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Exhibit :

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IN THE COURT OF 10TH ADDI. DISTRICT JUDGE & MACT (AUXI.) AHMEDABAD (RURAL)

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MOTOR ACCIDENT CLAIM PETITION NO. 26 OF 2022

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Petitioner / Claimant :

Prajapati Shweta Rajeshkumar
Age : 22 years, Occu. : Service,
Residing at : B/19, Virbaba Park Society,
Jagatpur Road, Chandlodiya, Ahmedabad.

V E R S U S

Opponents :

1. Prajapati Pavitraben Rameshbhai
   Residing At : Kumbhar Vas, At Post Kimbuva,
   Taluka Saraswati, District Patan.
   (Owner of Motorcycle bearing no.GJ-24-AP-2233)

2. HDFC Ergo General Insurance Co. Ltd.
   At : 206, 2nd Floor, Shoppers Plaza-4,
   Telephone Exchange Road, Navrangpura,
   Ahmedabad.
   (Insurer of Motorcycle bearing no.GJ-24-AP-2233)

3. Rakeshkumar Parshottambhai Prajapati
   Residing At : B/19, Virbaba Park Society,
   Jagatpur Road, Chandlodiya, Ahmedabad.
   (Owner of Motorcycle bearing no.GJ-01-UW-3239)

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Subject :- Claim Petition for Compensation of

₹8,00,000/- under section 166 of Motor Vehicles Act.

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APPERANCE :-
Ld. Advocate Mr. N. B. Rawal for the Petitioner.
Ex-parte against the Opponent No.1.
Ld. Advocate Mr. K. C. Mehta for the Opponent No.2.
The Opponent No.3 : Party-in-person.

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J U D G M E N T

[1.0] The petitioner has filed present the claim petition under Section – 166 of the Motor Vehicles Act, 1988 for seeking compensation ₹8,00,000/- from the opponents in their joint and several capacity for the injuries sustained to her in a motor-vehicular accident, which took place on 21.12.2021.

[2.0] The brief facts of the present claim petition are as under :-

On 21.12.2021, upon completion of her job, the claimant was returning on Activa bearing registration no.GJ-01-UW-3239 (for short "Activa"). The opponent no.3 who is the father of the claimant was riding the said Activa in moderate speed, carefully and by following all traffic rules and the claimant was travelling in the capacity of pillion passenger. At around 08:00 pm, the claimant was passing through Krushnanagar Dairy Road, at that time, one motorcyclist came riding Motorcycle bearing registration no.GJ-24-AP-2233 (hereinafter referred to as "the offending vehicle") in full speed, in rash and negligent manner and without following the traffic rules and dashed with Activa. Due to which, the claimant as well as her father fell down on the road and suffered grievous injuries. It has been averred that the accident occurred due to rash and negligent driving on the part of the rider of the offending vehicle. It has been further averred that crime regarding accident was registered in ‘A’-Division Traffic Police Station vide I-C.R.No.4/2022.

[2.1] It has been averred that at the time of accident the claimant was 22 years old hale and healthy, person without any disease. She was employed in Unique Data Solutions, out of which she was earning ₹17,000/- per month. It has been further averred that she suffered fracture on her left leg thigh along with other injuries on various body parts and after taking primary treatment in Sola Civil Hospital, she was admitted in Arham Hospital, Bhimjipura. Due to the injuries, she became permanently disabled resulting in incapability of doing even casual and routine work. A huge sum of money on her treatment, hospitalization, medicines, investigation, etc. has been incurred by her, as such, compensation of ₹8,00,000/- has been claimed on account of pecuniary loss, permanent disablement, physical pains, mental agony and shock, loss of earning capacity, expenditure and treatment and future treatment, services rendered by attendant and family members, loss of future earning, loss of amenities of life etc.

[3.0] The opponent no.1 was duly served the summons issued by this Tribunal, however, she has not appeared before the Tribunal and accordingly, the claim petition was ordered to be proceeded as ex-parte against her vide order passed below Exhibit:13.

[3.1] Upon service of summons, the opponent no.2-insurance appeared put in its appearance through its Ld. Advocate and also submitted its reply against the claim petition vide Exhibit:18 denying the averments of the claim petition. Admitting issuance and validity of the insurance policy of the offending vehicle at the time of accident, it has been submitted that the rider of the offending vehicle was not holding valid and effective driving licence at the time of accident. It has been further submitted that the opponent no.3 who was riding Activa tried to take right turn without following the traffic rules and, thus, he was sole negligent for causing the accident. It has been further submitted that the claimant has not produced any cogent and reliable evidence in context of her age, income, occurrence of accident, injuries suffered by her, which resulted in permanent partial disablement, etc. With these submissions, he has prayed that the claim petition may be dismissed. In the alternative, it has been submitted that contributroy negligence of the opponent no.3 may be rated on higher side.

[3.2] The opponent no.3 himself appeared before the Tribunal, however, he has not filed any reply against the claim petition.

[4.0] Based upon the available pleadings and documentary evidence, vide Exhibit:21 following issues have been framed by the Ld. Predecessor Tribunal to adjudicate the matter on merit:-

(1) Whether the petitioners prove that the he/she sustained injuries because of rash and negligent driving of the driver of vehicle involved in the accident?

(2) Whether the petitioner is entitled to compensation? If yes what amount?

(3) In case, if the finding of issue No.2 is in the affirmative, who is liable to pay the compensation?

(4) What order and award?

[5.0] My findings of the above noted issues are as under :-

(1) In Affirmative.

(2) As per final order.

(3) As per final order.

(4) As per final order.

[6.0] In order to prove the case, the petitioner has produced the following oral as well as documentary evidences:-

-:: <u>Oral Evidence</u> ::-

Sr.No.	**Particulars**	**Exh.**
1	An Affidavit of Examination-in-chief of the petitioner.	24

-:: <u>Documentary Evidence</u> ::-

Sr.No.	**Particulars**	**Exh./ Mark**
1	Copy of complaint.	26
2	Copy of Discharge Summary.	27

3	Injury Certificate of the claimant.	28
4	Various Medical Bills.	29
5	Disability Certificate.	31
6	Xerox Copy of Salary Slip of the claimant for the month of September, 2021 and October, 2021.	33

[7.0] The Opponent No.2-insurance has produced following oral as well as documentary evidence in support of its case:

-:: <u>Oral Evidence</u> ::-

Sr.No.	Particulars	Exh.
1	An affidavit of Examination-in-chief of witness Chirag Ramchandra Joshi.	34

-:: <u>Documentary Evidence</u> ::-

Sr.No.	Particulars	Exh./ Mark
1	Insurance Policy of Motorcycle bearing registration no. GJ-24-AP-2233.	37
2	Copy of charge-sheet.	38

[8.0] Learned Advocates for the respective parties have argued their case as per their pleadings and evidence. Further, the Ld. Advocate for the claimant tendered written arguments vide Exhibit:40.

[8.1] I have considered the argument advanced by the learned Advocates for the both the sides and perused the documentary as well as oral evidence submitted by the parties.

- :: R E A S O N S :: -

[9.0] **Issue No. 1 (Negligence):-**

[9.1] The Ld. Advocate for the applicant has submitted that the applicant was travelling as a pillion passenger on Activa bearing registration no.GJ-01-UW-3239, which was driven by the opponent no.3. At around 08:00 pm, when he was passing through Jagatpur Road near Krushnanagar Dairy, at that time opponent no.1, the rider of motorcycle came riding the offending vehicle in full speed, in rash and negligent manner and without following the traffic rules and dashed on the rear side of Activa. He has further submitted that the accident had occurred due to sole negligence on the part of rider of the offending vehicle. Ld. Advocate for the opponent no.2-insurance company has submitted that the opponent no.3 was also negligent in causing the accident and, therefore, negligence of the opponent no.3 may be taken into consideration.

[9.2] At the outset, it is pertinent to note here that the claimant was travelling as a pillion rider on Activa. Therefore, at the outset, it is clear that it is the case of an accident involving two or more vehicles, where a third party (other than the drivers/rider and/or owners of the vehicles are involved in the accident) – the claimant is seeking compensation for the injuries suffered by her, hence, this is a case of ‘Composite negligence’. Therefore, it is apt to refer the judgment of Hon'ble Suprme Court in case of **"Khenyei Vs. New India Assurance Co. Ltd. & Ors." reported in 2015 ACJ 1441,** wherein the Hon'ble Supreme Court has held as under;

"(i) In the case of composite negligence, plaintiff/claimant is entitled to sue both or any of the joint tortfeasor and to recover the entire compensation as liability of joint tortfeasor joint and several.
(ii) In the case of composite negligence, apportionment of compensation between two tortfeasor vis-a-vis the plaintiff/claimant is not permissible. He can recover at his option whole damages from any of them.
(iii) In case, all the joint tort feasors have been impleaded and evidence is sufficient, it is open to the court/tribunal to determine inter se extent of composite negligence of the drivers. However, determination of the extent of negligence between the joint tort feasors is only for the purpose of their inter se liability so that one may recover the sum from the other after making whole of payment to the plaintiff/claimant to the extent it has satisfied the liability of the other. In case both of them have been impleaded and the apportionment/extent of their negligence has been determined by the court/tribunal, in main case one joint tort feasor can recover the amount from the other in the execution proceedings.
(iv) It would not be appropriate for the court/tribunal to determine the extent of composite negligence of the drivers of two vehicles in the absence of impleadment of other joint tort feasors. In such a case, impleaded joint tort feasor should be left, in case he so desires, to sue the other joint tort feasor in independent proceedings after passing of the decree or award."

In case of "**T.O. Anthony v/s Karvarnan"**, **reported in (2008) 3 SCC 748,** Hon'ble Apex Court has held that;

"In an accident involving two or more vehicles, where a third party (other than the drivers and/or owners of the vehicles involved) claims damages for loss or injuries, it is said that compensation is payable in respect of the composite negligence of the drivers of those vehicles. But in respect of such an accident, if the claim is by one of the drivers himself for personal injuries, or by the legal heirs of one of the drivers for loss on account of his death, or by the owner of one of the vehicles in respect of damages to his vehicle, then the issue that arises is not about the composite negligence of all the drivers, but about the contributory negligence of the driver concerned.
6. 'Composite negligence' refers to the negligence on the part of two or more persons. Where a person is injured as a result of negligence on the part of two or more wrong doers, it is

> *said that the person was injured on account of the composite negligence of those wrong-doers. In such a case, each wrong doer, is jointly and severally liable to the injured for payment of the entire damages and the injured person has the choice of proceeding against all or any of them. In such a case, the injured need not establish the extent of responsibility of each wrong-doer separately, nor is it necessary for the court to determine the extent of liability of each wrong-doer separately. On the other hand where a person suffers injury, partly due to the negligence on the part of another person or persons, and partly as a result of his own negligence, then the negligence of the part of the injured which contributed to the accident is referred to as his contributory negligence. Where the injured is guilty of some negligence, his claim for damages is not defeated merely by reason of the negligence on his part but the damages recoverable by him in respect of the injuries stands reduced in proportion to his contributory negligence.*
>
> *7. Therefore, when two vehicles are involved in an accident, and one of the drivers claims compensation from the other driver alleging negligence, and the other driver denies negligence or claims that the injured claimant himself was negligent, then it becomes necessary to consider whether the injured claimant was negligent and if so, whether he was solely or partly responsible for the accident and the extent of his responsibility, that is his contributory negligence*."

[9.3] Thus, from the above dictum it is clear that, it is not necessary for the claimant to establish the extent of responsibility of each wrongdoer separately and even it is not necessary for the Tribunal to determine the extent of liability of each wrongdoer separately. However, as held by the Hon'ble Apex court in the case of **Khenyei (supra)**, here in this case all the joint tort feasors have been impleaded and there is sufficient evidence on record to determine *inter se* extent of composite negligence of the rider/driver of the vehicles involved in the accident for the purpose of their *inter se* liability. Now, the question that arise for consideration of this Tribunal is as to whether the rider of the offending vehicle was negligent in causing the accident or the opponent no.3 who was riding Activa had contributed in causing the accident. In this regard the claimant has produced evidence by way of her examination-in-chief affidavit at Exhibit:21 reiterating the averments of the claim petition. In her cross-examination by the Ld. Advocate for the opponent no.2-insurance company, on the day of accident, she was travelling on Activa along with her father. She stated that she was seated in a manner that her legs were on both sides of Activa. She admitted that her father was turning Activa on right side. She stated that at the time of accident, they have to take U-Turn. She stated that at the time of accident, she does not remember that the offending vehicle was how far away from Activa. She stated that accident took place when her father was taking U-Turn. She stated that she has produced all the evidence pertaining to her treatment. Apart from that, she denied the other suggestions put to her.

[9.4] Over and above affidavit of chief examination in chief, the claimant side has produced copy of the complaint at Exhibit:26, which was lodged by the opponent no.3 against the rider of the offending vehicle. It appears that accident took place at around 08:00 pm, when there was dark. The claimant in her cross-examination has clearly deposed that accident took place while her father was taking U-turn and this fact has also been corroborated with the documentary evidence produced on record i.e. copy of the complaint. In this case, although the Ld. Advocate for the opponent no.2-insurance company has asserted that some negligence may be attributed to the opponent no.3-rider of Activa, however, no evidence in this regard has been placed on record. In fact the opponent no.2-insurance company has brought on record copy of charge-sheet at Exhibit:38, which was submitted against the rider of the offending vehicle. As such, it transpires that the police investigation also supports the version of the claimant. Even otherwise, the opponent no.2-insurance company could have examined the rider of the offending vehicle, who could be best person to narrate the exact version of the accident. Here in this case, though the summons issued by this Tribunal is duly served upon the opponent no.1 who is the owner of the offending vehicle, yet, she has neither appeared before the Tribunal nor produce any evidence in rebuttal. Even, no evidence is brought on record to the effect that charge-sheet, which was submitted against the rider of the offending vehicle was challenged before any higher forum, *inter alia*, alleging that false, frivolous and vexatious allegations are levelled against him. Accordingly, in absence of any contrary evidence placed on the case file, this Tribunal is of the opinion that adverse inference is required to be drawn against the rider of the offending vehicle. Considering overall facts and circumstances of the present case, this Tribunal is of the opinion that the rider of the offending vehicle had failed to exercise reasonable care and caution while plying his vehicle on the road. Therefore, considering these factual aspects, this Tribunal comes to the conclusion that the claimant has proved that, the accident took place due to rash and negligent riding of Motorcycle bearing registration no.GJ-24-AP-2233 by its rider. Therefore, my answer to Issue No.1 is in affirmative.

[10.0] **<u>ISSUES NO.2 & 3</u>** :-

[10.1] As the issue No.1 is decided in affirmative, now it is the duty of the Tribunal to award just, equitable and fair compensation to petitioner. The expression 'compensation' is comprehensive term which includes a claim for the damages. Hon'ble Apex Court in **"Sarla Verma and Others Vs. Delhi Transport Corporation and Another"** reported in **AIR 2009 (SC) 3014** has discussed as under:-

> "*……just compensation is adequate compensation which is fair and equitable, on the facts and circumstances of the case,to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation. It is not intended to be a bonanza, largesse or source of profit.*"

[10.2] As settled legal proposition factors to be considered for deciding quantum of compensation in a claim petition wherein the claimant had suffered permanent disability in a motor vehicular accident are, age of claimant to ascertain proper multiplier, income of the claimant at the time of accident, percentage of permanent disablement of body as a whole, actual loss of income due to injuries sustained, medical expenses (already incurred and future medical expenses), expenses incurred for attendant, transportation and special diet, non-pecuniary loss (pain, shock and sufferings) and the appropriate rate of interest on the calculated compensation amount.

[11.0] **<u>Quantum</u>** :

[11.1] **<u>Income</u>** :

The claimant has submitted that at the time of accident, she was gainfully employed in Unique Data Solutions, out of which, she was earning ₹17,000/- per month therefrom. So far as the income of the claimant is concerned, the claimant has produced Xerox Copies of her salary slip issued by her employer for the Months of September, 2021 and October, 2021 vide Exhibit:33. It is worthy to note here that these documents were duly exhibited with the consent of the opponent no.2-insurance company and, therefore, at this stage, there is no evidence to disbelive these documents. Now, looking to the salary slip for the month of October, 2021, it appears that the claimant derived salary of ₹12,235/-, out of which professional tax in sum of ₹200/- is required to be deducted. Thus, it is just and proper to consider income of ₹12,035/- as monthly income of the claiamnt for computing loss of income and the same would not be exaggerated in view of this Tribunal.

[11.2] **<u>Age & Multiplier</u> :**

It is the case of the claimant that she was 22 years old at the time of accident. The claimant has not produced specific evidence with regard to her age. However, the claimant has produced copy of the complaint vide Exhibit:26, in which, age of the claimant is mentioned as 22 years. Accordingly, in absence of any contrary evidence, this Tribunal is of the opinion that age of the claimant at the time of accident can be considered as 22 years. As per the Yard-stick laid down in the Hon'ble Apex Court's judgment of ***"Sarla Verma and Others Vs. Delhi Transport Corporation and Another"*** reported in ***AIR 2009 (SC) 3014"***, multiplier of 18 is suggested between the age group of 21 to 25 years and therefore, the claimant is entitled for

multiplier of 18 for the calculation of future loss of income.

[11.3] <u>Disability</u> :

So far as sustaining serious injuries resulting permanent disablement due to accident is concerned, the claimant has produced disability certificate issued by Dr. Nalin M. Shah vide Exhibit:31 who has assessed disability suffered by the claimant as 22% in context of whole body. However, in the instant case, vide pursis at Exhibit:30, both the parties have amicably decided to consider permanent disability of the claimant as 13% in context of whole body. Hence, considering the said factual aspect on record and evidence in support of the same, this Tribunal is of the view that the claimant sustained serious injuries resulting permanent disablement in the alleged incident and it is just and proper to consider 13% permanent disability of body as a whole to the claimant for calculating future loss of income.

[11.4] <u>Loss of Income</u>:

Considering the above decided income, age, multiplier and disability, the Future Loss of Income would become **₹3,37,943/-** [rounded off] [₹12,035/- (monthly income) X 13/100 (disability) = 1564.55 x 12 x 18 (Multiplier)].

[11.5] <u>Actual loss of income</u> :

According to the claimant, he could not work for very long time due to the injuries sustained to her in the alleged vehicular accident. As per the medical case papers produced on record, the claimant remained admitted in the hospital for 07 days and thereafter according to the claimant, she had taken conservative treatment for longer period. Therefore, looking to the nature of injuries sustained by the claimant and period of hospitalization, it can fairly be concluded that the the claimant could not work for 2 months and, therefore, she is entitled for **₹24,070/- (₹12,035 X 2 months) for actual loss of income.**

[11.6] **<u>Medical Expenses</u>** :

The claimant has brought on record medical bills amounting to ₹1,52,395/- on her treatment, hospitalization, investigation, medicines, etc. vide Exhibit:29. Hence, a sum of **₹1,53,000/-** is awarded to the claimant under the head of Medical Expenses.

[11.7] **<u>Special diet, Attendant Charges & Transportation</u>** :

Though there is no supporting documentory evidence to show that the claimant had taken service of attendent, spent on transportation for treatment or had taken special diet to recover from the injuries sustained in the accident, yet, looking to the disability certificate, injury certificate, period of hospitalization, this tribunal is of the view that the claimant must have incurred some expanses on the transportation, special diet & nourishment. Further, during the medical treatment of the claimant, a family member would have had to attend her to look after her. Hence, in view of above discussion, the claimant is also entitled to get compensation of **₹25,000/-** under the head of Special diet, Attendant Charges & Transportation, which is just and reasonable.

[11.8] **<u>Pain, Shock and Suffering</u>** :

The claimant has sustained serious injuries in the accident and due to that injuries, a permanent disability is also caused to her and due to that she definitely had undergone severe pain, shock and suffering for considerable period. Further, due to permanent disability, she is facing several difficulties in her routine and other work. The claimant would have to suffer these difficulties till her entire life span. Therefore, the claimant is entitled to get compensation of **₹30,000/-** under the head of non-pecuniary loss i.e, pain, shock and sufferings.

[11.9] Now, it is well settled principle of law that the just compensation should be awarded to the victim. Now, considering the above noted facts and foregoing reasons and keeping in mind the concept of the 'just compensation', this Tribunal has inclined to grant the following quantum :-

1	Future Loss of income	₹3,37,943/-
2	Actual Loss of income	₹24,070/-
3	Medical Expenses	₹1,53,000/-
4	Special diet, Attendant charges, and Transportation	₹25,000/-
5	Pain, Shock and Suffering.	₹30,000/-
Total Compensation ...		**₹5,70,013/-**

[12.0] **<u>Liability to satisfy the award:-</u>**

[12.1] As discussed above, accident dated 21.12.2021 had occurred purely on account of rash and negligent riding of Motorcycle bearing registration no.GJ-24-AP-2233 by its rider. The Ld. Advocate for the opponent no.2-insurance company has brought on record the copy of insurance policy of motorcycle bearing registration no.GJ-24-AP-2233 vide Exhibit:37, whereby, it transpires that the opponent no.1 is the owner of that offending vehicle at the time of accident. It further transpires that insurance policy was in force for the period from 04.11.2021 to 03.11.2022, which covers the date of accident i.e. 21.12.2021.

[12.2] Ld. Advocate for opponent no.2 - insurance company has contended that at the time of accident, rider of the offending vehicle was juvenile and, as such, he was not authorized to ride motorcycle. Ld. Advocate for the opponent no.2 has also placed on record copy of charge-sheet vide Exhibit:38 and submitted that as the rider of the offending vehicle was not holding any driving licence. He has further submitted that the rider of the offending vehicle was minor and was not holding valid and effective driving licence on the date of accident, however, the opponent no.1 knowingly and willfully handed over her vehicle to the rider, which amounts to breach of terms and conditions of the insurance policy and, therefore, the opponent no.2-insurance company must be exonerated from its liability to pay compensation to the claimant. The Ld. Advocate for the opponent no.2-insurance company has tendered examination-in-chief affidavit of witness namely Chirag Ramchandra Joshi vide Exhibit:34, who deposed that the driver of vehicle no.GJ-24-AP-2233 was minor at the time of accident. He further deposed that he has been sent to Juvenile Court for proper and necessary action by the police. He further deposed that the opponent no.1 has violated the terms and conditions of the policy and also violated the provisions of Motor Vehicles Act too. In his cross-examination by the Ld. Advocate for the claimant, he admitted that he has no personal knowledge in relation to present accident. He admitted that they have carried out investigation. He admitted that after obtaining investigation report, they have not issued any notice to the owner/driver regarding breach of policy conditions. He admitted that the claimant is third party in respect of their policy. He admitted that contract of insurance is entered into between owner of the vehicle and insurance company.

[12.3] *Per Contra*, Ld. Advocate for the claimant has submitted that the opponent no.2-insurance company has neither examined RTO Officer nor the investigating officer to prove that the rider of the offending vehicle was not holding valid and effective driving licence. He has further submitted that the risk of the third party was covered under the policy and, hence, if this Tribunal comes to the conclusion that the opponent no.2 - insurance company has proved its defence under Section 149 of the M V Act in relation to the no licence of the rider, in view of the ratio laid down in the case of **National Insurance Co. Ltd. V/s Swaran Singh**, reported in **AIR 2004 SC 1531**, the opponent no.2-insurance company is liable to indemnify the claimant.

[12.4] I have heard the Ld. Advocates for the parties on the point of valid and effective driving licence of the rider of the offending vehicle. Ld. Advocate for the opponent no.2-insurance company has relied upon the charge-sheet submitted against the juvenile and has submitted that at the time of accident, rider of the offending vehicle was not possessing valid and effective driving licence. However, to substantiate his say, he has not produced any evidence except charge-sheet. At the outset, it is worthy to note here that in the charge-sheet, no offences were invoked against the rider of the offending vehicle for riding the vehicle without having valid licence. Further, the Ld. Advocate for the opponent no.2-insurance company has not examined any RTO Officer nor the concerned investigating officer. But, upon a bare perusal of the copy of the charge-sheet at Exhibit:38, it appears that the rider of the offending vehicle was prosecuted as minor in the offence. Further, from the insurance policy brought on record vide Exhibit:37, it appears that cubic capacity of the offending vehicle is 97. At this stage, Sections 4 and 7 of the M. V. Act, 1988 are required to be referred, which read as under:

> ***4. Age limit in connection with driving of motor vehicles****.—(1) No person under the age of eighteen years shall drive a motor vehicle in any public place:*
>
> *Provided that 1[a motor cycle with engine capacity not exceeding 50cc] out gear may be driven in a public place by a person after attaining the age of sixteen years.*
>
> *(2) Subject to the provisions of section 18, no person under the age of twenty years shall drive a transport vehicle in any public place.*
>
> *(3) No learner's licence or driving licence shall be issued to any person to drive a vehicle of the class to which he has made an application unless he is eligible to drive that class of vehicle under this section.*
>
> ***7. Restrictions on the granting of learner's licences for certain vehicles****.—[(1) No person shall be granted a learner's licence to drive a transport vehicle unless he has held a driving licence to drive a light motor vehicle for at least one year:]*

> *[Provided that nothing contained in this sub-section shall apply to an e-cart or e-rickshaw.]*
>
> *(2) No person under the age of eighteen years shall be granted a learner's licence to drive a motor cycle without gear except with the consent in writing of the person having the care of the person desiring the learner's licence.*

[12.5] Bare reading of Section 4(1) of the Act reveals that a boy aged around 17 years cannot legally ride motorcycle having engine capacity of 97 cc on public road. In these circumstances, this Tribunal holds that the insurance company has proved its defence of valid driving licence of the rider of the offending vehicle. Further, though the notice of the present petition has been served upon the opponent no.1 who is the owner of the offending vehicle, yet, she has not entered her appearance and produced any proof regarding driving licence of the rider of the offending vehicle.

[12.6] At the outset, I draw my attention towards the ratio laid down by the Hon'ble Full Bench of Hon'ble Apex Court in the case of ***Sawran Singh (supra)***. In the said judgment para No.105 is relevant and, therefore, same is reproduced herein under:-

> *"105. The summary of our findings to the various issues as raised in these petitions are as follows :*
>
> *(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.*
>
> *(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163-A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a)(ii) of the said Act.*

(iii) The breach of policy condition e.g. disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. ***Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties****. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.*

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefore would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfill the requirements of law or not will have to be determined in each case.

(viii) If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree.

(ix) The claim tribunal constituted under Section 165 read with Section 168 is empowered to adjudicate all claims in respect of the accidents involving death or of bodily injury or damage to property of third party arising in use of motor vehicle. The said power of the tribunal is not restricted to decide the claims inter se between claimant or claimants on one side and insured, insurer and driver on the other. In the

> *course of adjudicating the claim for compensation and to decide the availability of defence or defences to the insurer, the Tribunal has necessarily the power and jurisdiction to decide disputes inter se between insurer and the insured. The decision rendered on the claims and disputes inter se between the insurer and insured in the course of adjudication of claim for compensation by the claimants and the award made thereon is enforceable and executable in the same manner as provided in Section 174 of the Act for enforcement and execution of the award in favour of the claimants.*
>
> *(x)* ***<u>Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Sections 149(2) read with sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal</u>****. Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears as land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.*
>
> *(xi)The provisions contained in sub-section (4) with proviso thereunder and sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by relegating them to the remedy before regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims".*

[12.7] At this stage reference is also required to be made to the ratio laid down by Hon'ble Apex Court in the case of "***Oriental Insurance Com. Vs. Zaharulnisha***", reported in ***AIR 2008 SC 2218***, wherein, in para No.16 it has been held as under:-

> *"16. The judgment proceeds to hold that under the MV Act,*

> *holding of a valid driving licence is one of the conditions of contract of insurance. Driving of a vehicle without a valid licence is an offence.* ***However, the question herein is whether a third party involved in an accident is entitled to the amount of compensation granted by the Motor Accidents Claims Tribunal although the driver of the vehicle at the relevant time might not have a valid driving licence but would be entitled to recover the same from the owner or driver thereof****. It is trite that where the insurers, relying upon the provisions of violation of law by the assured, take an exception to pay the assured or a third party, they must prove a wilful violation of the law by the assured.* ***In some cases, violation of criminal law, particularly violation of the provisions of the MV Act, may result in absolving the insurers but, the same may not necessarily hold good in the case of a third party****. In any event, the exception applies only to acts done intentionally or "so recklessly as to denote that the assured did not care what the consequences of his act might be". The provisions of sub-sections (4) and (5) of Section 149 of the MV Act may be considered as to the liability of the insurer to satisfy the decree at the first instance.* ***The liability of the insurer is a statutory one. The liability of the insurer to satisfy the decree passed in favour of a third party is also statutory.****"*

[12.8] Further in the case of "***Singh Ram Vs. Nirmala***", reported in ***2018 (0) AIJEL - SC 61863***, the Hon'ble Supreme Court summed up as under:

> *"8. In the present case it is necessary to note, as observed by the Tribunal,* ***that the owner did not depose in evidence and stayed away from the witness box****. He produced a licence which was found to be fake. Another licence which he sought to produce had already expired before the accident and was not renewed within the prescribed period. It was renewed well after two years had expired.* ***The appellant as owner had evidently failed to take reasonable care (proposition (vii) of Swaran Singh) since he could not have been unmindful of facts which were within his knowledge.****"*

[12.9] From the above ratios, it becomes clear that the liability of the insurer to satisfy the decree passed in favour of a third party is statutory and mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. Applying the above referred test, now the question which Tribunal is first required to decide as to whether the claimant is third party for the opponents or not? It is not the case of the opponent no.2 that the claimant is not a third party for them. It is also not in dispute that the claimant was a pillion rider and was travelling on Activa, which the opponent no.3 was riding, when accident occurred and, therefore, there is no dispute that the claimant is the third party for the opponents. Therefore, from the above referred discussion, it becomes clear that the claimant is third party for present opponents and, therefore, liability of the insurer to satisfy the decree passed in favour of a third party is statutory.

[12.10] Further, in the case of "***Pappu Vs. Vinod Kumar Lamba***", reported in ***2018 (0) AIJEL - SC 61544***, wherein Hon’ble Supreme Court for deciding liability to pay in case of invalid/fake/no license defence and breach of terms and conditions of insurance policy by the insured has referred the ratio laid down in ***Swaran Singh (supra)*** and has observed in para Nos.14 as under:-

> *"14. The next question is: whether in the fact situation of this case the insurance company can be and ought to be directed to pay the claim amount, with liberty to recover the same from the owner of the vehicle (respondent No1)? This issue has been answered in the case of National Insurance Company Ltd.(supra). In that case, it was contended by the insurance company that once the defence taken by the insurer is accepted by the Tribunal, it is bound to discharge the insurer and fix the liability only on the owner and/or the driver of the vehicle.* ***However, this Court held that even if the insurer succeeds in establishing its defence, the Tribunal or the Court can direct the insurance company to***

> ***pay the award amount to the claimants(s) and, in turn, recover the same from the owner of the vehicle****. The three-Judge Bench, after analysing the earlier decisions on the point, held that there was no reason to deviate from the said well-settled principles. .... "*

[12.11] As per the ratio laid down by Hon'ble Apex court and Hon'ble High Court of Gujarat in the above stated decisions, it is clear that when a defence of invalid/fake/without driving license is pleaded by the insurer, it is the duty of the owner to prove on record that the vehicle was being driven by the driver having valid and effective driving licence at the time of accident and only then the onus for the same would be discharged on the part of the owner and then the onus would shift to insurer and now it is the insurer to prove its defence of invalid/fake/without driving license. When insured/owner failed to discharge its burden then an adverse inference is required to be drawn against the insured/owner and in such cases insurer can not be held liable to pay the compensation to petitioners due to breach of terms and conditions on the part of insured/owner. However, considering the social beneficial nature of legislation even if the insurer succeeds in establishing its defence, the Tribunal or the Court can direct the insurance company to pay the award amount to the claimants(s) and, in turn, recover the same from the owner of the vehicle.

[12.12] Therefore, here in this case as discussed above, in view of the material placed on record, the opponent no. 2 - insurance company is able to prove that the rider of the offending vehicle was not duly licenced at the time of accident and the opponent no.1 - insured failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of the vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time and, thereby, committed the 'breach' of terms and conditions of insurance policy. Therefore, the opponent no.2 - insurance company is required to be absolved from liability to pay compensation to the claimant but considering the facts that the deceased being a third party for the owner and insurance company, the opponent no.2 - insurance company cannot avoid it's liability to pay the compensation to the claimant who are legal heirs of the deceased and considering the benevolent object of the M. V. Act, other relevant factors arising in the case, the ratio of above cited judgments and by applying the principle of "Pay and Recover", it would be just and proper to direct the insurance company to pay the award amount to the claimants in the first place and, in turn, recover the same from the opponent no.1 - owner of the offending vehicle by initiating appropriate proceedings before the competent Court.

[13.0] **INTEREST ON AWARDED AMOUNT:**

[13.1] The claimant submitted that he should be awarded interest at the rate of 15% on the awarded amount. I have considered and perused the records. It shows that the accident took place on 21.12.2021 and the claim petition was filed in the year 2022. Thus, having regards to the facts and circumstances of the present case, in the light of the law laid down by the Hon'ble Supreme Court of India in the case of ***"M.C.D. - versus – Association of Victim of Uphaar Tragedy",*** reported in ***2012 ACJ 48 (Supreme Court)*** *as well as* in the case of "***National***

Insurance Company Ltd. Vs. Pranay Sethi and others" reported in ***2017 ACJ 2700***, it would be just and proper to award the simple interest at the rate of 9% p.a.. Accordingly, the claimant is entitled to get simple interest at the rate of 9% per annum on the awarded amount of claim from the date of filing of claim petition till realization of awarded amount.

[14.0] In view of above referred discussion, the claimant is entitled for compensation of **₹5,70,013/-** and therefore, my answer to issues No.2 & 3 partly in affirmative and for issue No.4, I pass the following final order in the interest of justice :-

:ORDER:-

(1) The above referred claim petition is hereby partly allowed.

(2) The petitioner is entitled to recover compensation of **₹5,70,013/- (Rs. Five Lakh Seventy Thousand Thirteen Only)** along with the simple interest at the rate of **9% per annum**, from the date of claim petition till its realization with proportionate cost, from the opponents no.1 and 2, who are liable to pay the compensation to the petitioner in their joint and several capacity. **However, the opponent no.2 is directed to first deposit the amount of compensation to the claimant and can then recover the same from the opponent no.1.** The claim petition is hereby dismissed qua the opponent no.3.

(3) The opponents are hereby directed to transfer awarded amount through RTGS/NEFT within 30 days from the date of this order.

(4) Deficit Court Fee Stamp, if any, be recovered first from the awarded amount and interim amount if paid be adjusted.

(5) On the remaining payable amount, 70% amount shall be deposited in any Nationalized Bank for a period of 5 years in FDR in the name of petitioner with a condition that the petitioner shall not be entitled to borrow loan or create any encumbrance on the said deposit and the remaining 30% amount shall be paid to the petitioner through RTGS / NEFT after due verification.

(6) **The petitioner is directed to submit the following details within one week from today:-**

1. **Name of the petitioner with address.**
2. **Name of the Bank & Branch, Bank IFSC Code, Account Number of the petitioner.**
3. **The first page of the bank pass-book, which will compulsorily contain the photograph of the petitioner, duly attested by the Bank concerned, should be made available.**
4. **Wherever the petitioner is impleaded as Respondents, before the claims tribunal, their account details, as above, will have to be furnished.**

(7) The insurance companies / transport corporations and such other entities shall deposit the amount as directed in Circular No.08/2022 dated 01/02/2022, by way of Direct Bank Transfer to Bank Account of MACT Tribunal

(Main) District Court, Ahmedabad (Rural), details of wich are as follows.

Bank Name : State Bank of India, Bhadra Branch, Lal Darwaja-380001.

Account Name : Principal District Judge, Ahmedabad (Rural) MACP,

Account No. : 00000040722625356,

IFSC Code: SBIN0000301

Bank MICR Code : 380002002

and on such deposits being made, the insurance companies/transport corporations and such other entities shall submit a letter to the Registry of District Court, Ahmedabad (Rural) enclosing a copy of the said bank advice, in prescribed format as above, as per which the deposit was made to the bank account of the Claims Tribunal, to enable the Claims Tribunal to keep tab on the deposits made and the MACPs for which they were made, which is a fundamental need for a smooth implementation. The Payment advice for remittance of compensation is as under:-

PAYMENT ADVICE FOR REMITTANCE OF COMPENSATION From:

.... Bank ....

To:

.... Court ....

We confirm remittance of compensation as follows on instructions of ....… (insurance company/transport corporation):-

1. MACP Number :

2. On the file of (Claims Tribunal Name) :

3. Name of Petitioner/s :

4. Place :

5. Date of award :

6. Amount Deposited :

7. Name of the Bank who deposit the amount :

8. Income Tax Deduction at Source, if any Unique Transaction Reference (UTR) No. :

(8) The Insurance Companies, Transport Corporations and such other entities making such deposit, shall also send a copy of the payment advice in the aforesaid Clause to the Claims Tribunal concerned and serve a copy of the same on the petitioner/s or their counsel as the case may be.

(9) The opponents shall follow guidelines given in the case of **"The Oriental Insurance Co. Ltd. Vs. Chief Commissioner of Income-tax (TDS), R/SCA/4800/2021"** decided on 05.04.2022 by the Hon'ble High Court of Gujarat with regard to the deduction of Income tax.

(10) Award be drawn accordingly in the above claim petition and file be consigned to record room after due compliance.

Signed & Pronounced in the open court on this 13h day of March, 2026.

Date : 13.03.2026.
Place: Ahmedabad.

[Hardik R. Shah]
MAC Tribunal (Auxi.) &
10th Additional District Judge,
Ahmedabad (Rural) at Navrangpura.
Judge Code No.GJ00851