# BEFORE THE HON'BLE MOTOR ACCIDENT CLAIMS TRIBUNAL [AUXI. ] AHMEDBAD(Rural).

## Motor Accident Claim Petition No.629/2012

**Exh.**

**Petitioner** : **Rajesh Govindji Thakor(then minor) (amended vide order below Exh.23)**
Age:21 years,
R/o Village-Dhameda, Taluka-Mansa, District-Gandhinagar.
Present R/o Kacha Chhaparama, Railway Colony, Sabarmati, Ahmedabad.

**VERSUS**

**Driver-cum-Owner of Tractor No.GJ-18-AR-505 and Trolly No.GJ-18-AU-6383**

**Opponents** 1: **Kaluram @ Kalubhai Bhanaram @ Bhanjibhai Vanzara**
Age:Major, Occup:Driving,
R/o:M.Po. Kharana, Taluka-Mansa, District-Gandhinagar.

**Insurance Company of Tractor No.GJ-18-AR-505**

2: **Cholamandlam MS General Insurance Com. Ltd.**

Address at:Options, 2nd Floor, Near Hotel Nest, Off C.G. Road, Ahmedabad.

**Insurance Company of Trolly No.GJ-18-AU-6383**

3: **Reliance General Insurance Comp. Ltd.**
Address:3rd Floor, Ajay Bungalows, Opp. HDFC Bank, Near Mithakhali Six road, Navrangpura, Ahmedabad-380009.

**[amended vide order below** 4: **Hirabhai Meghjibhai Vanzara**
R/o Kharna, Taluka-Mansa, District-

**Exh.20]** Gandhinagar.

**WITH**

**Motor Accident Claim Petition No.915/2012**

**Legal heirs of deceased-Rajdip Ramtuji Thakor, Age:6 years.**

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|---|---|---|
| **Petitioners** | **1:** | **Ramtuji Bhagwanji Thakor**<br>Age:29 years, Occup:Agricultural work. |
| **Amended vide Exh.26** | **2:** | **Ushaben Ramtuji Thakor**<br>Age:27 years, Occup:Household work. |
| | **:** | Both R/o:Village-Dhameda, Taluka-Mansa, District-Gandhinagar.<br>Present R/o Kacha Chhaparama, Railway Colony, Sabarmati, Ahmedabad . |

**VERSUS**

| | | |
|---|---|---|
| | | **Driver-cum-Owner of Tractor No.GJ-18-AR-505 and Trolly No.GJ-18-AU-6383** |
| **Opponents** | **1:** | **Kaluram @ Kalubhai Bhanaram @ Bhanjibhai Vanzara**<br>Age:Major, Occup:Driving,<br>R/o:M.Po. Kharana, Taluka-Mansa, District-Gandhinagar. |
| | | **Insurance Company of Tractor No.GJ-18-AR-505** |
| | **2:** | **Cholamandlam MS General Insurance Com. Ltd.**<br>Address at:Options, 2nd Floor, Near Hotel Nest, Off C.G. Road, Ahmedabad. |
| | | **Insurance Company of Trolly No.GJ-18-AU-6383** |
| | **3:** | **Reliance General Insurance Comp. Ltd.**<br>Address:3rd Floor, Ajay Bungalows, Opp. HDFC Bank, Near Mithakhali Six road, Navrangpura, Ahmedabad-380009. |
| **[amended vide** | **4:** | **Hirabhai Meghjibhai Vanzara** |

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|---|---|
| **order below Exh.30]** | R/o Kharna, Taluka-Mansa, District-Gandhinagar. |

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Appearances:
Learned Advocate Mr. A.L. Nadiya for the petitioner(s).(in both petitions)
Process served to opponent No.1.
Learned Advocate Mr. Y.N. Shah for the Opponent No.2-Ins. Comp. (in both petitions)
Learned Advocate Mr. M.J. Parikh for the Opponent No.3-Ins. Comp. (in both petitions)
Opponent No.4-party in person (in both petitions).
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**-:-JUDGEMENT-:-**

1. In the present case, it is pertinent to note here that above mentioned both the claim petitions have arisen out of one and same accident occurred on dated 11.04.2012 and therefore, both claim petitions have been consolidated by this Tribunal vide order passed below Exh.30. Thus, in view of the above facts on record, the above numbered claim petitions are being decided by this Common Judgment.

2. Above both claim petitions have been filed U/s 166 of the Motor Vehicles Act, 1988 **(herein after referred as "M.V. Act")** by the Petitioners/Claimants and/or by the legal representatives of the deceased who succumbed in the accident as well as by the petitioner who sustained serious injuries resulting into permanent disablement against the Opponents (driver(s), owner(s) and insurer(s) of the vehicle(s) involved in accident) to recover compensation of **Rs.1,00,000/- in MACP No.629/2012** and **Rs.5,00,000/- in MACP No.915/2012** respectively.

3. It is pertinent to note here that in MACP No.629/2012 at the time of accident, the petitioner was minor and he had preferred the present claim petition through his father and natural guardian, but subsequently, during the pendency of the present claim petition, as the minor petitioner attains the age of majority, by order passed below Exh.23, the minor petitioner has been considered as major.

4. The brief facts of the present claim petitions are as under;

**<u>MACP No.629/2012</u>**

On dated 11.04.2012, petitioner alongwith his brother went out from the field on the cycle towards home and at about 10:30am while petitioner was passing Bavana Temba on the Ghameda village to Chanduji Naliya road, at that time, opponent No.1 was reversing his tractor bearing RTO No.GJ-18-AR-505 attached with its trolley bearing RTO No.GJ-18-AU-6383 in rash and negligent manner, without observing the rear side, without blowing horn and passing any signal and dashed with full force to the cycle of the petitioner, as a reason, the petitioner alongwith cycle fell down on the road the wheel of the trolley rolled over on both legs of the petitioner and thereby, the accident occurred as averred in the claim petition.

It is further stated that in the accident, petitioner has sustained serious injuries over his both legs and other serious injuries on various part of his body. For the said accident, FIR was lodged at Mansa Police Station, vide C.R.No.45/2012 against the opponent No.1. It is further stated that at the time of accident, petitioner was minor aged about 14 years and studying in 9th class. But, on account of the alleged accident, petitioner was admitted in the Mansa Civil Hospital and necessary medical treatment was performed and thereby, the petitioner has sustained permanent disablement and he is unable to do work as he was doing before the accident and hence, the petitioner has preferred the present claim petition as to get the compensation.

**MACP No.915/2012**

On dated 11.04.2012, minor deceased i.e. son of petitioners alongwith his brother went out from the field on the cycle towards home and at about 10:30am while deceased alongwith his brother were passing near Bavana Temba on the Ghameda village to Chanduji Naliya road, at that time, opponent No.1 was reversing his tractor bearing RTO No.GJ-18-AR-505 attached with its trolly bearing RTO No.GJ-18-AU-6383 in rash and negligent manner, without observing the rear side, without blowing horn and passing any signal and dashed with full force to the cycle of the deceased, as a reason, the deceased alongwith cycle fell down on the road the wheel of the trolley rolled over on both legs of the son of petitioners and thereby, the accident occurred as averred in the claim petition

It is further stated that in the accident, the son of petitioners had sustained grievous injuries over his head and on various part of his body and consequently succumbed during the treatment due to fatal injuries sustained by the deceased in the vehicular accident. For the said accident, For the said accident, FIR was lodged at Mansa Police Station, vide C.R.No.45/2012 against the opponent No.1. It is further stated that at the time of accident, deceased was minor 6 years old healthy boy, very intelligent but on account of sudden death of the deceased, Petitioners have lost their shelter, support, care taker and important family member, hence, have filed present claim petition for compensation against the opponents.

5. Upon service of notice, the opponent No.1-driver-cum-owner of the tractor attached with its trolley appeared in person and filed written reply dated 05.07.2012 in MACP No.629/2012 and reply at Exh.8 in MACP No.915/2012 and thereby denied all the statements, averments and allegations leveled in the claim petition. It is further contended that opponent No.1 was not negligent in driving the tractor and trolley on the contrary, minor petitioner including deceased were negligent in riding the cycle and they dashed to rear side of the trolley and the accident happened and therefore, the accident occurred due to sole negligence on the part of the petitioner who was riding the cycle. It is further contended if the Hon’ble Tribunal comes to the conclusion that the driver/opponent No.1 was negligent on his part, in the circumstances, the tractor was insured with the opponent No.2 and trolley was insured with the opponent No.3 and the policies were in existence at the time of accident, hence, opponent No.2 & 3 are liable to pay compensation to the petitioner and/or legal guardian of the deceased.

6. Upon service of notice, the opponent No.2-Insurance company of the tractor appeared through its advocate and filed written statement vide Exh.27 and Exh.20 in both claim petitions respectively and thereby denied all the statements, averments and allegations leveled in the claim petition. It is contended that the Vehicle No.GJ 18 AR 505 was covered with this insurance company at the time material time under the policy

No.3380/00422708/000/00 subject to the terms, conditions and limitations thereof. It is further contended that the driver of the vehicle No.GJ 18 AR 505 was not holding valid and effective driving licence at the material time and therefore, opponent No.2 is not liable to pay any compensation to the petitioner. The Opponent No.2-Insurance Company has challenged the time, date and place of the accident as well as challenged the age and income of the petitioner and ultimately, prayed to dismiss the present claim petition.

7. Upon service of notice, the opponent No.3-Insurance company appeared through its advocate and filed written statement vide Exh.15 and Exh.16 in both claim petitions respectivelly and thereby denied all the statements, averments and allegations leveled in the claim petition. It is mainly contended that the petitioner is sued as the insurer of trolley No.GJ-18-AU-6383 but the petitioner has neither mentioned the policy particulars in the claim petition nor enclosed a copy of insurance policy covering the risk of the said trolley. It is further contended that petitioner has produced the insurance policy No.1605712343000482 covering the risk of vehicle No. GJ-18-H-6509 for the period from 01.12.2011 to 30.11.2012 but as per the police case papers and in the claim petition, the said vehicle No. GJ-18-H-6509 is not involved in the accident as well as the owner of the vehicle No. GJ-18-H-6509 is not joined as a party in this claim petition. It is further contended that petitioner has wrongly involved the opponent No.3-insurance company and hence, the opponent No. 3 is not liable to pay compensation to the petitioner. The Opponent No.3-Insurance Company has

challenged the time, date and place of the accident as well as challenged the age and income of the petitioner and ultimately, prayed to dismiss the present claim petition.

8. Upon service of notice, opponent No.4 has appeared before this tribunal and filed written reply at Exh.22 and thereby denied all the statements, averments and allegations leveled in the claim petition. It is further contended that the alleged accident occurred due to negligent on the part of minor petitioner including deceased in riding the cycle and they dashed to rear side of the trolley and the accident happened and therefore, the accident occurred due to sole negligence on the part of the petitioner who was riding the cycle. It is further contended if the tractor was insured with the opponent No.2 and trolley was insured with the opponent No.3 and the policies were in existence at the time of accident, hence, opponent No.2 & 3 are liable to pay compensation, if any, to the petitioner and/or legal guardian of the deceased.

**MACP No.915/2012**

9. The notice was duly served upon the opponent No.4 and he has appeared before the Tribunal and filed written reply in MACP No.629/2012 at Exh.22 but he has not filed any written statement/reply in present claim petition.

10. To prove their case, Petitioners have lead oral and documentary evidence in the following manner:-

**ORAL EVIDENCE**

| Sr. No. | Particulars of Oral Evidence | Exh. |
|---|---|---|
| 1. | Affidavit of Examination–in–chief and Cross | 25 |

| | | |
|---|---|---|
| | examination of Petitioner No.1**[In MACP No.629/2012]**. | |
| 2. | Affidavit of Examination–in–chief and Cross examination of Petitioner No.1 **[In MACP No.915/2012]**. | 24 |

**DOCUMENTARY EVIDENCE[In MACP No.629/2012].**

| **Sr. No.** | **Particulars of Documents** | **Exh./ Mark** |
|---|---|---|
| 1. | Certified Copy of Complaint. | 34 |
| 2. | Certified Copy of Panchnama of Place of Accident. | 35 |
| 3. | Copy of Discharge card of the petitioner. | 36 |
| 4. | Copy of RC Book of Vehicle No.GJ-18-AR-505. | 37 |
| 5. | Copy of insurance policy of Vehicle No.GJ-18-AR-505. | 5/5 |
| 6. | Copy of permit of the truck showing the ownership of truck. | 26/6 |
| 7. | Copy of school leaving certificate of the deceased-Ashokbhai | 32 |
| 8. | Copy of RC Book of motorcycle. | 33 |

**DOCUMENTARY EVIDENCE [In MACP No.915/2012].**

| **Sr. No.** | **Particulars of Documents** | **Exh./ Mark** |
|---|---|---|
| 1. | Copy of RC Book of Vehicle No.GJ-18-AU-6383. | 4/3 |
| 2. | School leaving certificate of the deceased-Rajdip. | 30 |
| 3. | Death certificate of deceased-Rajdip. | 27/2 |
| 4. | Copy of postmortem report of deceased-Rajdip. | 31 |
| 5. | Certified Copy of chargesheet. | 35 |
| 6. | Copy of permit of the truck showing the ownership of truck. | 36 |
| 7. | Copy of Aadhar Card of petitioners. | 26/7 to 26/10 |
| 8. | Copy of school leaving certificate of the deceased-Vikrambhai. | 26/11 |

11. For the defence, the opponent No.2 has filed documentary evidence in the following manner:-

**DOCUMENTARY EVIDENCE (In MACP No.629/2012 & 915/2012)**

| Sr. No. | Particulars of Documents | Exh./ Mark |
|---|---|---|
| 1. | Certified Copy of Insurance policy of vehicle No.GJ-18-AR-505. | 29/1 & 22/1 |

12. For the defence, the opponent No.3 has lead oral and documentary evidence in the following manner:-

**ORAL EVIDENCE(In MACP No.629/2012 & 915/2012)**

| Sr. No. | Particulars of Oral Evidence | Exh. |
|---|---|---|
| 1. | Deposition alongwith cross-examination of witness No.1- Pratik Lalitkumar Sheth (authorized person on behalf of opponent No.3). | 41 |

**DOCUMENTARY EVIDENCE (In MACP No.629/2012 & 915/2012)**

| Sr. No. | Particulars of Documents | Exh./ Mark |
|---|---|---|
| 1. | Certified Copy of Insurance policy of vehicle No.GJ-18-H-6509. | 42 |

13. Considering the above pleadings, the following issues are framed at Exh.19 for the final conclusion of the present claim petition.

**-:-IS S U E S-:-**

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

2. Whether the petitioner is entitled to compensation? If yes what amount? and who is liable to pay the compensation?

3. What order and award?

The issues in MACP No.915/2012 farmed at Exh.23 which are as under;

**-:-IS S U E S-:-**

1. Whether the applicant proves that the deceased sustained injuries because of rash and negligent driving on the part of the driver of the vehicle involved in the accident and died as a result of the injuries ?

2. Whether the applicant is entitled to get compensation ? If yes, what amount and from whom?

3. What order and award

14. The findings of this Tribunal on the aforesaid issues in both the petitions are as under:

1. In affirmative.

2. In affirmative, as per final award.

3. As per Final order and Award.

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

**Issues No.1 & 2:**

15. As the Issues No.1 & 2 are interconnected, reasons for both issues are discussed herein together for the sake of brevity and

to avoid repetition.

16. Ld. Advocate Mr. A.L. Nadiya appeared on behalf of the petitioners in both the MACPs and filed common written submission vide Exh.47 and vehemently argued the matter. Ld. Advocate for the petitioners has reiterated the contents of the claim petition and written submission and further submitted that the accident occurred due to sole negligence on the part of the driver of the tractor-trolley, therefore, the petitioners being third party are entitled for the compensation.

17. Learned advocate Mr. Y.N. Shah appeared on behalf of the opponent No.2-insurance company of the tractor and argued the matter. During the arguments, Ld. advocate for the opponent No.2 has reiterated the contents of reply/written statements and further submitted that the petitioner has not examined any witness to prove as to who was negligent. With these submissions, Ld. advocate submitted that opponent no.2-Insurance company is not liable to pay any compensation to the petitioner for the alleged accident and present petition is liable to be dismissed.

18. Learned advocate Mr. M.J. Parikh appeared on behalf of the opponent No.3-insurance company of the Trolley No. GJ-18-AU-6383 and argued the matter. During the arguments, Ld. advocate for the opponent No.3 has also reiterated the contents of reply/written statements and further submitted that as per the contents of the complaint and claim petition, this vehicle is not involved in the accident, however, the petitioner(s) has wrongly joined the opponent No.3 as a necessary party in these claim petitions hence, the claim petition is liable to be dismissed

against the opponent No.3. With these submissions, Ld. advocate submitted that opponent no.3-Insurance company is not liable to pay any compensation to the petitioner for the alleged accident and present petition is liable to be dismissed.

19. Heard the Ld. Advocates for both the sides. This tribunal has also gone through all the pleadings as well as oral as well as documentary evidence and oral evidence adduced on record by both the parties.

20. In MACP No.629/2012, to substantiate claim petition, the Petitioner has submitted evidence (examination-in-chief) affidavit at Exh.25, wherein, he has deposed the same facts as averred in the claim petition and therefore, as to avoid the repetition, the same have not been reproduced herein. The petitioner is cross-examined by the Ld. Advocate for the opponent No.2-Insurance Company, wherein, he has deposed that at the time of accident, he and Rajdip(deceased) were coming by riding cycle at home and the driver of the tractor-trolley was reversing his vehicle and dashed to the cycle and accident occurred.

21. Likewise, the Petitioner No.1 has submitted evidence (examination-in-chief) affidavit at Exh.24 in MACP No.915/2012, wherein, petitioner No.1 has deposed the same facts as averred in the claim petition and therefore, as to avoid the repetition, the same have not been reproduced herein. Petitioner No.1 has been cross-examined by the Ld. advocate for the opponent No.2 wherein, he has deposed that he has not personally seen the accident.

22. In both the claim petitions, from perusal of complaint at Exh.34,

copy of place of panchnama Exh.35, postmortem report at Exh.31 (in MACP No.915/2012). Copy of the complaint is produced at Exh.34 and the same is filed by complainant Dashrathji Mayurji Rathod, wherein, the complainant has narrated same facts of the accident as averred in claim petition. On perusing the complaint, the complainant has narrated the same facts that while the driver of the tractor-trolley was reversing his tractor-trolley, he dashed to the cycle of the petitioner from the rear side of the trolley and accident occurred and the petitioner sustained injuries and deceased succumbed.

23. Now as to prove the negligence of the driver of tractor-trolley, on perusal of the Panchnama of the Place of the accident, it appears from the Panchnama of the Scene of occurrence produced at Exh.35, wherein the place of occurrence of accident is shown as pleaded in the petition as well as examination in chief affidavit of the petitioner.

24. This tribunal has thoroughly gone through the pleadings, oral evidence of petitioner as well as documentary evidences brought on record and having gone through the nature of accident, it clearly appears that the accident took place on account of rash and negligent driving on the part of the driver of the tractor-trolley. Further, in the present case, on perusal of the record, it appears that the opponent No.2-Insurance Company has not examined the tractor driver, who is the best person to exactly narrate the facts of the accident and therefore, in absence of such material evidence on record, an adverse inference is required to be drawn against the opponents. Not only that the other side has not produced even single evidence

on record to prove the negligence of the petitioner as well as deceased. Thus, considering the above facts and evidence on record, this tribunal holds that the accident took place on account of rash and negligent driving on the part of the Driver of the tractor-trolley and the Driver of the tractor-trolley was sole negligent for causing the accident and hence, in the interest of justice, this tribunal decides the accident took place due to sole negligence on the part of the Driver of the tractor-trolley.

25. So far as the involvement of the Vehicle No.GJ-18-AU-6383 and vehicle No.GJ-18-H-6509 is concerned, the Learned Advocate for the opponent No.3 has submitted that petitioners have mentioned the trolley No.GJ-18-AU-6383 but the petitioner has neither mentioned the policy particulars in the claim petition nor enclosed a copy of insurance policy covering the risk of the said trolley but the petitioner has produced the insurance policy No.1605712343000482 covering the risk of vehicle No.GJ-18-H-6509 for the period from 01.12.2011 to 30.11.2012 which is not involved in the accident as well as the owner of the vehicle No.GJ-18-H-6509 is not joined as a party in this claim petition. But looking to the papers available on record and the insurance policy of vehicle No.GJ-18-H-6509 at Exh.42 produced by the insurance company, it prima-facie appears that in column of the insurance policy, the Registration number and place for vehicle is mentioned as GJ18H6509 and in another column of same policy, it is mentioned as Chassis/Serial Number of trailer is mentioned as 103411/GJ18AU6383, the policy clearly shows that vehicle No.GH18H6509 was insured for declared value of 2,90,000/-

and by the said policy, trailer no. GJ18AU6383 was insured for declared value of Rs.30,000/-. On perusal of the claim petition, reply of opponent No.1 at Exh.8, the oral and documentary evidence on hand, it transpires that the tractor No.GJ-18-AR-505 and Trolley No.GJ-18-AU-6383 were involved in causing the accident. Therefore, the arguments advanced by the Learned advocate for the opponent No.3-insurance company is not applicable, hence, this tribunal comes to the conclusion that tractor No. GJ-18-AR-505 attached with its trolley No. GJ18AU6383 are involved in the accident.

26. As decided hereinabove, the accident has been taken place on account of rashness and **sole negligent** driving on the part of the driver of the tractor GJ-18-AR-505 attached with its trolley No. GJ18AU6383 involved in the accident and therefore, now, it is the duty of the Tribunal to award just and reasonable compensation to the petitioners.

**COMPENSATION(In MACP No.629/2012).**

27. So far as assessment of the compensation in case of minor children suffering disability on account of vehicular accident is concerned, this tribunal would like to put reliance on the para 8 & 12 of judgement of Hon'ble Apex Court in the matter titled as **Mallikarjun V/s Divisional Manager, National Insurance Col. Ltd. and another, 2013 ACJ 2445,** wherein Hon’ble Apex court has held that:-

> *"For a child, the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children, there is no income. The only indication in the Second Schedule for*

> *non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation etc.*
>
> *12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6/-lakhs. For permanent disability up to 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick."*

28. Considering the settled principles laid down by the Hon'ble Apex Court in case of **Mallikarjun(*supra*)**, in case of minor injured if the permanent disability is up to 10%, appropriate compensation should be Rs.1,00,000/- on all other heads in addition to the actual expenditure for treatment done/to be done, transportation, attendant etc. but the petitioner in his examination-in-chief affidavit at Exh.25 has deposed that at the time of accident, he was minor and sustained serious injuries on his both legs and therefore, he was admitted in Mansa Civil Hospital as indoor patient. It is further deposed that on account of such injuries, the petitioner is facing difficulties in his daily routine. The petitioner is cross-examined by the Ld. Advocate

for the opponent No.2-Insurance Company, wherein, he has admitted that in the accident, he has not sustained any fracture injury. This tribunal has gone through the above evidence of the petitioner. This tribunal has also perused the documentary evidences produced by the petitioner more particularly Discharge Card at Exh.36. In the present case, it appears from the record that the petitioner has not produced disability certificate to prove his disablement and therefore, in absence of such material evidence on record, it clearly appears that the petitioner has not sustained grievous injury and the petitioner has sustained simple injury. Therefore, considering the injuries suffered by the original petitioner, it is just and proper to award **Rs.50,000/-** as total compensation under all available heads to the petitioner for non pecuniary damages, in addition to the actual expenditure for treatment done/to be done, transportation, attendant etc. and it would not be exaggerated in view of this tribunal.

**COMPENSATION.(In MACP No.915/2012)**

**AGE**

29. In the present case, the petitioner No.1 has filed his examination-in- chief affidavit at Exh.24, wherein, he deposed that at the time of accident, the minor deceased was aged about 6 years and relied upon the school leaving certificate of the deceased-Rajdip ramtuji Bhagvanji Thakor at Exh.30. Now, on persual the same, the dadte of birth of deceased is mentioned as 28.02.2006. Considering the same, it is justified to hold that on the day and date of accident i.e. on 11.04.2012, the deceased was 06 years 1 month and 14 days. This tribunal also gone through the

Postmortem report of the deceased at Exh.31, wherein, the age of the deceased is mentioned as 6 years One & Half month. Thus it clearly proves on record that on the day and date of accident, the deceased was **6 years** old and other side have not brought any rebuttal evidence in this regard thus, in view of the above facts and evidence, this tribunal holds that at the time of accident, the deceased was 6 years old. Now so far as for the calculation of Loss of Dependency, it is required to be assessed proper multiplier considering the age of the deceased. Thus, in view of the above facts on record, in the judgment of **Sarla Verma and Others Vs. Delhi Transport Corporation and Another** reported as AIR 2009 (SC) 3014, herein the present case, the deceased was minor of 6 years old and therefore, it would be just and proper to apply <u>**15 Multipliers**</u> for the calculation of loss of total dependency.

## <u>INCOME and FUTURE PROSPECTS.</u>

30. Now, so far as the income of the deceased is concerned, it is not disputed that the deceased was minor at the time of accident. This tribunal relied upon the judgment of the judgment of the Hon’ble Apex Court in case of ***Hitesh Nagjibhai Patel Versus Bababhai Nagjibhai Rabari 2025 (0) AIJEL-SC 75833, Kajal Vs. Jagdish Chand and Ors., (2020) 4 SCC 413 and Baby Sakshi Greola v. Manzoor Ahmad Simon and Anr., 2024 SCC OnLine SC 3692.***

31. <u>In view of the law laid down as per the above judgments of Hon’ble Apex Court, it is desirable that the minimum wages applicable at the time of the accident in question should be taken into consideration for purpose of determining the income</u>

of minor. As nothing can be said about the skills of the deceased it is preferable to take into account the minimum wages applicable for the semi-skilled worker in the given month and year. The accident occurred in the month of April-2012. As per the Gujarat Government Notification, the Minimum Wages of a semi-skilled worker has been as Rs.4,890/- per month for that year. So, considering the month and year of accident, this Tribunal assessed notional monthly income of the deceased as **Rs.4,890/-** per month.

32. It is not disputed that deceased was minor and thus, considering the age of the deceased, in light of the recent Judgment of the Hon'ble Apex Court pronounced in the case of **National Insurance Company Ltd. Vs. Pranay Sethi and others** in Special Leave Petition [Civil] No. 25590 of 2014 and this Tribunal has thoroughly gone through the above Judgment of the Hon'ble Apex Court and this Judgment pronounced by the Larger Bench of the Hon'ble Apex Court, wherein the Hon'ble Apex Court has specifically observed that "in case of deceased was self employed or on a fixed Salary, **an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 Years**. It is further observed by the Hon'ble Supreme Court that an Addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component". Here, in the present case, it is proved on record that on the day and date of the accident, the deceased was minor

and this tribunal assessed **Rs. 4,890/-** per month as the Income of the deceased and as observed by the Hon'ble Supreme Court in the above latest Judgment, **40%** prospective income of the deceased is required to be considered and accordingly, it is required to be calculated. Thus, in view of the above facts, the prospective income of the deceased to the tune of **40% would come to Rs.6,846/-**[**Rs.4,890%40 = Rs.1,956 then, it would be 4,890 + 1,956 = 6,846/-**]. Thus, after considering the above prospective income of the deceased, the monthly income of the deceased would come to **Rs.6,846/-** and it would not be exaggerated in the opinion of this tribunal.

**<u>Future Dependency and calculation of total loss of Dependency.</u>**

33. In the present case, the petitioners are the parents of the minor deceased. As per record, it transpires that the deceased was minor and unmarried and left behind him two legal heirs. Thus in view of the facts and circumstances of the present case and as per the principle settled in the case of **Sarla Varma (supra)**, 1/2 share as expenditure for personal expenses of the deceased is required to be deducted from the assessed income of the deceased.

34. Thus, calculation of total loss of Dependency of the deceased after deductions for personal expenses and applying the multiplier would be as under:

| | |
|---|---|
| Annual income of deceased | **Rs.6,846** × 12 = Rs.82,152 |
| 1/2(50%) from the Annual income is required to be deducted | 82,152×1/2 =41,076 |
| Thus, after deducting 1/2 from the income of the deceased-Annual income would come to | 82,152 – 41,076 =41,076/- |

| | |
|---|---|
| **Applying Multiplier of 15** | Rs.41,076 ×15=6,16,140/- |
| **Total Loss of dependency** | **Rs.6,16,140/-** |

**<u>LOSS OF ESTATE, LOSS OF CONSORTIUM AND FUNERAL EXPENSES:</u>**

35. Now, the above heads are concerned, in legal parlance, “consortium” is a compendious term which encompasses ‘spousal consortium’, ‘parental consortium’, and ‘filial consortium’. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. **Spousal consortium** is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, cooperation, affection, and aid of the other in every conjugal relation.” **Parental consortium** is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training.” **Filial consortium** is the right of the parents to compensation in the case of an accidental death of a child (minor child, unmarried son or daughter). An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

36. Hon'ble Supreme Court in the matter of **Pranay Sethi (Supra)** has held that "*Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses*

*should be Rs.15,000/-, Rs. 40,000/- and Rs.15,000/- respectively...*" The aforesaid amount should be enhanced at the rate of 10% after every three years".

37. Hon'ble Apex Court in **Magma General Insurance Company Limited versus Nanu Ram & Ors. (2018) 18 SCC 130** awarded the amount of Rs.40,000/ each to father and sister of the deceased for loss of Filial Consortium. Hon'ble Apex Court in United India Insurance Company Ltd. versus Satinder Kaur alias Satvinder Kaur and others, (2020) SCC Online 410, had reaffirmed the view of two-Judge Bench in Magma General insurance Company Ltd. And observed that The Motor Vehicles Act, 1988 is a beneficial legislation which has been framed with the object of providing relief to the victims, or their families and the consortium is not limited to spousal consortium only, it also includes parental consortium as well as filial consortium and awarded consortium to the widow and to three children left behind by the deceased @Rs.40,000/- each.

38. Here in the present case, it is an admitted fact that on the day and date of the accident, the deceased was minor and petitioners are parents who lost their shelter, support and affection due to sudden death of deceased in the alleged vehicular accident, hence, his family is entitled for the compensation under above mentioned conventional heads and in light of the judgment discussed herein above petitioners are entitled for total 10% enhancement on the conventional heads. Compensation for Conventional heads:-

| **Sr.No.** | **Particulars** | **Amount [Rs.]** |
|---|---|---|
| 1. | Loss of estate | **Rs.15,000/-** |

| | | |
|---|---|---|
| 2. | Loss of consortium to each petitioner | **Rs.40,000 × 2 = Rs.80,000/-** |
| 3. | Funeral Expenses | **Rs.15,000/-** |
| **Total** | | **Rs.1,10,000 /-** |

and after adding 10% the same, it would be Rs.1,21,000/- [Rs.1,10,000%10=11,000, 1,10,000+11,000=1,21,000/-]. Hence this tribunal awards total **Rs.1,21,000/-** for Loss of Estate, Loss of Consortium and Funeral expenses to the petitioners/claimants.

39. Thus, in view of the above discussions, the petitioners in MACP No.915/2012 are entitled for the following amount of the compensation under the different heads.

| Sr.No. | Particulars | Amount [Rs.] |
|---|---|---|
| 1. | Loss of Dependency | **Rs.6,16,140/-** |
| 2. | Loss of Estate, Consortium & Funeral Expense. | **Rs.1,21,000/-** |
| **Total** | | **Rs.7,37,140/-** |

40. Thus, in view of the above discussion, in MACP No.915/2012, Petitioners are entitled to get a sum of **Rs.7,37,140/- (Rs. Seven Lakh Thirty Seven Thousand One Hundred Fourty only)** as total compensation.

**Liability.**

41. In the present case, as discussed hereinabove, the accident is the result of rash and negligent driving on the part of the driver of the tractor-trolley. But so far as the point of liability is concerned, as discussed hereinabove, the tractor-trolley was involved in the accident and the accident occurred due to sole negligence on the part of the driver of the tractor-trolley and petitioner sustained injuries and deceased succumbed due to the

fatal injuries sustained in the accident respectively. Learned Advocate for the opponent No.2-insurance company of tractor No.GJ-18-AR-505 has submitted in his reply that the tractor No.GJ-18-AR-505 was covered at the material time of the accident and the insurance policy was inforce and produced the insurance policy of the tractor vide Mark 22/1. The Learned advocate for opponent No.3-insurance company of the trailer/trolley has relied upon the deposition of authorized person of the insurance company who has deposed during his deposition that GJ-18-AU-6383 was insured with this opponent-insurance company and relied upon the certified copy of the insurance policy at Exh.42 but the third party risk is not covered under premium paid by the owner of the trolley. This tribunal has gone through available documentary evidence as well as oral evidence, it appears that there is no dispute about the involvement of the vehicle/tractor-trolley in the accident and as per the insurance policy at Mark 22/1 and at Exh.42, both the tractor-trolley were insured with the opponent No.2 and opponent No.3 at the time of accident and the polices were in existence, therefore, the defence taken by the opponent No.3 that the insurance company is not liable to pay compensation to third party but considering the clause of insurance policy at Exh.42 under the heading of IMT.30 Trailer, it is mentioned that in consideration of the payment of an additional premium, it is hereby understood and agreed that the indemnity granted by this policy shall extend to apply to the trailer and as per the deposition of authorized person of insurance company, an additional premium of Rs.930/- was taken, therefore, the defence taken by the opponent No.3 is not supported.

Therefore, petitioners of each petition being third party are entitled to be compensated by the opponents as Owner being vicariously liable for the acts of the driver and Insurance company under the contract of indemnity is liable to compensate the petitioner. Hence, opponent No.1, 2, 3 & 4 are jointly and severally liable to pay compensation to respective petitioners accordingly. Hence, in the interest of justice, this tribunal decides point of liability accordingly.

**INTEREST ON AWARDED AMOUNT:**

42. The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and considering relevant factors like inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending etc. In **Abati Bezbaruah Vs. Dy. Director General, Geological Survey of India and Another [(2003) 3 SCC 148]**, the Hon'ble Supreme Court has held that "The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering loss of future income, loss of enjoyment of life etc., into consideration." Thus, having regards to the facts and circumstances of the case, in the light of the abovementioned judgments, it would be just and proper to award the simple interest at the rate of 9%p.a. on the awarded amount of claim from the date of filing the petition till the date of payment of awarded amount.

**TAX DEDUCTED AT SOURCE:**

43. In **Hansaguri Prafulchandra Ladhani & Others – Versus – Oriental Insurance Company Limited & Others** reported as 2012 ACJ 1897, the Division Bench of Hon'ble Gujarat High Court has laid down the guidelines regarding the Tax Deducted at Source. In this judgment, the Hon'ble High Court directed that if amount of interest calculated on the awarded amount does not exceeds Rs.50,000 per year per petitioner, then no TDS shall be deducted by the Insurance Company/ Respondents at the time of depositing the awarded amount along with interest in the Tribunal, therefore, in view of this Judgment, the Respondents/ Insurance company is hereby directed not to deduct the TDS if the amount of interest does not exceeds Rs. 50,000 per year per petitioners.

44. For the aforesaid reasons, this tribunal has decided issue no.1 and issue no.2 in accordingly and has decided the quantum of compensation, liability to pay the same accordingly. In view of the above discussion, while deciding issue no.3, the following final order is passed in the interest of justice.

**:-FINAL ORDER-:**

1) The Claim Petition No.629/2012 of the Petitioners is hereby partly allowed against the Opponent No.1 to 4 and Claim Petition No.915/2012 of the Petitioners are hereby allowed against the opponent No.1 to 4.

2) Petitioners of **MACP No.629/2012** do recover **Rs.50,000/- (Rs. Fifty Thousand only)** as compensation amount alongwith cost of petition with a simple interest to be calculated @ 9% p.a.

from the date of filing of the claim petition till realization.

3) Petitioners of **MACP No.915/2012** do recover **Rs.7,37,140/- (Rs. Seven Lakh Thirty Seven Thousand One Hundred Fourty only)** as compensation amount alongwith cost of petition with a simple interest to be calculated @ 9% p.a. from the date of filing of the claim petition till realization.

4) The Opponents No.1 to 4 jointly and severally are hereby directed to deposit the amount of compensation alongwith cost of petition after deducting the amount of interim compensation, if any, paid under section 140 of the Motor Vehicles Act, as directed in Circular No.8/2022 dated 01/02/2022, by way of Direct Bank Transfer to Bank Account of MACT Tribunal (Main) District Court, Ahmedabad (Rural), details of which are as follows:-

**Bank Name-State Bank of India, Bhadra Branch Lal Darwaja-380001**
**Bank Account Name-PRINCIPAL DIST JUDGE ABAD RURAL MACP**
**Account No- 00000040722625356**
**IFS Code- SBIN0000301**
**Bank MICR Code- 380002002**
PAYMENT ADVICE FOR REMITTANCE OF COMPENSATION
From:
______________________Bank_________________
To:
______________________Court_________________

We confirm remittance of compensation as follows on instructions of_______________________________(insurance company/transport corporation)

5) On such deposits being made, the opponents 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:-

| | | |
|---|---|---|
| 1. | On realization of the amount, the entire amount, after deductions, be paid to the applicant through RTGS / NEFT after due verification. | |
| 2. | On the file of (Claims Tribunal Name): | |
| 3. | Name of the Petitioner's: | |
| 4. | Date of award: | |
| 5. | Compensation Amount : | |
| 6. | Name of the bank who deposit the amount: | |
| 7. | Income Tax Deduction at Source: | |
| 8. | Income Tax Deduction at Source, if any Unique Transaction Reference(UTR) No.: | |

6) On depositing of the above amount of award by the Respondents/opponents in this Tribunal, the deficit amount of Court Fee Stamp, if any, on the awarded amount be deducted first separately in each MACPs petitions and thereafter;

**In MACP No.629/2012**, whole amount be paid to the Petitioners through RTGS/NEFT on proper identification.

**In MACP No.915/2012**, **70%** of the amount equally be deposited in the name of the Petitioners in any nationalized bank of the choice of the petitioners for the period of **5 years** through RTGS/NEFT and the remaining **30%** amount equally be paid to the Petitioners through RTGS/NEFT on proper identification.

7) In view of the Judgment of the Hon'ble Gujarat High Court passed in the case of *The Oriental Insurance Co. Ltd. vs. Chief Commissioner of Income Tax, R/Special Civil Application No. 4800 of 2021, decided on 05/04/2022* the opponents shall deposit the full amount with this Tribunal and **shall not deduct tax on the interest** awarded herein above.

8) Final Decree and Memo of cost be prepared accordingly and file be consigned to record room after due compliance.

**Signed & Pronounced in the open Court on this 29th day of July, 2026.**

Date :29/07/2026.
Place:Ahmedabad.
P.D.M.

**[Kruti Sanjay Trivedi]**
Motor Accident Claims Tribunal(Auxi.)
Ahmedabad(Rural),
(UIC No.GJ00617)