar to admissibility unless the court in an exceptional case finds full authentication through presence and testimony of the custodian before the court.

Here no such certificate from the petrol-pump side exists; the investigator frankly admitted that the CD was not obtained from the responsible person of the petrol pump, which destroys the chain of custody and authenticity.

8.12 The private forensic expert's report, though examined, cannot substitute for proper origin and custodial authenticity derived from the system owner. Therefore, the evidence of the CD based CCTV footage should be given no or very little weight in the MACP. The defence of the insurance company cannot be upheld merely on the basis of this defective electronic record; the claimant's version on the accident and vehicle involvement will prevail unless the insurer produces independent, reliable, and properly authenticated evidence e.g., an authenticated CD from the petrol pump manager, with 65B compliant authentication.

8.13 The complainant is a rustic woman and belong to labour class. It is not expected from such person, whose near and dear ones also became victim of the accident, to note down the exact time of the accident. Perhaps she may not have the watch also. She might disclosed the time approximately. Further time shown in the CCTV footage may be as per the clock set by the operator and there may be possibility of difference of time. It is defence that from 19.45 to 20.15 pm, car was at petrol pump and accident occurred at 20.00 pm. Even if, the period between these two kept in mind, this period is not so long that the involvement of the vehicle becomes suspicious.

8.14 The FIR was registered promptly. Incident occurred at 20.00 hrs and FIR was registered at 0.35 hrs at the SSG Hospital. It is stated in the FIR that one man has given the number of the offending vehicle and the registration number of the offending car is mentioned in the FIR from the beginning and at relevant time also it was not disputed by the opponent No.1. It is also important to note that, the statements of the Witnesses - Hardikbhai Devendrabhai Desai and Shaileshbhai Arvindbhai Gohil were recorded, who are the eye witnesses of the accident, gave the statement before the police that he and his friend had saw the accident and chased the vehicle and noted the number of offending vehicle. The statements of the witnesses were produced before the tribunal. The said statements have not been challenged or controverted by the opponents. Thus, the contents of FIR were corroborated by the statements of the witnesses. The time gap between the occurrence of incident and registration of FIR, is too narrow that false implication of vehicle become impossible. Complainant in

FIR and two witnesses in their statements have also described the offending vehicle. FIR was given by the lady who was also the eye witness and victim of the accident, stated that two persons of Panipuri lorry were also hit by the offending vehicle. The deceased was also taken to SSG where he was succumbed to the injuries. The death certificate also mentioned SSG hospital as the place death. Further, the seizer panchnama of offending vehicle also depicts that there are scratches on the font side of the car. The said panchnama was drawn in the presence of the driver of the car and he has produced the said car before the police. It is mentioned in the said panchnama that the driver of the vehicle also stated the said accident had occurred by the said car while he was driving the vehicle. This panchnama was also not challenged or controverted by the opponents or contrary evidence comes on the record.

8.15 It is pertinent to note that defence of non involvement of vehicle was raised first time in the evidence of opponent. Prior to the evidence of opponent, this defence was not never raised. Driver of the vehicle also neither put forward this defence in the criminal case nor he has given the said CD to the Police more particularly when he allegedly possessed the CD within the two day of occurrence of accident. There is nothing on the record that SIT has filed the report supports the defence of the opponents. Thus, from the appreciation of evidences placed on the record, it is proved that the offending vehicle was involved in the accident and has been driven by the opponent no.1 at the date and time of occurrence of the incident.

8.16 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 reasonable 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****.*

8.17 It is also to be noted that Motor Vehicles Act is a benevolent legislature; therefore, liberal and general approach should be adopted in estimating the income of the injured or deceased person. It is further to be noted that, in a claim under the Act, evidence has not been scrutinized in a manner as used to be done in Civil Suits or in Criminal Cases. In a matter of accident claim case, it is summary inquiry and no necessity to doubt or suspect would arise with Tribunal in deciding the petition.

8.18 Moreover, looking to the oral and documentary evidence produced on record, it is clear that, on the day of accident the deceased working on his Pani Puri Stall and offending car which was being driven by opponent No.1 in rash and negligent manner dashed with the deceased and accident occurred and deceased sustained grievous injuries and was admitted to hospital where he expired during the course of treatment. Therefore I hold that opponent No.1 being the driver of the offending i-20 Car No. GJ.06.JE.1443 was solely negligent in causing the accident due to which the deceased sustained grievous injuries and he expired during the course of treatment. Hence, I answer issue No.1 accordingly in affirmative.

Issue No.2 : Quantum of compensation.

9] So far as the compensation is concerned, it is submitted by Ld. Advocate Mr.C.B. Rawal for the claimants that, the deceased was having a Pani Puri Stall and was selling Pani Puri and was earning about Rs.40,000/- per month. It is further submitted that the deceased was aged 41 years at the time of accident and had he not died he would have worked for more period and his income would have certainly increased. Moreover, claimants have produced on record the copy of Aadhar Card of deceased which shows that, the date of birth of deceased is 01.01.1973 and the accident in question occurred on 15.01.2026, which makes it clear that, at relevant time **deceased was aged about 43 years**. Claimants have not produced any documentary evidence on record to prove the income for the deceased. Hon'ble the ***Supreme Court in the case of Govind Yadav Vs. Natinoal Insurance Co. Ltd. reported in 2012 (1)***

<u>TAC 1 (SC)</u>, that if no proof of income is produced on the record then Tribunal has to consider prevalent rate of minimum wages in absence of the evidence of monthly income of the claimant. Accordingly, looking to nature of work done by the deceased and the date of accident and as per the Minimum Wages of Skilled Labour as per Government of Gujarat, this Tribunal is of the opinion that, Rs.8,000/- per month can be considered as income of the deceased at the time of accident. As per Judgment of ***the Hon'ble Supreme Court in case of National Insurance Co. Ltd. Vs. Pranay Sethi & Others, SLP(Civil) No.25590/2014***, dated 31/10/2017, the deceased was aged about 43 years and was self employed, therefore 25% would be added towards future prospectus i.e. Rs.8000/- + (25%)Rs.2000/- = Rs.10,000/- and as there were six dependents, 1/4th amount is deductible as personal and pocket expenses of deceased. Therefore, the income that remains after arithmetical calculation is Rs.10,000/- - Rs.2,500/-(1/4th) = Rs.7500/-. **Therefore, the monthly dependency loss of Rs.75000/-** can be considered for calculating the total dependency loss.

<u>MULTIPLIER & LOSS OF DEPENDENCY :</u>

For application of the multiplier to find out loss of income, it is clear that, deceased was aged about 43 years at the time of accident. Relying upon case of ***Sarla Varma Vs. DTC, 2009(6) SCC, 121,*** the Hon'ble Supreme Court, multiplier of 14 for the age of 43 years can be applied.

Therefore, multiplier of 14 is applied in the present case. The arithmetical calculation after applying multiplier to dependency loss would be come to Rs.12,60,000/- (i.e. Rs.7500/- x 12 months x 14 multiplier = Rs.12,60,000/-).

CONVENTIONAL HEADS :

At this juncture, reliance is required to be placed on the ruling of ***Magma General Insurance Co. Ltd. v. Nanu Ram & Ors: 2018 (18) SCC 130.***,

"this Court interpreted "consortium" to be a compendious term, which encompasses spousal consortium, parental consortium, as well as 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.

57. Parental consortium is granted to the child upon the premature death of a parent, for loss of parental aid, protection, affection, society, discipline, guidance and training.

58. Filial consortium is the right of the parents to compensation in 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 a parent is to lose their child during their lifetime. Children are valued for their love and affection, and their role in the family unit."

Further Hon’ble the Supreme Court in the case of New India Assurance Co. Ltd. vs. Somwati & Ors.,reported in 2020 (0) AIJEL-SC 66509 has held that each eligible claimant - such as spouse (spousal consortium), child (parental consortium), or parent (filial consortium) is entitled to receive ₹40,000 under the head of consortium.

Considering the decision of Hon'ble Apex Court rendered in the case of National Insurance Company Limited Vs. Pranay Sethi(Supra) & Ors., reported in 2017 ACJ 2700, **Rs.48,400/- is awarded towards Loss of consortium to each of the applicant** i.e applicant No.1(Wife of the deceased- Spouse consortium), Applicant Nos.2 to 4 (Children of the deceased- Parental consortium), Opponent Nos.4 & 5 (Parents of the deceased- Filial consortium) **[*(Rs. 40,000/- which was awarded by the Hon'ble Supreme Court towards Loss of consortium in case of National Insurance Co. Ltd. Vs. Pranay Sethi & Ors in Special (Civil) No. 25990/2024, dated 31/10/2017 should be enhanced at the rate of 10% in every three years as per guideline issued by the Hon'ble Supreme Court]***

10.5 Furthermore, as per judgment of ***National Insurance Company Limited Vs. Pranay Sethi and others (supra)***, the applicants are also entitled to get Rs.18,150/- towards loss of estate and Rs.18,150/- towards funeral expenses ***(Rs. 15,000/- and Rs. 15,000/- which were awarded by the Hon'ble Supreme Court towards Loss of Estate and Funeral expenses in case of National Insurance Co. Ltd. Vs. Pranay Sethi & Ors in Special (Civil) No. 25990/2024, dated 31/10/2017 should be enhanced at the rate of 10% in every three years as per guideline issued by the Hon'ble Supreme Court)***.

10] In view of the above referred discussions, claimants and opponent Nos.4 & 5 are entitled for following amount as compensation :

Rs.12,60,000=00	Loss of Dependency.
Rs. 2,90,400=00	Towards Consortium
Rs. 36,300=00	Towards Loss of Estate and Funeral Expenses.
Rs.15,86,700=00	**Total amount of compensation.**

Liability :

11] As decided above, the opponent No.1- driver of offending car No.GJ.06.JE.1443 was solely negligent in causing the accident. A copy of the insurance policy of the offending vehicle car No.GJ.06.JE.1443 is produced with list vide Ex.30 which shows that the offending involved in the accident was belonging to the opponent No.2 and it was insured with the opponent No.3 - Bajaj Allianz General Insurance Co. Ltd. at the time of accident and the insurance policy was valid from 29.04.2015 to 28.04.2016 and the accident occurred on 15.01.2016. Under these circumstances, the opponent Nos.1, 2 & 3 being driver cum owner and insurer of the offending vehicle car No.GJ.06.JE.1443 are jointly and severally liable to pay compensation to the claimants.

12] As per the latest decisions of the Hon'ble Supreme Court in case of ***Josphine James v. United India Insurance Co. Ltd. and another***, ***2013 ACJ 2418 (SC)*** and in case of ***Kishan Gopal v. Lala and others*** [***2013 A.C.J. 2594 (SC)***] and ***Municipal Corporation of Delhi v. Association of Victims of Uphhar Society [2012 ACJ 48 (SC)]***, it would be just and proper to award an interest @9% per annum on the compensation awarded in favour of the claimants and therefore, the claimants are entitled to get an interest at the rate of 9% p.a. from the date of filling the present claim petition.

Issue No.3 :

13] In view of aforesaid discussions, I pass following final order :

:: ORDER ::

- Present claim petition is hereby partly allowed with proportionate costs and interest against the opponent Nos.1, 2 & 3.

- The Claimants & Opponent Nos.4 & 5 are entitled to recover an amount of Rs.**15,86,700=00 (Rupees Fifteen Lacs Eighty Six Thousand Seven Hundred Only**) by way of compensation from the opponent Nos.1, 2 & 3 jointly and severally together with interest @ 9% p.a. from the date of filling the petition till realization of the payment.

- The amount of interim compensation, if any paid U/ Sec.140 of M.V. Act shall be deducted from the awarded amount of compensation.

- The opponent Nos.1, 2 & 3 shall follow the guidelines given in the case of ***Hansagauri Prafulchandra Ladhani & others v. Oriental Insu. Co. Ltd. & Ors. [2007 ACJ 1897 (DB) Guj.]*** by the Hon'ble High Court of Gujarat, with regard to the deduction of Income Tax.

- Opponent Nos.1, 2 & 3 are hereby directed to deposit the awarded amount of compensation together with interest within one month from date of this order.

- The Court fees, if any recovered, it shall be deducted first from the awarded amount of compensation.

- Order regarding disbursement will be passed after depositing the awarded amount by the opponent Nos.1, 2 & 3.

- Award to be drawn accordingly.

Signed and pronounced in the open Court
today on 9th day of April, 2026.

Date : 09.04.2026

Place: Vadodara

[Ghanshyam Jayantbhai Thoria]
M.A.C. Tribunal (Auxi.) &
10th Additional District Judge,
Vadodara.
UID Code No. GJ00842

BKSajnani