IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1041 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE L. S. PIRZADA

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Approved for Reporting	Yes	No

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DUDHABHAI TRIKAMBHAI PARMAR & ORS.
Versus
SARVANSINGH S/O HIRASINGH (DELETED) & ORS.

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Appearance:
MS CHANDANI O VYAS FOR VIRAL K VASHI(8220) for the Appellant(s) No. 1,2,3
DELETED for the Defendant(s) No. 1
MS ESHA S BHAVSAR FOR MR RATHIN P RAVAL(5013) for the Defendant(s) No. 3
RULE SERVED for the Defendant(s) No. 2

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CORAM:**HONOURABLE MR.JUSTICE L. S. PIRZADA**

Date : 28/10/2026

ORAL JUDGMENT

1. The present appeal has been preferred by the present appellants - original claimant nos. 1, 2 and 3 against the judgment and award dated 01.09.2023 passed by the Motor Accident Claims Tribunal (Auxi.) and 2nd Additional District and Session Judge at Mirzapur, Dist.: Ahmedabad (Rural) in MACP no. 421 of 2015 whereby the learned Tribunal has rejected the Claim Petition.

2. The factual matrix of the present appeal is that a Claim Petition was preferred by the appellants before the learned Tribunal to recover compensation of Rs.10,00,000. It is the case of the appellants that on 20-02-2015, the original applicant no. 1,

Dudhabhai Trikambhai Parmar's son and applicant nos. 2 and 3's brother - Chaganbhai Dudhabhai Parmar, went towards Bavla on motorcycle no. GJ-01-ST-8963, which was driven by the deceased - Chaganbhai Dudhabhai Parmar at a moderate speed and at around 8:20 pm while passing by village: Lodariya, near petrol pump, the original opponent no. 1 came with truck no. GJ-04-X-5996 in full speed and in a negligent manner and dashed with his motorcycle whereby the deceased - Chaganbhai Parmar sustained grievous injuries. During the course of his treatment at Sanand, he passed away. Hence, the original claimant no. 1 being father of the deceased and original claimant nos. 2 and 3 being brothers of the deceased had filed Claim Petition before the learned Tribunal to recover compensation. It is pertinent to note that during the pendency of the Claim Petition, the father of the deceased, claimant no. 1 - Dudhabhai Trikambhai Parmar passed away and he was deleted as a party to the Claim Petition.

2.1. The learned Tribunal has rejected the Claim Petition only on the ground that the claimant nos. 2 and 3 are the elder brothers of the deceased and they are not financially dependent on the deceased and as they were living separately from the deceased on the date of the accident. Hence, they cannot maintain the Claim Petition as they are not dependent on the deceased and mainly on this ground, the Claim Petition was rejected.

3. Heard Ms. Chandani O. Vyas, learned advocate appearing on behalf of Mr. Viral K Vashi, learned advocate for the appellants. She has submitted that the impugned judgment and award is illegal, improper and unjust under the provisions of law. She submitted that the Hon'ble Supreme Court in the case of **National Insurance Company Ltd Vs. Birender in Civil Appeal nos. 242-243 of 2020** has already held that the Claim Petition can be maintained by the legal representative of the deceased and they have right to apply for the compensation. She further submitted that the Co-ordinate Bench of this Court in the

case of **Ahmedbhai Sharafatali Sai and Another Vs. Keshubhai Mohanbhai Parmar and Ors. in First Appeal no. 3579 of 2014** has also observed that the brothers can claim the compensation on account of death of the brother and Claim Petition is maintainable under Section 166 of the Motor Vehicles Act, 1988. She further submitted that the learned Tribunal has not considered any other aspect and merely on this ground only the Claim Petition has been rejected. She has submitted that the present appeal deserves to be allowed and matter is required to be remanded back to the concerned Tribunal to decide afresh.

4. On the other hand, Ms. Esha S Bhavsar, learned advocate appearing on behalf of Mr. Rathin Raval, learned advocate for the respondents has submitted that the judgment and award passed by the learned Tribunal is just and proper and does not require any interference. In support of her arguments, she has relied upon the judgment of this Court in the case of **United India Insurance Company Ltd Vs. Diptiben Ureshbhai Vora** reported in **2017 ACJ 234** and submitted that it has clearly come on record that even in the ration card, the names of claimant nos. 2 and 3 have been deleted as they had moved to some other place and hence, they are not financially dependent on the deceased, therefore, the learned Tribunal has rightly rejected the Claim Petition.

5. Heard the learned advocate for the respective parties.

6. Considering the facts and circumstances of the case, the only question before this Court is that the learned Tribunal has rejected the Claim Petition only on the ground that claimant nos. 2 and 3 are not financially dependent on the deceased and the Claim Petition came to be rejected mainly on this ground only. In this regard, the findings of the learned Tribunal is required to be considered. The learned Tribunal has relied upon the deposition of witness of opponent no.3-insurance company namely,

Pravinchandra Bhrambhatt who has been examined vide exh. 31. As per his deposition, he has was running a fair price shop and the deceased and his family members were registered in his fair price shop. The copy of the ration card has been produced at exh. 32 and as per this ration card, three names have been mentioned namely, Dudhabhai Trikambhai Parmar, Samuben Dudhabhai and Chaganbhai Dudhabai. Initially, there were six names in the ration card and out of them, three names have been deleted. The learned Tribunal, on the ground that, the claimant nos. 2 and 3 are residing separately and also considering that the brother of a person who dies in the motor accident is not entitled to maintain the petition as they have proved that they were residing together and the deceased was earning and he used to feed the claimant nos. 2 and 3, the claim petition was rejected mainly on this ground.

7. At this juncture, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court in the case of **Birender**(supra) whereby the Hon'ble Supreme Court has observed in paragraph no. 15 as under:

> *"15. 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."

8. Further, the Co-ordinate Bench of this Court in the case of **Keshubhai Mohanbhai Parmar and Ors**(supra) has observed in paragraph nos. 15, 16, 17, 18, 19, 20, 22, 23, 24 as under:

> *"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:-*
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> *(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:*
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> *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:-*
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> > *"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 re-quired by section 110B of the Act amongst the legal repre- sentatives for whose benefit an application may be filed under section 110-A of the Act have to be done in accordance with well-known prin- ciples 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 provi- sions 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."

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."

9. Considering the settled principles of law and the pronouncement of the Hon'ble Supreme Court and Co-ordinate Bench of this Court as per Section 166(1)(c) of the Motor Vehicles Act, 1988, in case of a death resulting from an accident, the Claim Petition can be filed by all or any of the legal representatives of the deceased. Further, it is pertinent to note that initially, the petition was filed by the father as well as the brothers of the deceased but during the pendency of the Claim Petition, the father of the deceased passed away. So considering the pronouncement of the Hon'ble Supreme Court and Co-ordinate Bench of this Court, as per Section 166(1)(c) of the Motor Vehicles Act, 1988, the claim petition can be maintained by the brothers of the deceased and the claim petition is maintainable under Section 166 of the Motor Vehicles Act, 1988.

10. Considering the above, the findings recorded by the learned Tribunal are against the settled principles of law and require interference and hence, the impugned judgment and award deserves to be quashed and set aside.

11. The present appeal is hereby allowed. The judgment and award passed by the Motor Accident Claims Tribunal (Auxi.) and 2nd Additional District and Session Judge at Mirzapur, Dist.: Ahmedabad (Rural) in MACP no. 421 of 2015 dated 01.09.2023 rejecting the Claim Petition of the claimants is hereby quashed and set aside.

11.1 The matter is remanded back to the learned Tribunal to decide the Claim Petition being MACP no. 421 of 2015 afresh in accordance with law and also considering the fact that the Claim Petition is of 2015, it may be decided preferably within a period of one year from the date of receipt of copy of the judgment.

Direct service is permitted.

12. Record and proceedings, if any, be sent back to the concerned Tribunal forthwith.

(L. S. PIRZADA, J)

ANUSRI

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ANUSRI VASU(HC02352), ENGLISH STENO GRADE-II\, at High Court of Gujarat on 28/10/2026 17:01:52