



	<u>D: M: Y</u>
Filed on	: 16.12.2008
Registered on	: 16.12.2008
Decided on	: 17.06.2026
Duration	:

**BEFORE THE HON'BLE 2nd ADDL. DISTRICT JUDGE &
MOTOR ACCIDENT CLAIMS TRIBUNAL [AUXI.]
AHMEDBAD(Rural).**

Exh. _____

Motor Accident Claim Petition No.2139/2008(Main)

With

Motor Accident Claim Petition No.2140/2008

with

Motor Accident Claim Petition No.2141/2008

with

Motor Accident Claim Petition No.2142/2008

Motor Accident Claim Petition No.2139/2008(Main)

**Petitioner : Legal heirs of deceased-Humerabanu
Aslambhai Shaikh**

**[amended : Alisabanu Aslambhai Shaikh
vide Exh.38 Age:20 years, Occup:Studying.
and R/o:A/38, Tashlim Society, Vibhag No.2, Opp.
thereafter, Bibi Talav, Vatva, Ahmedabad.
Exh.58]**

VERSUS

[Driver & owner of Tractor No.GJ-1-FQ-3217]

**Opponents 1: Rammilanbhai Vishalbhai @ Bishalbhai
Yadav**

**Age:38 years, Occup:Driving,
R/o:In the tenant house of Govindbhai
Bharwad, Bharwad Vas, Pipalj Gaam, Taluka-**

Daskroi, District-Ahmedabad.

[owner] 2: Matambhai Jaksibhai Bharwad
Age:Major, Occup:Business,
R/o:Village-Piplaj, Bharwad Vas, Taluka-
Daskroi, District-Ahmedabad.

[Owner of 3: Jaksibhai Gandubhai Bharwad
trolley No.GJ- Age:Major, Occup:Business,
1-VV-7728] R/o:Saijpur-Gopalpur, Taluka-City, District-
Ahmedabad.

[Driver & owner of Motorcycle No.GJ-1-JG-4758]

[owner] 4: Aslambhai Ibrahimhai Shaikh
Age:Major, Occup:Business,
R/o:A/38, Tashlim Society, Vibhag No.2, Nr.
Bibi Talav, Vatva, Ahmedabad.

[insurance 5: ICICI Lombard General Insurance Co. Ltd.
com.] Address:7,8,9 Zodiya Square Building, Nr.
Vishal Mega Mart, SG Highway, Ahmedabad.

**[Insurance Company of Tractor No.GJ-1-FQ-3217 and trolley
No.GJ-1-VV-7728]**

(amended vide 6: IFFCO-TOKIO General Insurance Co. Ltd.
Exh.19) Address at:45, Opp. Devbhumi Apartment,
Drive-in-Road, Navrangpura, Ahmedabad.

Motor Accident Claim Petition No.2140/2008

Petitioners 1: Nadim Iqbalhusain Shaikh
Age:26 years, Occup:Advocacy,
[amended R/o:A/38, Tashlim Society, Vibhag No.2, Opp.
vide Exh.65] Bibi Talav, Vatva, Ahmedabad.

2: Alisabanu Aslambhai Shaikh
Age:20 years, Occup:Studying.
R/o:A/38, Tashlim Society, Vibhag No.2, Opp.
Bibi Talav, Vatva, Ahmedabad.

VERSUS

[Driver & owner of Tractor No.GJ-1-FQ-3217]

Opponents 1: Rammilanbhai Vishalbhai @ Bishalbhai
Yadav

Age:38 years, Occup:Driving,
R/o:In the tenant house of Govindbhai
Bharwad, Bharwad Vas, Pipalj Gaam, Taluka-
Daskroi, District-Ahmedabad.

[owner] 2: Matambhai Jaksibhai Bharwad
Age:Major, Occup:Business,
R/o:Village-Piplaj, Bharwad Vas, Taluka-
Daskroi, District-Ahmedabad.

[Owner of 3: Jaksibhai Gandubhai Bharwad
trolley No.GJ- Age:Major, Occup:Business,
1-VV-7728] R/o:Saijpur-Gopalpur, Taluka-City, District-
Ahmedabad.

[Driver & owner of Motorcycle No.GJ-1-JG-4758]

[owner] 4: Aslambhai Ibrahimbhai Shaikh
Age:Major, Occup:Business,
R/o:A/38, Tashlim Society, Vibhag No.2, Nr.
Bibi Talav, Vatva, Ahmedabad.

[insurance 5: ICICI Lombard General Insurance Co. Ltd.
com.] Address:7,8,9 Zodiya Square Building, Nr.
Vishal Mega Mart, SG Highway, Ahmedabad.

**[Insurance Company of Tractor No.GJ-1-FQ-3217 and trolley
No.GJ-1-VV-7728]**

(amended vide 6: IFFCO-TOKIO General Insurance Co. Ltd.
Exh.19) Address at:45, Opp. Devbhumi Apartment,
Drive-in-Road, Navrangpura, Ahmedabad.

Motor Accident Claim Petition No.2141/2008

Petitioner : Aslambhai Ibrahimbhai Shaikh
Age:28 years, Occup:Business,
R/o:A/38, Tashlim Society, Vibhag No.2, Bibi
Talav Cross Road, Opp. Golden Park, Vatva,
Ahmedabad.

VERSUS

**[Driver, owner & insurance company of Tractor No.GJ-1-FQ-
3217 & trolley No.GJ-1-VV-7728]**

Opponents 1: Rammilanbhai Vishalbhai @ Bishalbhai Yadav

Age:38 years, Occup:Driving,
R/o:In the tenant house of Govindbhai
Bharwad, Bharwad Vas, Pipalj Gaam, Taluka-
Daskroi, District-Ahmedabad.

[owner] 2: Matambhai Jaksibhai Bharwad

Age:Major, Occup:Business,
R/o:Village-Piplaj, Bharwad Vas, Taluka-
Daskroi, District-Ahmedabad.

[Owner of 3: Jaksibhai Gandubhai Bharwad

**trolley No.GJ-
1-VV-7728]**

Age:Major, Occup:Business,
R/o:Saijpur-Gopalpur, Taluka-City, District-
Ahmedabad.

(amended vide 4: IFFCO-TOKIO General Insurance Co. Ltd.

Exh.19) Address at:45, Opp. Devbhumi Apartment,
Drive-in-Road, Navrangpura, Ahmedabad.

Motor Accident Claim Petition No.2142/2008

Petitioner : Alisabanu Aslambhai Shaikh

Age:20 years, Occup:Studying.

**[amended
vide Exh.72]**

R/o:A/38, Tashlim Society, Vibhag No.2, Bibi
Talav Cross Road, Opp. Golden Park, Vatva,
Ahmedabad.

VERSUS

[Driver & owner of Tractor No.GJ-1-FQ-3217]

Opponents 1: Rammilanbhai Vishalbhai @ Bishalbhai Yadav

Age:38 years, Occup:Driving,
R/o:In the tenant house of Govindbhai
Bharwad, Bharwad Vas, Pipalj Gaam, Taluka-
Daskroi, District-Ahmedabad.

[owner] 2: Matambhai Jaksibhai Bharwad

Age:Major, Occup:Business,
R/o:Village-Piplaj, Bharwad Vas, Taluka-
Daskroi, District-Ahmedabad.

**[Owner of 3: Jaksibhai Gandubhai Bharwad
trolley No.GJ-1-VV-7728]** Age:Major, Occup:Business,
R/o:Saijpur-Gopalpur, Taluka-City, District-
Ahmedabad.

[Driver & owner of Motorcycle No.GJ-1-JG-4758]

[owner] 4: Aslambhai Ibrahimhai Shaikh
Age:Major, Occup:Business,
R/o:A/38, Tashlim Society, Vibhag No.2, Nr.
Bibi Talav, Vatva, Ahmedabad.

[insurance com.] 5: ICICI Lombard General Insurance Co. Ltd.
Address:7,8,9 Zodiya Square Building, Nr.
Vishal Mega Mart, SG Highway, Ahmedabad.

**[Insurance Company of Tractor No.GJ-1-FQ-3217 and trolley
No.GJ-1-VV-7728]**

(amended vide Exh.19) 6: IFFCO-TOKIO General Insurance Co. Ltd.
Address at:45, Opp. Devbhumi Apartment,
Drive-in-Road, Navrangpura, Ahmedabad.

=====

Appearances:

Learned Advocate Mr. K.P. Koshti for the claimants/petitioners.
Learned Advocate Mr. C.K. Patel for the opponent Nos.1 to 3.
Learned Advocate Mr. H.B. Khatri for the opponent No.4.
Learned Advocate Mr. M.J. Parikh for the Opponent No.5.
Learned Advocate Mr. M.P. Patel for the Opponent No.6.

=====

-:-JUDGEMENT:-:-

1. In the present case, it is pertinent to note here that above mentioned four the claim petitions have arisen out of one and same accident and therefore, all four claim petitions have been consolidated by order passed below Exh.51 and so, evidences have been recorded in MACP No.2139 of 2008. Thus, in view of the above facts on record, the above numbered claim petitions are being decided by this Common Judgment.
2. Now, so far as the claimant/petitioner in MACP No.2139 of

2008 is concerned, it is pertinent to note here that initially, the MACP No.2139 of 2008 was preferred by the minor Legal heirs of deceased-Humerabanu through her legal guardian grandfather-Ibrahimbhai Gulamnabi Shaikh, but subsequently, during the pendency of the claim petition, the legal guardian grandfather - Ibrahimbhai Gulamnabi Shaikh of minor claimant expired naturally, therefore, his name was abetted vide order passed below Exh.38 and subsequently, as the minor claimant turned into major, therefore, the same was amended by this Tribunal vide order passed below Exh.58.

3. Similarly, so far as the claimant/petitioner in MACP No.2140/2008 is concerned, it is pertinent to note here that initially, the MACP No.2140/2008 was preferred by the legal heir of unborn child who died in foetus of deceased-Humerabanu viz. grandfather-Ibrahimbhai Gulamnabi Shaikh, but subsequently, during the pendency of the claim petition, the legal guardian grandfather-Ibrahimbhai Gulamnabi Shaikh has expired naturally, therefore, his name was abetted and the name of his legal heirs has been impleaded vide order passed below Exh.65.
4. Likewise, so far as the claimant/petitioner in MACP No.2142 of 2008 is concerned, it is pertinent to note here that initially, the MACP No.2142/2008 was preferred by the minor claimant/petitioner through her legal guardian viz. grandfather-Ibrahimbhai Gulamnabi Shaikh, but subsequently, during the pendency of the claim petition, as the minor claimant turned into major, therefore, the same was amended by this Tribunal vide order passed below Exh.72.

5. Above mentioned all claim petitions have been filed **U/s 163-A of the Motor Vehicles Act, 1988** (herein after referred as “**M.V. Act**”) by the respective Petitioner(s)/Claimant(s) and/or by the legal representatives of the deceased who succumbed in the accident against the Opponents to recover compensation of **Rs.4,62,834/- in MACP No.2139/2008, Rs.1,54,500/- in MACP No.2140/2008, Rs.1,22,333/- in MACP No.2141/2008 and Rs.33,500/- in MACP No.2142/2008** respectively.

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

MACP No.2139/2008, 2140/2008 & 2142/2008

On dated 30.09.2008, mother of the petitioner who was 9 months pregnant alongwith her minor child i.e. petitioner also were going to Muktjivan School as pillion riders on the motorcycle bearing RTO No.GJ-1-JG-4758, owned & ridden by opponent No.4 and insured with the opponent No.5. At about 07:45 a.m., while they were passing near Kharawala Complex, Isanpur Cross-Road, towards Vatva Gaam, at that time, the opponent No.1 i.e. the driver of one tractor bearing RTO No.GJ-1-FQ-3217 owned by opponent No.2 attached with trolley bearing its RTO No.GJ-1-VV-7728, owned by opponent No.3 and insured with opponent No.6, came by driving his tractor attached with the trolley in rash, negligent manner and endangering to human life from opposite side i.e. from the Isanpur side and dashed with full force to the motorcycle of the opponent No.4. As a result, the mother of petitioner and petitioner fell down from the motorcycle on the road and thereby, the accident occurred as averred in the claim petition. It

is stated that in the accident, the mother of petitioner had sustained serious injuries over abdomen and all over her body parts and consequently petitioner's mother as well as her unborn child succumbed due to fatal injuries sustained by her in the vehicular accident. It is further stated that petitioner had also sustained serious injuries all over parts of her body. For the said accident, FIR was lodged at Vatva Police Station, vide C.R.No.299/2008. It is further stated that at the time of accident, deceased was 26 years old healthy lady and her yearly income was Rs.40,000/-. It is further averred that on account of sudden death of the deceased, Petitioner has lost her shelter, support, care taker and important family member, hence, has filed present claim petition for compensation against the opponents.

MACP No.2140/2008

On dated 30.09.2008, the petitioner alongwith his family members were going to Muktjivan School by riding his motorcycle bearing RTO No.GJ-1-JG-4758. At about 07:45 a.m., while he was passing near Kharawala Complex, Isanpur Cross-Road, towards Vatva Gaam by riding his motorcycle in moderate speed and on the correct side of the road, at that time, the opponent No.1 i.e. the driver of one tractor bearing RTO No.GJ-1-FQ-3217 owned by opponent No.2 attached with trolley bearing its RTO No.GJ-1-VV-7728, owned by opponent No.3 and insured with opponent No.6, came by driving his tractor attached with the trolley in rash, negligent manner and endangering to human life from opposite side i.e. from the Isanpur side and dashed with full force to the motorcycle. As a

result, the petitioner alongwith his wife and child fell down from the motorcycle on the road and thereby, the accident occurred as averred in the claim petition. It is stated that in the accident, the petitioner had sustained serious injuries on his both legs as well as serious injuries all over his body parts in the vehicular accident. For the said accident, FIR was lodged at Vatva Police Station, vide C.R.No.299/2008. It is further stated that at the time of accident, petitioner was 28 years old healthy person but on account of the injuries sustained in the alleged accident, the petitioner has permanent disability and he is not able to do his work as he was doing before the accident and hence, the present claim petition. It is further stated that petitioner was earning Rs.1 lakh per annum by doing business but as he has filed the claim petition U/s 163-A of the M.V. Act, so it is just and proper to consider income of petitioner as Rs.40,000/- per annum.

MACP No.2139/2008

7. Upon service of notice, the opponent No.1, 2 & 3-the driver and owner of the tractor No.GJ-1-FQ-3217 attached with the trolley appeared through their advocate and filed common reply vide Exh.23 and thereby denied all the statements, averments and allegations leveled in the claim petition. It is denied that the alleged accident occurred due to sole negligence on the part of the driver of tractor attached with the trolley even, the rider of the motorcycle i.e. opponent No.4 was riding his motorcycle in excessive speed and as on the said road, digging work was going on the side of the road and the road was oneway, however, the opponent No.4 has without maintaining the speed,

came from the opposite side and dashed to the tractor attached with the trolley and hence, opponent no.1, 2 & 3 are not liable to pay any compensation to the petitioners. The Opponent No.3- Insurance Company has challenged the time, date and place of the accident as well as challenged the age, income and injury of the petitioner and ultimately, prayed to dismiss the present claim petition.

8. The notice was duly served upon the opponent No.4-owner/rider of the motorcycle and opponent No.4 has appeared through his advocate and filed his reply vide Exh.17 hereby denied all the statements, averments and allegations leveled in the claim petition. It is mainly contended that if the Hon'ble tribunal comes to the conclusion that the alleged accident occurred due to any negligence of the opponent No.4, in that case, the motorcycle of the opponent No.4 was insured with the opponent No.5 and the insurance policy of the motorcycle was in force at that time, therefore, the insurance company is liable to pay compensation, if any, to the petitioner.
9. In pursuance of Service of Notice, the opponent No.5-Insurance Company of the motorcycle appeared through its advocate and filed its written reply at Exh.30 and thereby, the opponent No.5 has denied all the statements, averments and allegations leveled against it. It is further mainly contended that the accident took place due to sole negligence of the driver of the tractor attached with the trolley, hence, the opponent No.5 cannot be held liable to pay compensation to the petitioner. The opponent No.5 Insurance Company has challenged the time, date and place of the accident as well as also challenged the age, income of the

deceased and ultimately, prayed to dismiss the present claim petition.

10. Upon service of notice, the opponent No.6-Insurance company of the tractor attached with the trolley appeared through its advocate and filed written reply vide Exh.28 and thereby denied all the statements, averments and allegations leveled in the claim petition. It is mainly contended that the driver of the tractor trolley No.GJ-01-FQ-3217 and GJ-01-VV-7728 alleged to be insured by the opponent No.6 held of license to drive only non-transport vehicle and at the time of the accident, the driver did not hold the valid driving license authorizing him to drive a transport vehicle resulting in breach of provision of Section 149 of the M.V. Act as well as the breach of policy conditions i.e. the tractor attached with the trolley which is involved in the accident are not insured with the opponent No.6 and therefore, the opponent No.6 cannot be fastened with any liability to pay compensation to the petitioners. It is denied that the alleged accident occurred due to sole negligence on the part of the driver of tractor attached with the trolley hence, opponent no.6 is not liable to pay any compensation to the petitioner. The Opponent No.6-Insurance Company has challenged the time, date and place of the accident as well as challenged the age, income of the deceased and ultimately, prayed to dismiss the present claim petition.
11. Likewise, all the opponents have appeared in other claim petitions and filed their reply as in **MACP No.2140/2008**, opponent No.1, 2 & 3 at Exh.22, opponent No.4 at Exh.16, opponent No.5 at Exh.29 and opponent No.6 at Exh.27. In

MACP No.2141/2008, opponent No.1, 2 & 3 at Exh.15 and opponent No.4 at Exh.20. In **MACP No.2142/2008**, opponent No.1, 2 & 3 at Exh.24, opponent No.4 at Exh.17, opponent No.5 at Exh.32 and opponent No.6 at Exh.29 and thereby, they have denied all the averments of the claim petitions in their respective part.

12. 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 examination of Petitioner-Alisabanu Aslambhai Shaikh.[In MACP No.2139/2008]	81
2.	Affidavit of Examination-in-chief and Cross examination of Petitioner No.2-Alisabanu Aslambhai Shaikh.[In MACP No.2140/2008]	80
3.	Affidavit of Examination-in-chief and Cross examination of Petitioner-Aslambhai Ibrahimhai Shaikh.[In MACP No.2141/2008]	82
4.	Affidavit of Examination-in-chief and Cross examination of Petitioner-Alisabanu Aslambhai Shaikh.[In MACP No.2142/2008]	79

DOCUMENTARY EVIDENCES

[MACP Nos.2139/2008, 2140/2008, 2141/2008 & 2142/2008]

Sr. No.	Particulars of Documents	Exh./ Mark
1.	Certified copy of FIR.	84
2.	Certified copy of complaint.	85
3.	Certified copy of Panchnama of Place of Accident.	86
4.	Certified copy of inquest panchnama of deceased-Humerabanu.	87
5.	Copy of RC book of tractor No.GJ-1-FQ-	100

	3217.	
6.	Copy of RC book of tractor trolley No.GJ-1-VV-7728.	101
7.	Copy of driving license of Aslambhai Ibrahimbhai Shaikh.	53/7
8.	Copy of RC Book of motorcycle No.GJ-1-JG-4758.	53/8
9.	Copy of insurance policy of motorcycle No.GJ-1-JG-4758.	53/9
10.	Copy of insurance policy of tractor No.GJ-1-FQ-3217 alongwith tractor trolley No.GJ-1-VV-7728.(GJ2L145)	102
11.	Certified copy of postmortem report of deceased-Humerabanu.	88
12.	MLC-OPD Medical case papers alongwith injury certificate of petitioner-Aslambhai Ibrahimbhai Shaikh.	89, 90 & 91
13.	Disability certificate of petitioner-Aslambhai Ibrahimbhai Shaikh.	53/15
14.	Disability certificate of petitioner-Aslambhai Ibrahimbhai Shaikh.	53/15
15.	X-ray report of petitioner-Aslambhai Ibrahimbhai Shaikh.	53/16
16.	Medical bills (Total Rs.270/-) issued from LG Hospital for the petitioner-Aslambhai Ibrahimbhai Shaikh.	92 to 95
17.	Medical bill of Rs.225/- issued from LG Hospital for the petitioner-Alisabanu Aslambhai Shaikh.	96
18.	Fee receipt issued by Dr. Nalin M. Shah of Rs.1000/- for the petitioner-Aslambhai Ibrahimbhai Shaikh.	53/22
19.	X-ray report fee of Rs.600/- for the petitioner-Aslambhai Ibrahimbhai Shaikh.	97
20.	Injury certificate of petitioner-Alishaben Aslambhai Shaikh.	98
21.	Certified copy of charg-sheet.	99
22.	Consent pursis for reducing the disability of petitioner-Aslambhai Ibrahimbhai Shaikh.	103

13. For the defence, opponents 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 examination of opponent No.3-Jaksibhai Gandabhai Bharwad.(owner of tractor trolley)	105
2.	On behalf of opponent No.5, Deposition of PW1(authorized person of insurance company)-Devang Bhikhubhai Parekh alongwith his cross-examination.(In MACP No.2139/2008)	109
3.	On behalf of opponent No.6, Deposition of PW1(authorized person of insurance company)-Mohit Dineshbhai Kavtakar alongwith his cross-examination.(In MACP No.2139/2008)	112

DOCUMENTARY EVIDENCES

[MACP Nos.2139/2008, 2140/2008, 2141/2008 & 2142/2008]

Sr. No.	Particulars of Documents	Exh./ Mark
1.	Certified Copy of insurance policy of motorcycle No.GJ-1-JG-4758.	110
2.	Certified Copy of insurance policy of tractor No.GJ2L145.	113

14. The following issues pertaining to Section 163-A of the M.V. Act as regards the schedule-II of the Act are framed at Exh.118 in MACP No.2139/2008, Exh.119 in MACP No.2140/2008, Exh.120 in MACP No.2141/2008 and Exh.121 in MACP No.2142/2008, for the final conclusion of the present claim petition. The issues in MACP No.2139/2008 and 2140/2008 are pertaining to fatal case and the issues are as under;

ISSUES

1. Whether the claimant proves that deceased died as a result of injuries sustained due to accident arising out of use of motor vehicle ?
2. Whether the claimant is entitled to get compensation under the IIInd Schedule of Motor Vehicle Act, 1988 ? If yes, what amount and from whom ?
3. What order and award ?

The issues in MACP No.2141/2008 and 2142/2008 are pertaining to injury case and the issues are as under;

ISSUES

1. Whether the claimant proves that sustained injuries due to accident arising out of use of motor vehicle ?
 2. Whether the claimant is entitled to get compensation under the IIInd Schedule of Motor Vehicle Act, 1988 ? If yes, what amount and from whom ?
 3. What order and award ?
15. The finding of this Tribunal on the aforesaid issues is as under:
1. In affirmative.
 2. In affirmative, as per final award.
 3. As per Final order and Award.

-:-REASONS:-**Issues No.1 & 2:**

16. 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.
17. Learned advocate Mr. K.P. Koshti appeared on behalf of the petitioners in all the MACPs and filed common written submissions vide Exh.115. Ld. Advocate for the petitioners has reiterated the contents of the claim petition and written arguments and further submitted that the present claim petitions have been filed U/s 163-A of the M.V. Act and therefore, all the opponents are liable to pay the compensation to the respective petitioners. It is further submitted that there is composite negligency and therefore, in the MACP No.2139/2008, 2140/2008 and 2142/2008, all the opponents are liable to pay compensation to the petitioner. However, in MACP No.2141/2008, the petitioner is rider of the motorcycle involved in the accident, therefore, the driver, owner and insurance company of the tractor trolley are liable to pay compensation to the petitioner.
18. Learned advocate Mr. C.K. Patel appeared on behalf of the opponent No.1 to 3-driver & owner of the tractor attached with its trolley involved in the accident and vehemently argued the matter. Ld. Advocate for the opponent No.1 to 3 reiterated the contents of common reply and written arguments further submitted that at the time of accident, one side of the road, there was digging/construction work going on and therefore, the road

was used by the people as one side and due to one side, there was heavy traffic on the road and therefore, the driver of the tractor was driving his tractor with its trolley in moderate speed, as per traffic rules and by keeping the cautionary but the opponent No.4 i.e. rider of the motorcycle was riding his motorcycle in very high speed and the driver of the tractor trolley was passing the horn however, the opponent No.4 was riding his motorcycle in a very negligent manner and due to excessive speed, opponent No.4 lost his control over the steering and the driver of tractor trolley applied the break to avoid the accident but due to excessive speed, opponent No.4 had dashed his motorcycle to middle portion of the tractor, therefore, the said accident was occurred due to sole negligence on the part of opponent No.4 hence, opponent No.1 to 3 are not liable to pay any compensation to the petitioners. The Ld. advocate for the opponent Nos.1 to 3 has placed heavily reliance upon the judgments of the Hon'ble High Court of Himachal Pradesh at Shimla in the case of **New India Assurance Co. Ltd. Vs. Kanta Rani and others, 2007 ACJ 1635** and further submitted that though the insurance policy of the tractor was not inforce at the time of accident but the insurance policy of the trolley which was attached with the tractor was inforce and therefore, the insurance company is liable to pay the compensation.

19. Learned advocate Mr. M.J. Parikh appeared on behalf of the opponent No.5-insurance company of the motorcycle and vehemently argued the matter. It is mainly argued that as all the MACPs are filed U/s 163A of the M.V. Act, therefore, there is

no dispute about the accident as well as there is no need to decide the negligence but so far as the liability is concerned, the rider of the the motorcycle i.e. opponent No.4 was riding his motorcycle with excess pillion rider as the motorcycle is only seating capacity of two person including pillion rider and therefore, there is clear breach of the terms & conditions of the insurance policy, the opponent No.5 is not liable to pay any compensation to the petitioners for the alleged accident and present petition is liable to be dismissed.

20. Learned advocate Mr. M.P. Patel appeared on behalf of the opponent No.6-insurance company of the trolley and vehemently argued the matter. It is mainly argued that in the accident Tractor- trolley No. GJ-1-FQ-3217 & GJ-1-VV-7728 are involved but at the time of accident, the tractor was not insured with the present insurance company and only trolley was insured and to get the compensation, the driver & owner of the tractor has falsely included the trolley. It is further submitted that as per the policy produced by the opponents No.1 to 3, the vehicle number is different and the tractor was not insured with the present opponent, therefore, opponent No.6 is not liable to pay any compensation to the petitioners for the alleged accident and present petition is liable to be dismissed.
21. 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. To substantiate claim petition, the Petitioner no.1 has submitted evidence (examination-in-chief) affidavit at Exh.81 in MACP No.2139/2008, wherein, petitioner No.1-

Alisabanu Aslambhai Shaikh 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. Lrs of the deceased i.e. Petitioner-Alisabanu has been cross-examined by the Ld. advocate for the opponent No.5 but nothing adverse record came out during the course of cross-examination.

22. Likewise, the Petitioner no.2- Alisabanu Aslambhai Shaikh has submitted evidence (examination-in-chief) affidavit at Exh.80 in MACP No.2140/2008, wherein, petitioner 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 has been cross-examined by the Ld. advocate for the opponent No.5 and she has admitted that her mother was 9 months pregnant at the time of accident.
23. Similarly, the Petitioner-Aslambhai Ibrahimbhai Shaikh has submitted evidence (examination-in-chief) affidavit at Exh.82 in MACP No.2141/2008, wherein, petitioner-Aslambhai 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 has been cross-examined by the Ld. advocate for the opponent No.4 and Ld. advocate for the opponent No.1 to 3 has adopted the cross-examination.
24. Likewise, the Petitioner-Alisabanu Aslambhai Shaikh has submitted evidence (examination-in-chief) affidavit at Exh.79 in MACP No.2142/2008, wherein, petitioner-Alisabanu Aslambhai Shaikh 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-Alisabanu has been cross-examined by the Ld. advocate for the opponent No.5 but nothing adverse record came out during the course of cross-examination.

25. So far the provision of Sec.163-A of the M.V. Act is concerned, the same is based upon the principle of '*No Fault Liability.*' The only requirement for the fulfillment of the provision of Section 163-A is the proof of involvement of the offending vehicle. Once the involvement of the vehicle, age and income of the victim are proved by the applicants, the Tribunal will have to decide the quantum of compensation as per the structured formula stated in the Second Schedule to Section 163-A of the M.V. Act. Sub-sec.2 of Sec.163-A is very specific, which says that, "*in any claim for compensation under Sec.163-A the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.*" This suggests that while deciding an application U/s163-A of the M.V. Act, the Tribunal is not required to decide the negligence of any person. It provides for payment of compensation on structured formula basis being special provisions. The relevant provisions reads as under :-

“Section 163-A :

- (1) *Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle of the authorized insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim,*

as the case may be.

Explanation. x x x x

- (2) *In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.*

(3) x x x x”

26. It is cardinal principle of law that while deciding application under Section-163A of the Act, Tribunal has not required to calculate amount of compensation by applying multiplier, but only required to compute amount of compensation on the basis of 'IInd Schedule of the Act'. Above referred proposition is laid down by Hon'ble Supreme Court in the case of ***National Company Ltd. Versus Gurumallamma***, reported in ***AIR 2009 SCW 7434***. Even in the case of ***Sarla Verma v/s Delhi Transport Corporation***, reported in ***Air 2009 SC 3104***, it has been held in para No.17 it has been held as under

“17.... Therefore, where the application is under section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs. 40,000/- by applying the formula : $(2/3 \times A1 \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. Several principles of tortious liability are excluded when the claim is under section 163-A of MV Act... “

27. From the above referred ratio, laid down by Hon'ble Apex Court, it becomes amply clear that Tribunal is not required to make calculation of compensation on the basis of application of multiplier. But Tribunal is only required to grant compensation as per Schedule-II of the Motor Vehicle Act, taking into considering the age and income of the deceased.

28. Hence present petitions are maintainable without ascertaining as to whether the petitioner himself was negligent for causing the alleged accident. From the complaint, FIR, Panchnama and charge-sheet against the driver of tractor attached with its trolley, it has come on record that the alleged accident occurred due to involvement of the vehicle driven by Opponent no.1 and in the said accident, some petitioners have sustained injuries and one woman has died alongwith her 9 months unborn child in her fetus due to same. Hence, let us decide whether the petitioners/petitioner prove the necessary requirements for the grant of compensation U/s163-A of the M.V. Act.

COMPENSATION.(In MACP No.2139/2008)

AGE

29. Now, so far as the age of the deceased is concerned, petitioner no.1 in the claim petition as well as in her examination-in-chief affidavit has stated that at the time of accident, the deceased was 26 years old. This tribunal has gone through the above evidence of the petitioner no.1 on record and this tribunal has also perused the record of the case and having gone through the record of the case, it clearly appears that the petitioners have not produced any evidence with regard to the age of the deceased. Thus in absence of such material evidence on record as well as, to apply proper multiplier, the age of the deceased is required to be considered on the basis of P.M. Report and the P.M. Report of the deceased is produced on record at Exh.88, wherein, the age of the deceased is mentioned as 26 years and therefore, considering the above facts on record, tribunal holds that at the

time of accident, the deceased was 26 years old.

30. This Tribunal is also inclined to take into consideration the Judgment of the Hon'ble Supreme court in the case of **Sarla Verma Vs. Delhi Transport Corp. 2009 ACJ 1298 and the Schedule-II of the M.V. Act**, in which, the Hon'ble Supreme Court has restructured the multiplier column of Schedule - II and considering the age of the deceased as per Postmortem report produced on record, to which other side has not objected, a multiplier of 18, since, the age of the deceased was 26 years at the time of accident. Here in the present case, the deceased was 26 years and therefore, it would be just and proper to apply **18** Multipliers for the calculation of loss of total dependency.

INCOME:

31. Now, so far the aspect of income of deceased is concerned, there is nothing on the file to prove income of the deceased. Hence, considering the age of the deceased and year of accident i.e. 2008 and nature of work done by the deceased, it would be just and reasonable to assess the income of the deceased as **Rs.36,000/- p.a.** as it would not be exaggerated.
32. As discussed hereinabove, the age of the deceased is falling under the category of a deceased aged above 25 years, but not exceeding 30 years as specified in the IInd Schedule of the M.V. Act and her income is assessed as **Rs.36,000/-** per annum. Hence, the amount of compensation as prescribed for the age between 25 to 30 years and income of Rs.36,000/- per annum in the IInd Schedule of the M. V. Act would come as Rs.6,12,000/-. The IInd Schedule furthermore provides that the

amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining herself and her family had she been alive. Therefore, from the amount of Rs.6,12,000/-, 1/3rd i.e. **Rs.2,04,000/-** is required to be deducted as personal expenditure of the deceased and, therefore, final figure comes to **Rs.4,08,000/-** [Rs.6,12,000– Rs.2,04,000]. Hence, the petitioner is entitled to get **Rs.4,08,000/- under the Head of Loss of dependency.**

33. The petitioner is the daughter of the deceased, therefore, as per the Clause(3) of the Second Schedule of the M.V. Act the petitioner is entitled to get following amounts under the Provisions of Section 163-A of the M. V. Act.

Loss of Estate.	2,500/-
Funeral Expenses.	2,000/-

34. Thus, in view of the above discussions, the Petitioner is entitled for the following amount on account of the different heads as under:

Loss of Dependency.	Rs.4,08,000/-
Loss of Estate.	Rs.2,500/-
Funeral Expenses.	Rs.2,000/-
Total Loss of dependency	Rs.4,12,500/-

35. Thus, in view of the above discussion, the in MACP No.2139/2008, Petitioner is entitled to get a sum of **Rs.4,12,500/-(Rupees Four Lakh Twelve Thousand Five**

Hundred only) as total compensation.

COMPENSATION.(In MACP No.2140/2008)

36. So far as the compensation in MACP No.2140/2008 is concerned, in the present claim petition, the legal heirs of unborn child has claimed for Rs.1,54,500/- as compensation. It is further stated that the mother of the petitioners was 9 months pregnant at the time of incident but petitioners' mother succumbed due to fatal injuries sustained in the vehicular accident and due to which, the unborn child also died in the womb hence, filed the claim petition U/s 163-A of M.V. Act. Ld. advocate for the petitioners has relied upon the postmortem report of the deceased-Humerabanu vide Exh.88 and further prayed to grant the compensation as Rs.1,54,500/-. So, far as the compensation for the unborn child is concerned, the petitioners have filed the present claim petition U/s 163-A of the M.V. Act and as per the second schedule of the 163-A of the M.V. Act, there is Rs.15,000/- per annum income is fixed for non-earning person but herein this case, the child was unborn.
37. This tribunal perused the postmortem report of the deceased-Humerabanu vide Exh.88 wherein, in column No.21 it is clearly mentioned that single dead foetus female, weight 2.5kg and in the column No.23, the cause of death of the deceased is mentioned as "shock and hemorrhage due to sustained injuries over the body" which resulted into also the death of 9 months foetus in the womb of the deceased-Humerabanu, therefore, there is no dispute about that one unborn child died in the vehicular accident. This tribunal relied upon the judgments of

the Hon'ble High Court of Madras in case of **M/s. ICICI Lombard General Insurance Company Ltd. Vs. Thangamani W/o. Muthan & Ors.**, CMA No.3724 of 2012 dated 28.10.2020 and the Hon'ble High Court of Delhi in case of **Prakash & Ors. Vs. Arun Kumar Sainin & Anr.**, MAC.APP.No.602/2009, 05 February, 2010, wherein in Para 17 it is held as under;

"17. This Court is of the view that the rights of an unborn child are recognised in various different legal contexts; e.g. in criminal law causing death of foetus has been held to be an offence under Sections 312 to 316 of the Indian Penal Code, and the law of property considers the unborn child in being for all purposes which are to its benefit, such as taking by will or descent. This Court is in respectful agreement with the judgments of Andhra Pradesh High Court in the case of Oriental Insurance Co. Ltd. (supra) and Kerala High Court in the case of Manikuttan (supra), and holds that an unborn child aged five months onwards in mother's womb till its birth is treated as equal to a child in existence. The unborn child to whom the live birth never comes is held to be a 'person' who can be the subject of an action for damages for his death. The foetus is another life in woman and loss of foetus is actually a loss of child in the offing. The appellants are, therefore, entitled to compensation for the loss of foetus."

It is further held in paragraph 21 of the said judgment as under;

"21. The appeal is allowed and the compensation of Rs.2,50,000/- along with interest @7.5% per annum from the date of filing of the petition till realization is awarded to appellant No.1 towards the death of seven months old foetus on 17th June, 2008."

38. Considering the above law point and facts & circumstances of the present claim petition, this tribunal comes to conclusion that the legal representatives of the unborn child 9 months old foetus are entitled for the compensation of mental agony for the loss of unborn child. Thus, in view of the above discussion, the in MACP No.2140/2008, Petitioners/legal representatives are entitled to get a sum of **Rs.2,50,000/-** as total compensation.

COMPENSATION.(In MACP No.2141/2008)**Disability.**

39. Now so far as the MACP No.2141/2008 is concerned, the petitioner has sustained serious injuries resulting permanent disablement due to accident is concerned, petitioner has produced **Disability Certificate** vide Mark 53/15 issued by Dr. N.M. Shah, M.B., M.S.(Ortho), in support of his version that petitioner has sustained 14% disability body as a whole. Perusing Mark 53/15, **disability certificate**, it appears that the petitioner had suffered 14% disability of the body as whole due to injuries sustained in vehicular accident. But, it is pertinent to note here that vide Exh.103, both the parties have agreed to consider 10% permanent disability body as a whole and therefore, in view of the above consent disability purshis, this tribunal holds that the petitioner has total **10%** permanent disability body as a whole in the alleged accident.

AGE:

40. Now, so far as the age of the petitioner is concerned, the petitioner has stated in his examination-in-chief affidavit at Exh.82 that at the time of accident, he was 28 years old but petitioner has not produced any evidence as to prove his age. In the cross-examination, opponents have not cross-examined on the point of the age of the petitioner. The age of the petitioner is not mentioned anywhere except the medical case papers vide Exh.90 wherein the age of the petitioner is mentioned as 26 years. The opponent has not brought any record which may

against the age of the petitioner. Therefore, considering documents produced on record, this tribunal holds that at the time of accident, the petitioner was 26 years old. Now so far as to calculate the Loss Income, proper multiplier is required to be applied considering the age of the petitioner. This Tribunal is also inclined to take into consideration the Judgment of the Hon'ble Supreme court in the case of **Sarla Verma Vs. Delhi Transport Corp. 2009 ACJ 1298 and the Schedule-II of the M.V. Act**, in which, the Hon'ble Supreme Court has restructured the multiplier column of Schedule - II and considering the age of the petitioner, to which other side has not objected, a multiplier of 18, since, the age of the petitioner was 26 years at the time of accident. Here in the present case, the petitioner was 26 years and therefore, it would be just and proper to apply **18** Multipliers for the calculation of loss of income.

Loss of Income:

41. In the present case, the petitioner in his examination-in-chief affidavit at Exh.82, has deposed that at the time of accident, he was having xerox shop and by doing this business, he was earning Rs.40,000/- p.a. The petitioner is cross-examined by the Ld. Advocate for the opponents-Insurance Company, wherein, he has deposed that he has not produced any evidence as to prove his income.
42. This tribunal has thoroughly gone through the above oral testimony of the petitioner as well as also perused the record of the case and on perusal of the same, it clearly appears that the petitioner has not produced any evidence with regard to prove

his income. It is pertinent to note here that the present claim petition is filed under the provisions of Sec. 163-A of the M. V. Act and considering the IIInd Schedule of the M. V. Act U/s 163-A, the income of the petitioner is required to be considered as 40,000/- p.a. and therefore, this tribunal assesses **Rs.40,000/-** p.a. as the income of the petitioner and it would not be exaggerated in view of this tribunal.

Calculation of Future loss of Income

43. Permanent Disability consented by both the parties is 10% body as a whole for assessing and 18 multiplier would apply for the future loss of income to the petitioner. Hence, the future loss of income would be as under:-

Annual income of the petitioner	Rs.40,000/-
Loss due to 10% disability	10% of 40,000 = 4,000/-
Loss of income of petitioner	4,000×18 =72,000/-

Actual Loss of Income:

44. According to petitioner, petitioner could not work for very long time due to the injuries. In the medical case papers vide Exh.89 to 91, petitioner was admitted in the hospital on dated 30.09.2008 and discharged from the hospital on dated 09.10.2008 after the medical treatment. Therefore, looking to the nature of injuries mentioned therein, it can fairly be concluded that the petitioner could not have worked for one month. Here, in the present case, it is an admitted position that the petitioner sustained serious fracture injuries on his tibia-fibula and also sustained other injuries on various part of his

body. In support thereof, the petitioner has produced Medico Legal Certificate at Exh.91. Therefore, in view of the above facts and evidence, as well as considering 10% permanent disability body as a whole, period of treatment and follow-up treatment, it can be presumed that the petitioner couldn't work at least for 1 month and thus, considering the provisions of Sec. 163-A of M. V. Act and as provided in IIInd Schedule of Sec. 163-A of the M. V. Act, this tribunal awards Rs.3,000/- [Rs.3000/- × 1 month = Rs.3,000/-] under the Head of Actual Loss of Income.

45. Therefore, actual loss of income would be **Rs.3,000/- for actual loss of income.**

Medical Expenses

46. As per the version of the petitioner in his examination-in-chief, he had taken medical treatment for his injury and produced the medical bills of Rs.2,095/- vide Exh.92 to 95 & 97 respectively. Therefore, looking to nature of injuries sustained by the petitioner and total medical bills of Rs.2,095/-, it is just and proper to award amount of Rs.2,095/-, rounded figure **Rs.2,100/-** towards medical expenses.

Pain and Suffering:

47. As discussed hereinabove, the petitioner sustained serious fracture injuries injuries on his tibia-fibula and also sustained other injuries on various part of his body. In support thereof, the petitioner has produced Medico Legal Certificate at Exh.91. Now so far as the Pain & Sufferings are concerned, the present claim petition is under the provisions of Sec. 163-A of the Act

and Sec. 163-A-4[i] provides Pain and Sufferings, wherein 163-A 4 [i] [a] Grievous Injuries - Rs. 5000/- and [b] Non - Grievous Injuries - Rs. 1000/-. In the present case, the petitioner sustained grievous fracture injuries and he has 10% permanent disablement and thus, in view of the above fact, this tribunal awards **Rs.5000/- under the head of pain & sufferings.**

48. Therefore the petitioner is entitled to get following amounts by way of compensation.

Future Loss of Income	: Rs.72,000/-
Actual Loss of Income	: Rs.03,000/-
Medical Expenses	: Rs.02,100/-
Pain & suffering	: Rs.05,000/-
Total Compensation	: Rs.82,100/- (Rupees Eighty Two Thousand One Hundred only)

Thus, in view of the above discussion, the in MACP No.2141/2008, Petitioner is entitled to get a sum of **Rs.82,100/- (Rupees Eighty Two Thousand One Hundred only)** as total compensation.

COMPENSATION.(In MACP No.2142/2008)

49. Now so far as the MACP No.2142/2008 is concerned, the petitioner was minor about 3 years of age at the time of accident. The present claim petition was initially filed by the petitioner through her legal guardian but during the pendency of the present claim petition, she completed her maturity and turned into major, therefore, the vide order passed below Exh. 72. Now so far as the compensation for the MACP

No.2142/2008 is concerned, petitioner has neither produced any injury certificate nor disability certificate which shows that the petitioner had sustained simple injuries in the vehicular accident. Petitioner has filed present petition u/s. 163-A of the M.V. Act and considering the IIInd Schedule of the M. V. Act U/s 163-A, the income of the petitioner is required to be considered as notional income for the non-earning person in non-fatal accident as Rs.15,000/- p.a. But, according to claim petition, petitioner was minor and she has sustained simple injuries and thus, considering the provisions of Sec. 163-A of M. V. Act and as provided in IIInd Schedule of Sec. 163-A of the M. V. Act, this tribunal awards Rs.30,000/- lump-sum compensation to the petitioner.

Thus, in view of the above discussion, the in MACP No.2142/2008, Petitioner is entitled to get a sum of **Rs.30,000/- (Rupees Thirty Thousand only)** as total compensation.

Liability:

50. In the present case as discussed above, the opponent No.4-owner/rider of the motorcycle and opponent No.4 has contended that if the Hon'ble tribunal comes to the conclusion that the alleged accident occurred due to any negligency of the opponent No.4, in that case, the motorcycle of the opponent No.4 was insured with the opponent No.5 and the insurance policy of the motorcycle was inforce at that time, therefore, the insurance company is liable to pay compensation, if any, to the petitioner. The opponent No.5-Insurance Company of the motorcycle contended that the accident took place due to sole negligence of

the driver of the tractor attached with the trolley, hence, the opponent No.5 cannot be held liable to pay compensation to the petitioner. The opponent No.6-Insurance company of the tractor attached with the trolley contended that the driver of the tractor trolley No.GJ-01-FQ-3217 and GJ-01-VV-7728 alleged to be insured by the opponent No.6 held of license to drive only non-transport vehicle and at the time of the accident, the driver did not hold the valid driving license authorizing him to drive a transport vehicle resulting in breach of provision of Section 149 of the M.V. Act as well as the breach of policy conditions i.e. the tractor attached with the trolley which is involved in the accident are not insured with the opponent No.6 and therefore, the opponent No.6 cannot be fastened with any liability to pay compensation to the petitioners. It is denied that the alleged accident occurred due to sole negligence on the part of the driver of tractor attached with the trolley hence, opponent no.6 is not liable to pay any compensation to the petitioner. The petitioner has produced written arguments at Exh.115 wherein, he has submitted that the accident was caused due to the rash and neglgent driving of the opponent No.1 having tractor No.GJ-1-FQ-3217 alongwith trolley No.GJ-1-VV-7728. The applicant has relied on the citation of the Hon'ble Supreme Court of India in case of 1. **Yashwant Krishna Kumbar Vs. The Divisonal Manager, United India Insurance Co. Ltd. & Ors.**, Civil Appeal No. of 2025(arising out of SLP(Civil) No.22599 of 2024 and 2. **Khenyei Vs. New India Assurance Co. Ltd. and others**, 2015 ACJ 1441 and prayed to allow the petition relying on the principle laid down therein. The

opponent No.1 to 3 have submitted their written arguments at Exh.116 wherein, they have submitted that at the time of accident, the trolley No.GJ-1-VV-7728 was attached with the tractor involved in the accident and have relied on the citations being, 1. New India Assurance Co. Ltd. Vs. Kanta Rani and others, 2007 ACJ 1635. 2. Vanita and others Vs. Shriram General Ins. Co. Ltd. and another, 2025 ACJ 2127. 3. New India Assurance Co. Ltd. Vs. Rupin and others, 2025 ACJ 2092. 4. Royal Sundaram Alliance Insurance Company Vs. Honnamma, 2025 INSC 625. 5. T.O. Anthony Vs. Karvarnan and others, 2008 ACJ 1165 and opponent No.1 to 3 have prayed to pass necessary order relying on the principle laid down therein. On perusal of case record the opponent no 1 and 2 have not stepped into the witness box in order to prove their case. The opponent no.5 has relied on the citations being, 1. The New India Assurance Co. Ltd. Vs. Minor Himaniben & 5, First Appeal No.3926 of 2007 date 10.06.2015, 2. United India Insurance Company Limited Vs. Kiritkumar Tulsibhai Patel, 2016(0) AIJEL-HC 236334 and 3. The National Insurance Company Limited Vs. Chandrakantbhai Chotabhai Parmar, R/First Appeal No.2302 of 2020 with Civil Application (For Stay) No.1 of 2020 dated 05.03.2021 and opponent No.5 has prayed to pass necessary order relying on the principle laid down therein. The opponent No.3 has examined witness Jakshibhai Gandabhai Bharwad at Exh.105 who is the owner and driver of tractor No.GJ02L0145 and trolley No.GJ1VV7728 and which is insured with IFFCO TOKIYO General Insurance company having validity for the period from 04.02.2008 to 03.02.2009. It

clearly transpires that the tractor-trolley involved in the accident as per the complaint at Exh.85 is tractor No.GJ-1-FQ-3217 and the panchnama at Exh.86 is tractor No.GJ-1-FQ-3217. Whereas, as per Exh.105, evidence of opponent No.3 in as mentioned as he had given his trolley No.GJ-VV-7728 to Matambhai for use with his consent. Looking to the cross-examination of said witness at Exh.105, in the cross-examination by opponent No.5, he has admitted that the accident was caused due to involvement of tractor No.GJ-1-FQ-3217. He has also admitted that the said tractor No.GJ-1-FQ-3217 is of not his ownership. As per the FIR at Exh.84, the involved vehicle tractor is mentioned as GJ-1-FQ-3217 hence, as per the documents produced by the petitioners, FIR, complaint as well as panchnama, there is no mention of involvement of tractor No. GJ02L0145 and trolley No.GJ1VV7728. Also the driver of the motorcycle No.GJ-01-JG-4758-Aslambhai Ibrahimbhai Shaikh has been examined at Exh.82 by the petitioner wherein, he has admitted in the cross-examination that he had seen the number of the tractor and trolley and he had given the numbers in his complaint. Hence, the petitioner Aslambhai Ibrahimbhai Shaikh had given number of the tractor-trolley in the complaint and on perusal of the Exh.85 complaint, Exh.86 panchnama and Exh.84 FIR, there is no mention of involvement of tractor No. GJ02L0145 and trolley No.GJ1VV7728. Hence, on perusal of case records, the petitioners have failed to establish the involvement of tractor No. GJ02L0145 and trolley No.GJ1VV7728 in the accident. The insurance policy of the vehicle involved in the accident as per the FIR, complaint and

panchnama being tractor No.GJ-1-FQ-3217 has not produced on the record. In such circumstances, the driver of the tractor No.GJ-1-FQ-3217 and owner of the tractor No. GJ-1-FQ-3217 i.e. opponent No.1 &2 respectively have remained present and filed his reply vide Exh.-23 but they have not stepped into the witness box to rebut the case of the petitioners. In such circumstance, there is no substantial evidence on record to prove that the tractor No. GJ02L0145 and trolley No.GJ-1-VV-7728 was involved in the accident in such circumstance, in absence of substantial prove, the insurance company of trolley No.GJ-1-VV7728 cannot be held liable to pay the compensation to the petitioners. Also when the involvement of owner of vehicle tractor No. GJ02L0145 and trolley No.GJ1VV7728 cannot be held liable to pay compensation to the petitioners.

51. It is laid down by Hon'ble Supreme Court in the case of ***National Company Ltd. Versus Gurumallamma***, reported in ***AIR 2009 SCW 7434***. Even in the case of ***Sarla Verma v/s Delhi Transport Corporation, reported in Air 2009 SC 3104***, it has been held in para No.17 it has been held as under:

*"17.... Therefore, where the application is under section 163-A of the Act, it is possible to calculate the compensation on the structured formula basis, even where compensation is not specified with reference to the annual income of the deceased, or is more than Rs. 40,000/- by applying the formula : $(2/3 \times A1 \times M)$, that is two-thirds of the annual income multiplied by the multiplier applicable to the age of the deceased would be the compensation. **Several principles of tortious liability are excluded when the claim is under section 163-A of MV Act...**"*

52. As per discussion above, the driver of the tractor No.GJ-1-FQ-3217 and owner of the tractor No. GJ-1-FQ-3217 i.e. opponent No.1 & 2 respectively are jointly and severally liable to pay the compensation to the respective claimant/petitioners/legal

representatives of the deceased and hence, in the interest of justice, this tribunal decides point of liability accordingly.

INTEREST ON AWARDED AMOUNT:

53. The records reveal that the accident occurred in the year 2011 and the claim petition was preferred in the year 2012. In **Abati Bezbaruah v. 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:

54. In **Hansaguri Prafulchandra Ladhani & Others Vs. Oriental Insurance Company Limited & Others** reported as 2007 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.

55. For the aforesaid reasons, this tribunal has decided issue no.1 and issue no.2 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 Petitions of the Petitioners are hereby allowed against the Opponent No.1 & 2.
- 2) Petitioners of **MACP No.2139/2008** do recover **Rs.4,12,500/- (Rupees Four Lakh Twelve Thousand Five Hundred 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.2140/2008** do recover **Rs.2,50,000/- (Rupees Two Lakh 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.
- 4) Petitioners of **MACP No.2141/2008** do recover **Rs.82,100/- (Rupees Eighty Two Thousand One Hundred 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.

- 5) Petitioners of **MACP No.2142/2008** do recover **Rs.30,000/- (Rupees Thirty 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.
- 6) The Opponents No.1 & 2 are jointly and severally 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.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 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)

- 7) 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.:	

- 8) 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.2139/2008, 70% of the amount be deposited in the name of the Petitioner in any nationalized bank

of the choice of the petitioner for the period of **5 years** through RTGS/NEFT and the remaining **30%** be paid to the Petitioner through RTGS/NEFT on proper identification.

In MACP No.2140/2008, 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.

In MACP No.2141/2008 and MACP No.2142/2008, whole amount be deposited in the name of the Petitioner respectively through RTGS/NEFT on proper identification.

- 9) 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.
- 10) The Respondents shall bear their own costs of this petition.
- 11) Final Decree and Memo of cost be prepared accordingly.

Signed & Pronounced in the open Court on this 17th day of June, 2026.

Date :17/06/2026.
Place:Ahmedabad.

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