

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/FIRST APPEAL NO. 3579 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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Approved for Reporting	Yes	No

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AHMEDBHAI SHARAFATALI SAI &amp; ANR.

Versus

KESHUBHAI MOHANBHAI PARMAR &amp; ORS.

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Appearance:

MR. BHAUMIK DHOLARIYA(7009) for the Appellant(s) No. 1,2

MR MOHSIN M HAKIM(5396) for the Defendant(s) No. 1,3

MR PALAK H THAKKAR(3455) for the Defendant(s) No. 4

NOTICE NOT RECD BACK for the Defendant(s) No. 2

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**CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI****Date : 11/06/2026****ORAL JUDGMENT**

1. The captioned appeal is filed against the impugned judgment and award dated 06.09.2014 passed by the learned Motor Accident Claims Tribunal (Main), Surat in MACP No.633/1995, whereby the learned Tribunal had partly allowed the claim petition and awarded a sum of Rs.2,02,000/- as a compensation along with interest at the rate of 9% per annum from the date of filing of claim petition till its realization.

2. The succinct facts leading to file the captioned appeal are that on 04.02.1994, the deceased was travelling on his luna moped bearing

registration no.GRH 5049 at very moderate speed and on the correct side of the road. When he reached at the place of accident, the appellant no.1 herein came by driving a truck bearing registration no.GRU 3723 at an excessive speed, in rash and negligent manner and dashed with the deceased and caused the accident. Due to the impact of the said accident, the deceased sustained severe injuries and succumbed to the injuries on the spot.

3. On being served, the appellant nos.1 and 2 filed their respective written statements at Exh.54 and Exh.22, while the respondent no.4/insurance company filed its written statement at Exh.16 and thereby denying all the averments made in the claim petition and prayed for rejection of the claim petition.

4. Having considered the pleadings, evidence led by the respective parties and the submissions canvassed by the respective parties, the learned Tribunal had partly allowed the claim petition and awarded a sum of Rs.2,02,000/- as a compensation along with interest at the rate of 9% per annum from the date of filing of claim petition till its realization.

5. Being aggrieved and dissatisfied with the impugned judgment and award, the appellants have challenged the impugned judgment and award on the ground of negligence and the maintainability of the claim petition on behalf of brothers of the deceased.

6. Heard learned counsels for the parties.

7. Mr. Bhaumik Dholariya, learned counsel appearing on behalf of

the appellants/owner and driver of the offending vehicle submitted that the involvement of the vehicle and the negligence of the appellant/driver was not proved on record; however, the learned Tribunal has held that the appellant/driver of the offending vehicle was negligent for causing the accident. He further submitted that the negligence has not been proved on record, therefore, the finding returned by the learned Tribunal is not sustainable and the same is required to be modified.

8. Learned counsel for the the appellants further submitted that the claimants/respondent nos.1 to 3 herein are the brothers of the deceased, therefore, they were not dependent upon the deceased, and hence they are not entitled to get the compensation. In support of his contention, learned counsel for the appellants placed the reliance upon the judgment rendered by the Hon'ble Apex Court in case of **Sadhana Tomar Vs. Ashok Kushwaha**, reported in 2025 SCC OnLine SC 554, **Anju Mukhi & Anr. Vs. Satish K. Bhatia & Ors.**, reported in (2010) 15 SCC 630 and **New India Assurance Company Ltd. Vs. Anand Pal**, reported in 2023 (0) AIJEL-SC 73185. Having placed the reliance upon the aforesaid judgments, learned counsel for the appellants submitted that the captioned appeal deserves to be allowed and the impugned judgment and award is liable to be set aside.

9. Per contra, Mr. Mohsin M. Hakim, learned counsel appearing on behalf of respondent nos.1 and 3/original claimants vehemently submitted that the offending truck bearing registration no.GRU 3723 was involved in the accident and at the time of accident, the said truck was being driven by the appellant no.1. He further submitted that after completing the investigation, the investigating officer has filed the charge-sheet against the appellant no.1 and consequently, he faced the

trial. Therefore, he submitted that the finding returned by the learned Tribunal on the issue of negligence is liable to be upheld.

10. Learned counsel for the original claimants further submitted that that the claim petition came to be filed by the brothers of the deceased. He submitted that the brothers of the deceased can maintain the claim petition. In support of his contention, learned counsel for the original claimants placed the reliance upon the judgment rendered by the Hon'ble Apex Court in case of **Gujarat State Road Transport Corporation, Ahmedabad Vs. Ramanbhai Prabhatbhai & Anr.**, reported in (1987) 3 SCC 234, **Jitender Kumar Vs. Sanjay Prasad**, reported in 2025 (0) AIJEL-SC 75499, **Manjusha & Ors. Vs. United India Assurance Compnay Ltd.**, passed in (Special Leave Petition (civil) No.5885 of 2019) and the judgment of Gujarat High Court rendered in case of **The Oriental Insurance Company Ltd. Vs. Raman Purshothaman Nair**, passed in First Appeal No.2239 of 2015. Having placed the reliance upon the aforesaid judgments, learned counsel for the original claimants submitted that the brothers of the deceased can maintain the claim petition under Section 166 of the Motor Vehicles Act as they are the legal representatives of the deceased, therefore, the present appeal deserves to be rejected.

11. Mr. Palak H. Thakkar, learned counsel appearing on behalf of respondent no.4 vehemently submitted that the insurance company has already been exonerated on the ground that at the time of accident, the vehicle was not insured, therefore, no liability can be fastened upon the insurance company. Hence, he submitted that there is no infirmity in the impugned judgment and award.

12. Having considered the submissions of the learned counsels for the parties and having gone through the record, it is to be noted that the appellants have challenged the impugned judgment and award on the ground of negligence and the maintainability of the claim petition on behalf of brothers of the deceased.

13. So far as the negligence is concerned, it is to be noted that the FIR came to be lodged by the police authorities, where the name of the driver was not mentioned. Perusal of the panchnama transpires that the offending truck bearing registration no.GRU 3723 was found at the place of accident. The claimant-Rameshbhai Mohanbhai Parmar has filed his affidavit in examination-in-chief along with the lines of pleadings. He was cross-examined but nothing adverse came on record. The driver and owner of the offending vehicle also filed the affidavit in examination-in-chief and stepped into witness box. The driver of the offending vehicle in his cross-examination, admitted that he has faced the trial and he has not made any complaint to the higher authorities that he has been falsely implicated in the present case. Not only this, in para 9 of his written statement, he has taken a contradictory plea, which demolished his defence. Thus, in the light of oral as well as documentary evidence, the learned Tribunal has not committed any error in holding that the driver of the offending truck was negligent for causing the accident. Hence, the finding returned by the learned Tribunal on the issue of negligence is upheld.

14. So far as the contention of the learned counsel for the appellants that the original claimants, who happen to be the brothers of the deceased, cannot maintain the claim petition under Section 166 of the MV Act as they were not dependent upon the deceased. The claimant-

Rameshbhai Mohanbhai Parmar, in his cross-examination, admitted that the deceased was his brother and the deceased had no legal representatives as he was bachelor. He also admitted that they were living separately and they were not dependent upon the deceased. Now, in light of the aforesaid evidence, the question arises as to whether the claimants can claim the compensation on account of death of their brother in road accident. Section 166 of the MV Act enumerates the categories of the persons, who can claim the compensation on account of death in a vehicular accident and the same are reproduced hereinunder:-

*“(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made--*

- (a) by the person who has sustained the injury; or*
- (b) by the owner of the property; or*
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or*
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:*

*Provided that where all the legal representatives of the deceased have not joined in any such application for compensation, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined, shall be impleaded as respondents to the application.*

*Provided further that where a person accepts compensation under section 164 in accordance with the procedure provided under section 149, his claims petition before the Claims Tribunal shall lapse.*

*(2) Every application under sub-section (1) shall be made, at the option of*

*the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:*

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*(3) No application for compensation shall be entertained unless it is made within six months of the occurrence of the accident.*

*(4) The Claims Tribunal shall treat any report of accidents forwarded to it under section 159 as an application for compensation under this Act.*

*(5) Notwithstanding anything in this Act or any other law for the time being in force, the right of a person to claim compensation for injury in an accident shall, upon the death of the person injured, survive to his legal representatives, irrespective of whether the cause of death is relatable to or had any nexus with the injury or not.”*

15. As per Section 166 (1) of the MV Act, the following persons can claim the compensation on account of death or injury sustained in a vehicular accident:-

- (a) by the person who has sustained the injury; or*
- (b) by the owner of the property; or*
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or*
- (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be:*

16. Clause (1)(c) of Section 166 is amply clear that the legal

representatives of the deceased can claim the compensation on account of death. It is not in dispute that the deceased happens to be the brother of the claimants. Being legal representatives, they can maintain the claim petition. Learned counsel for the appellants placed the reliance upon the judgment rendered in the case of Sadhana Tomar (supra), wherein the family members including father and younger sister were held not entitled to get the compensation as they were not dependents. Similarly in case of Anju Mukhi & Anr. (supra), the Hon'ble Apex Court in para 4 of the judgment, has observed as under:-

*“4. The only challenge is to the finding that on remarriage the widow loses the right to claim compensation. It is to be seen that the main purpose of the Motor Vehicles Act is to award compensation for loss of income on the death of a person. On remarriage there is no longer a loss of income. Now the dependency has shifted on to the new husband. Therefore, we are in agreement with the High Court that after remarriage a widow would not be entitled to any compensation.”*

17. Similarly, in case of Anand Pal (supra), the brothers and sisters were held not to be dependents because they would either be earning members themselves, married or dependent upon their father.

18. The issue involved in the present appeal directly came for consideration before the Hon'ble Apex Court in case of Ramanbhai Prabhatbhai & Anr. (supra), wherein the elder brother had filed the claim petition to claim the compensation under the Motor Vehicles Act on account of death of his younger brother. The Hon'ble Apex Court, in para 13 of the judgment, has observed as under:-

*“13. We feel that the view taken by the Gujarat High Court is in*

*consonance with the principles of justice, equity and good conscience having regard to the conditions of the Indian society. Every legal representative who suffers on account of the death of a person due to a motor vehicle accident should have a remedy for realisation of compensation and that is provided by sections 110-A to 110-F of the Act. These provisions are in consonance with the principles of law of torts that every injury must have a remedy. It is for the Motor Vehicles Accidents Tribunal to determine the compensation which appears to it to be just as provided in section 110-B of the Act and to specify the person or persons to whom compensation shall be paid. The determination of the compensation payable and its apportionment as required by section 110B of the Act amongst the legal representatives for whose benefit an application may be filed under section 110-A of the Act have to be done in accordance with well-known principles of law. We should remember that in an Indian family brothers, sisters and brothers' children and some times foster children live together and they are dependent upon the bread-winner of the family and if the bread-winner is killed on account of a motor vehicle accident, there is no justification to deny them compensation relying upon the provisions of the Fatal Accidents Act, 1855 which as we have already held has been substantially modified by the provisions contained in the Act in relation to cases arising out of motor vehicles accidents. We express our approval of the decision in Megjibhai Khimji Vira and another v. Chaturbhai Taljabhai and others, (supra) and hold that the brother of a person who dies in a motor vehicle accident is entitled to maintain a petition under section 110-A of the Act if he is a legal representative of the deceased.”*

19. Similarly, in case of Jitender Kumar (supra), the married sons and an unmarried daughter filed the claim petition for claiming the compensation. The Hon'ble Apex Court, in para 12 of the judgment, has observed as under:-

*“12. The High Court has placed reliance on the judgment of this Court in National Insurance Co. Ltd. v. Birender, 2020) 11 SCC 356 to observe that the claimant-appellant(s) are legal representatives of the deceased and have a right to apply for compensation. Thereafter, in its discussion, the Court observed that the claimant-appellant(s) have not been shown to be dependents on the deceased and consequently, a deduction of 50% is to be made to determine the compensation to be received by the claimant-appellant(s).”*

20. Similarly, in case of **National Insurance Company Ltd. Vs. Birender & Ors.**, reported in (2020) 11 SCC 356, wherein the Hon'ble Apex Court, in para 14 of the judgment, has observed as under:-

*“14. It is thus settled by now that the legal representatives of the deceased have a right to apply for compensation. Having said that, it must necessarily follow that even the major married and earning sons of the deceased being legal representatives have a right to apply for compensation and it would be the bounden duty of the Tribunal to consider the application irrespective of the fact whether the concerned legal representative was fully dependant on the deceased and not to limit the claim towards conventional heads only. The evidence on record in the present case would suggest that the claimants were working as agricultural labourers on contract basis and were earning meagre income between Rs.1,00,000/ and Rs.1,50,000/ per annum. In that sense, they were largely dependant on the earning of their mother and in fact, were staying with her, who met with an accident at the young age of 48 years.”*

21. The issue also came before the learned Single Judge of Gujarat High Court in case of Raman Purshothaman Nair (supra), wherein the learned Single Judge, in para 6 of the judgment, has observed as

under:-

*"6. I have considered the rival submissions made at the Bar. I have considered the [Section 166](#) of the Motor Vehicles Act. I have considered various judgments, more particularly, the judgment which squarely decides the issue about who can be considered as legal representative in view of the language of [Section 166](#) of the Motor Vehicles Act. The judgment of the Hon'ble Apex Court in the case of [Smt. Manjuri Bera](#) (supra) where the Hon'ble Apex Court has categorically held that married daughter is entitled to get compensation though she is not dependent on the deceased, but she is legal representative under Section 166. Another judgment which is also required to be considered is [Montford Brothers](#) (supra) where the Supreme Court has held to the extent that even collective entity may claim compensation as legal representative by considering the provisions of the [Fatal Accident Act, 1855](#). The Hon'ble Apex Court has also considered once again the issue in the case of [N. Jayasree](#) (supra). Para 21 of that judgment is reads as under:*

*"21. Coming to the facts of the present case, the fourth appellant was the motherinlaw of the deceased. Materials on record clearly establish that she was residing with the deceased and his family members. She was dependent on him for her shelter and maintenance. It is not uncommon in Indian Society for the motherinlaw to live with her daughter and soninlaw during her old age and be dependent upon her soninlaw for her maintenance. Appellant no.4 herein may not be a legal heir of the 8 AIR 1987 Pat 239 deceased, but she certainly suffered on account of his death. Therefore, we have no hesitation to hold that she is a "legal representative" under [Section 166](#) of the MV Act and is entitled to maintain a claim petition.*

*(II) Whether the High Court was justified in applying a split multiplier-" Therefore, [in that case](#), the mother-in-law is considered as the dependent of the son-in-law. The judgment rendered by this Court in the First Appeal*

No. 1792 of 2020 dated 09.08.2021 in the case of *Bajaj Allianz General Insurance Co. Ltd. Pune v. Thakor Jayantibhai Piraji*, this Court has held in the following terms in Paras 11.1, 11.2 and 12, which are relevant and being reproduced as under:-

"11.1 The law is well settled that the Motor Accident Act is a beneficial legislation enacted with the object to provide monetary relief to the victim or their family. The Hon'ble Supreme Court from time to time in its decisions *referred to above* has held that the term 'legal representative' is required to be given a wider interpretation for the purpose of *Chapter XII of the Motor Vehicle Act* and the interpretation should not be confined only to the spouse, parents and children of the deceased. *The Act* therefore calls for a liberal and wider interpretation to serve the underlying purpose of the enactment and fulfillment of its legislative intent.

11.2 To maintain a claim petition it is sufficient for the claimant to establish that there is loss of dependency and every legal representative who suffers on account of death of a person in a motor vehicle accident have the remedy for realization of compensation.

12. In view of the above settled legal position, we are of the view that the opponent no.6 being the real sister of the deceased - Rakesh Shantilal Sharma is entitled to claim compensation in her capacity as a legal representative. We are not inclined to interfere with the findings recorded by the Tribunal. In our opinion, the Tribunal has taken into consideration all the above aspects in accordance with the law as well as per the ratio *laid down by* the Supreme Court in various decisions."

This Court has considered that real sister of the deceased is entitled to claim compensation in our capacity as legal representative. Therefore, I found that the Tribunal has not committed any error by considering the present claimants as legal representative.

6.1 Now the second issue is about the negligence aspect. I have considered that discussion of the Tribunal in Paras 14, 15 and 16. I found

that the Tribunal has rightly considered the panchnama and after considering width of the road which is 22 feet and having 5 feet Kachcha road and the vehicle damaged from the front side, the brake marks found on the road and also the position of the vehicle at the time of panchnama, clearly speaks about the role of both the vehicles. More particularly, if we consider the F.I.R. lodged by one of the passengers driving in the Jeep, clearly reveals that the truck has come on the wrong side as somehow the driver of the truck lost control over the vehicle. Therefore, the truck has dashed with the Jeep and truck was in so much speed that Jeep has immediately turned turtle and due to that, several passengers have received injuries as well as some of them have succumbed to the injuries. This version of the F.I.R. is well supported by the panchnama. Therefore, there is no reason to disbelieve the aspect, more particularly, considering the recent judgment of the Hon'ble Apex court in the case of [Renu Rani Srivastava v. New India Assurance Company](#) reported in AIR 2019 SC 5719 and also considering the principle of *res ipsa loquitur*. The things fixed for itself and looking to the panchnama, I have no hesitation that driver of the truck is solely negligent and, therefore, the Tribunal has not committed any error. Now considering the aspect of deduction of dependency. The Tribunal has rightly considered the issue of dependency in Para 17 of the impugned judgment. The Tribunal after considering 1/2 deduction towards income of the deceased as the deceased was unmarried and in view of the judgment of Hon'ble Apex Court in the cases of [Sarla Verma](#) (supra) and [Pranay Sethi](#) (supra), there is no error committed by the Tribunal. The Tribunal has rightly considered the multiplier of 17 after considering the judgment of [Sarla Verma](#) (supra) as the deceased was aged 30 years. At the time of accident, the deceased was getting salary of Rs.3,356/- and as the deceased was salaried employee and was aged 30 years, in view of the [Pranay Sethi](#) (supra) judgment, the Tribunal has rightly added 50% towards prospective income. Therefore, considering the judgment in totality, I found there is no error committed by the Tribunal. On the contrary, it is found that the Tribunal has

*not awarded some amount under the head of consortium and amount which is awarded towards funeral Rs.10,000/- should be more in view of the amount awarded under the head of loss of estate i.e. Rs.15,000/- which can also be more in view of the judgment of Hon'ble Apex Court in the case of [Somwati](#) (supra). However, since the claimants have not preferred any appeal, and claimants have not argued to enhance any amount of compensation, therefore, that aspect has not been considered. Therefore, as discussed above, that the Tribunal has given cogent and convincing reasons while considering the claimants as dependent of the deceased and while considering the issue regarding negligence as well as quantum of the compensation, the Tribunal has not committed any error and has considered the documentary evidence available on the record appropriately and also considered the judgment of [Pranay Sethi](#) (supra), [Sarla Verma](#) (supra) and other relevant judgments which are cited at the Bar.”*

22. Further, in case of ***Manjuri Bera Vs. Oriental Insurance Company Ltd. & Anr.***, reported in 2007 (10) SCC 643, the Hon'ble Apex Court has held that a married daughter can also claim the compensation on account of death of her parents. Similarly, in case of ***N. Jayasree Vs. Cholamandalam Ms General Insurance Company Ltd.***, reported in AIR OnLINE 2021 SC 923, the Hon'ble Apex Court has held that the brother's sister and brother's children can also claim the compensation.

23. Even in case of ***Montford Brothers of St. Gabriel & Anr. Vs. United India Insurance Company Ltd.***, reported in 2014 (3) SCC 394, the Hon'ble Apex Court has held that the successor to the trustees of trust property can also be considered as a legal representative. The MP High Court, in case of ***Mahant Shyamdas Guru Mohandas Vs.***

***Lalaram M. Kori & Ors.***, reported in AIR 2008 MP 47, also held that even a Gurubhai of an Ashram can be considered as a legal representative.

24. Thus, in view of the catena of judgments of the Hon'ble Apex Court as well as various High Courts, I am of the considered view that the brothers can claim the compensation on account of death of their brother and the claim petition is maintainable under Section 166 of the Motor Vehicles Act.

25. In view of the above discussion, the captioned appeal fails and hence stands dismissed. The appellants are directed to satisfy the award within a period of 6 weeks from the date of receipt of copy of this order along with interest.

26. The amount, if any, lying deposited with the registry of this Court, the same shall be transmitted to the learned Tribunal concerned forthwith. No order as to costs.

27. Record & Proceedings, if any, be sent back to the learned Tribunal concerned.

HARSHIT

**(MOOL CHAND TYAGI, J)**