GJAN120000922023

Filed On: 14/03/2023
Registered On : 14/03/2023
Decided On : 20/08/2026
Duration : Y M D

IN THE COURT OF
ADDL.DISTRICT AND SESSIONS JUDGE AT
PETLAD,ANAND
Presided Over by Z.V.TRIVEDI

MAC PETITION NO. 12/2023 (MAIN)

Ex.______

Applicants :-

Legal Heirs of deceased Arjunsinh Harisinh Mahida

1. Rajuben Arjunsinh Mahida, Age 43, Housework
2. Mehulkumar Arjunsinh Mahida, Age 22,
3. Aartiben Arjunsinh Mahida, Age 21,
4. Rahulkumar Arjunsinh Mahida, Age, 19
5. Savirtaben harisinh Mahida, Age 67, Housework
   All are R/o Vanta Area, Malataj, Tal. Sojitra, dist. Anand

: V E R S U S :

PARTIES OF BOLERO NO. GJ-13 AW-0739

1. Gopalbhai@ Gopi Jagdishbhai Thakor...............Driver

R/o Suryanagar Sim, Kanbhaipura,
Tal. Dist. Anand

2. Danabhai Laxmanbhai Sabhad.................Owner
R/o Sabhad Sheri, Ralol, Tal. Limdi,
dist. Surendranagar

3. ICICI Lombard General Insurance Co. Ltd.,
Gamdivad, Radheshyam buiolding,
Ganesh Colony, Anand

PARTIES OF MARUTI ALTO CAR NO. GJ-23 H-7722

4. Heirs of Jayeshbhai Savabhai Rabari,
4/1 Jayshriben wd/o Jayeshbhai Rabari, Self and Guardian
of No. 4/3
4/2 Meet Jayeshbhai Rabari
4/3. Minor Poonam Jayeshbhai Rabari
All are R/o Malataj, Rabarivas,
Tal. Dist. Anand

Filed On:	26/05/2023
Registered On :	26/05/2023
Decided On :	20/08/2026
Duration :	Y M D

MAC PETITION NO. 24/2023

Ex.______

Applicants :-

Legal Heirs of deceased Jayeshbhai Savabhai Rabari
1. Jayshriben Jayeshbhai Rabari, Age 36, Housework

2. Meet Jayeshbhai Rabari, Age 18
3. Minor Poonam Jayeshbhai Rabari Age 15,
   Through Applicant No. 1.
4. Hiraben Savabhai Rabari, Age56, Housework
   All are R/o Malataj, Rabarivas,
   Tal. Dist. Anand

: V E R S U S :

PARTIES OF BOLERO NO. GJ-13 AW-0739

1. Danabhai Laxmanbhai Sabhad.................Owner
   R/o 165, Sabhad Sheri, Ralol-1, Tal. Limdi,
   dist. Surendranagar

2. ICICI Lombard General Insurance Co. Ltd.,
   Gamdivad, Radheshyam buiolding,
   Ganesh Colony, Anand

PARTIES OF MARUTI ALTO CAR NO. GJ-23 H-7722

3. Heirs of Arjunsinh Harisinh Mahida..........driver
   Mehulbhai Arjunsinh Mahida
   R/o Vanta, Malataj,. Tal. Petlad, Dist. Anand

Filed On:	07/06/2023
Registered On :	07/06/2023
Decided On :	20/08/2026
Duration :	Y M D

MAC PETITION NO. 27/2023

Ex.______

Applicant :-

Swapnil Ajaysinh Mahida, Age 27,
R/o Nr. Holi chakla, In Vata,
Nr. Kshem Kalyani Temple, At malataj,
Tal. Sojitra, Dist. Anand

: V E R S U S :

PARTIES OF BOLERO NO. GJ-13 AW-0739

1. Danabhai Laxmanbhai Sabhad.................Owner
R/o Sabhad Sheri, Ralol, Tal. Limdi,
dist. Surendranagar

2. ICICI Lombard General Insurance Co. Ltd.,
Gamdivad, Radheshyam buiolding,
Ganesh Colony, Anand

PARTIES OF MARUTI ALTO CAR NO. GJ-23 H-7722

3. Heirs of Jayeshbhai Savabhai Rabari,
3/1 Jayshriben wd/o Jayeshbhai Rabari,
R/o Malataj, Rabarivas,
Tal. Dist. Anand

Filed On:	27/06/2023
Registered On :	27/06/2023
Decided On :	20/08/2026
Duration :	Y M D

MAC PETITION NO. 29/2023

Ex.______

<u>Applicant :-</u>

Mahendrasinh Shivsinh Mahida, Age 53,
R/o In Vata, At malataj,
Tal. Sojitra, Dist. Anand

: V E R S U S :

PARTIES OF BOLERO NO. GJ-13 AW-0739

1. Danabhai Laxmanbhai Sabhad.................Owner
   R/o Sabhad Sheri, Ralol, Tal. Limdi,
   dist. Surendranagar

2. ICICI Lombard General Insurance Co. Ltd.,
   Gamdivad, Radheshyam buiolding,
   Ganesh Colony, Anand

PARTIES OF MARUTI ALTO CAR NO. GJ-23 H-7722

3. Heirs of Jayeshbhai Savabhai Rabari,

3/1 Jayshriben wd/o Jayeshbhai Rabari,
R/o Malataj, Rabarivas,
Tal. Dist. Anand

Filed On:	13/04/2023
Registered On :	13/04/2023
Decided On :	20/08/2026
Duration :	Y M D

MAC PETITION NO. 38/2025

(OLD MACP NO. 92/2023)

Ex.______

<u>Applicant :-</u>

Vishnubhai Hartanbhai Rabari, Age 33,
R/o Rabarivas, At malataj,
Tal. Sojitra, Dist. Anand

: V E R S U S :

PARTIES OF BOLERO NO. GJ-13 AW-0739

1. Danabhai Laxmanbhai Sabhad.................Owner
   R/o Sabhad Sheri, Ralol, Tal. Limdi,
   dist. Surendranagar

2. ICICI Lombard General Insurance Co. Ltd.,
   Gamdivad, Radheshyam buiolding,
   Ganesh Colony, Anand

Appearance:
Ld. advocate Mr. H.R. Patel for the applicant In MACP no.12/23
Ld. advocate Mr. K.B. Patel for the applicant In MACP no.24/23
Ld. advocate Mr. K.B. Patel for the applicant In MACP no.27/23
Ld. advocate Mr. O.G.Mansuri for the applicant In MACP no.29/23
Ld. advocate Mr. N.S. Thakkar for the applicant In MACP No.38/25
Ld. Advocate Mr. H.S. Somaiya for the respondent No. 2
Ld. Advocate Mr. H.G. Zala for the respondent No. 3

C O M M O N   J U D G M E N T

1. All these petitions are arise out of one accident and therefore all these claim petitions are decided by this common judgment.

2. The present claim petitions are filed by the applicants under the provision of Sec.166 of the M.V. Act against the opponents to get compensation.

MACP NO. 12/2023

3. The claimants have filed the present claim petition for recovery of compensation of Rs. 25,00,000-00 for the death of deceased Arjunsinh Harisinh Mahida, occurred in the alleged vehicular accident which was took place on 31/12/2022 under the provision of Motor vehicles Act. It is the case of the claimants that deceased proceeded towards Savli taluka Bhammarghods Meldi Mata Mandir, to perform religious ceremony by driving Maruti Alto Car No. GJ-23 H-7782 and he was driving the said in moderate speed on correct side of the road and at about 9.45 PM when they reached near agricultural filed of Manubhai Kashibhai Patel, on Ode - Kanbhaipura Road, that time from Ode side one Bolero Pick-up van bearing No. GJ-13 AW-0739 came with excessive speed in rash and negligent manner and dashed with the Alto Car as a result deceased sustained serious injuries and succumbed to the injuries on the way to Karamsad Hospital. Further, it is the say of the applicants that at the time of accident deceased was 47 years old hale and hearty and doing agricultural and animal husbandry work and earning Rs. 15,000-00 per month. Further, it is the say of the applicant that due to sudden death of deceased claimants have suffered tremendous pain, shock and suffering and also lost love and affection. Further, it is the say of the applicant that if the deceased would have not died in the alleged accident he would have earned more income in his future life. Further, it is the say of the applicant that they have lost their earning family member. Ultimately, he had prayed to award compensation of Rs. 25,00,000-00 from all the opponents with interest.

MACP NO. 24/2023

4. It is the case of the claimants that deceased Jayeshbhai Savabhai Rabari, was travelling in Car Maruti Alto Car No. GJ-23 H-7782 and they were going towards Savli taluka Bhammarghods Meldi Mata Mandir, to perform religious ceremony and at about 9.45 PM when they reached near agricultural filed of Manubhai kashibhai Patel, on Ode - Kanbhaipura Road, that time from Ode side one Bolero Pick-up van bearing No. GJ-13 AW-0739 came with excessive speed in rash and negligent manner and dashed with the Alto Car as a result deceased sustained serious injuries and succumbed to the injuries. Further, it is the say of the applicants that at the time of accident deceased was 39 years old hale and hearty and doing agricultural and animal husbandry work and earning Rs. 25,000-00 per month. Further, it is the say of the applicant that due to sudden death of deceased claimants have suffered tremendous pain, shock and suffering and also lost love and affection. Further, it is the say of the applicant that if the deceased would have not died in the alleged accident he would have earned more income in his future life. Further, it is the say of the applicant that they have lost their earning family member. Ultimately, he had prayed to award compensation of Rs. 30,00,000-00 from all the opponents with interest.

MACP NO. 27/2023 :

5. It is the case of the applicant Swapnil Ajaysinh Mahida, that in the alleged accident he also sustained serious injury of fracture of right tibia-fibula, fracture on right leg hip and also sustained injuries on other parts of his body and immediately he was shifted to Rudra Hospital, Nadiad, where he remained as indoor patient and operation was performed on his right leg and he has incurred huge amount towards his medicine, medical treatment, special diet, attendance etc. Further, it is the say of the applicant that at the time of accident he was hale and hearty and earning Rs.15,000-00 per month by way of playing DJ Music and agricultural work. Further, it is the say of the applicant that due to accidental injuries, disability has been developed which has adversely affected his earning capacity. Ultimately, he had prayed to award compensation of Rs. 5,00,000-00 from all the opponents with interest.

MACP NO. 29/2023 :

6. It is the case of the applicant Mahendrasinh Shivsinh Mahida, that in the alleged accident he also sustained serious injury of fracture on left side nose, left side chest ribs and left shoulder and wrist, and also sustained injuries on other parts of his body and immediately he was shifted to Madhav Hospital, Nadiad, where he remained as indoor patient and operation was performed on his left hand wrist and he has incurred huge amount towards his medicine, medical treatment, special diet, attendance etc. Further, it is the say of the applicant that at the time of accident he was hale and hearty and earning Rs.20,000-00 per month by way of serving at PBM Pvt. Ltd., and also doing agricultural work. Further, it is the say of the applicant that due to accidental injuries, disability has been developed which has adversely affected his earning capacity. Ultimately, he had prayed to award compensation of Rs. 10,00,000-00 from all the opponents with interest.

MACP NO. 38/2025 (OLD NO. 92/2023) :

7. It is the case of the applicant Vishnubhai Hartanbhai Rabari, that in the alleged accident he also sustained serious injury of fracture on right hand and left leg and also sustained injuries on other parts of his body and immediately he was shifted to Rudra Hospital, Nadiad, where he remained as indoor patient and operation was performed and he has incurred huge amount towards his medicine, medical treatment, special diet, attendance etc. Further, it is the say of the applicant that at the time of accident he was hale and hearty and earning Rs. 10,000-00 per month by way of service and also doing agricultural work. Further, it is the say of the applicant that due to accidental injuries, disability has been developed which has adversely affected his earning capacity. Ultimately, he had prayed to award compensation of Rs. 5,00,000-00 from all the opponents with interest.

8. The opponents are duly served with the summons / notice. Owner of the Bolero Pick-up van bearing No. GJ-13 AW-0739 has appeared before this Tribunal through his ld. advocate and filed written statement in MACP No. 12/23, 24/23, 27/23 & 29/29 wherein denied all the averments made by the applicants in toto. It is contended that the age, income and death of deceased as well as injuries sustained by the other applicants are not true and it should be proved by cogent evidence. It is contended that the owner was possessing valid and effective driving licence at the time of accident and if the Hon'ble Tribunal came to the conclusion that the driver of Bolero Pick-up van was negligent to some extent in that circumstances vehicle Bolero was duly insured with the Opponent No. 3 insurance company which covers the date of accident and therefore opponent 1 & 2 are not liable to pay any amount of compensation.

9. The Opponent No. 3 Insurance Company appeared through its advocate and filed reply in all claim petitions vide Ex. 27,23,19,16 & 12 respectively and denying the contents of claim petition Ex. 1 in toto. It is contended that the age, income and death of deceased and injuries sustained by the applicants due to accidental injuries are not true and it should be proved by cogent evidence. It is contended that the driver was not holding valid and effective driving licence and therefore opponent No. 3 insurance company is not liable to pay compensation. It is contended that the car was came with its full speed and wrong side and dashed with the Bolero, hence there is no negligence on the part of driver of Bolero pick-up. Ultimately, it is contended to reject the claim petitions with costs.

10. From the above pleadings of the parties the following issue have been framed by my ld. Predecessor in MACP No. 12/2023 and 23/2023 for determination of present petition.

1. Whether the applicant proves that deceased died due to rash and negligent driving of the driver of the vehicles involved in the accident ?

2. Whether the applicants are entitled to any compensation ? If yes, what amount and from whom ?

3. What Award and order ?

11. The following issue have been framed by my ld. Predecessor in MACP No. 27/2023, 29/2023 and 38/2025 for determination of present petition.

1. Whether the applicant proves that he suffered injury due to the rash and negligent driving by the driver of the vehicle involved in the accident ?

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

3. What Award and order ?

12. My findings to the above Issues in all the petitions, for the reasons given below, are as under:-

1. In the affirmative.
2. Partly in the affirmative
3. As per final order.

R E A S O N S

13. Ld. Advocate for the claim petition no.12/23 filed written arguments vide Ex. 114 and mainly argued that the applicants have proved factum of accident by oral and documentary evidence. It is argued that the driver of pick up bolero has not stepped into the witness box to throw light on the incident and therefore adverse inference should be drawn against him and driver of pick up bolero should be held 100% negligent for the accident. He further argued that deceased was doing driving work and agricultural work and earning 15000/- per month. In support of his argument he relied on following judgment.

1. Meera Devi & anr v/s HRTC & ors,civil appeal no.5764/14
2. Ashvinbhai Jayantibhai Modi v/s Ramkaran Ramchanra Sharma,civil appeal no.8131/14
3. Oriental Insurance co.Ltd. v/s Ramdas Madanlal Saini,2019(2)TAC-418
4. Ranjeet v/s Abdul Kayam Neb,2025 AJR sc 74889
5. 2004(1)GLH 671, National Insurance co v/s Swaran Singh
6. 2025 ACJ Cholamandala MS General Ins v/s Nunni Bai and others
7. 2006(2) GLH 441, United India Insurance co.ltd. v/s Damor Kacharbhai Ghanabhai

14. Ld. Advocate Mr. K B Patel for the MACP no. 24/23 & 27/23 gave written argument vide Exh. 112. In support of his argument he relied on following judgment.

1. 2019 TAC 418, Oriental Insurance co. v/s Ramdas Madnalal Saini
2. 2025 ACJ 1925, Branch Manager, SBI General Ins. v/s Muthulakshmi and others
3. Civil Appeal No.4734/2012, Oriental Insurance Co. v/s Lakhdhirbhai Devabhai Rabari.
4. 2025 ACJ 821, Cholamandalm Ms General Ins.

v/s Munni Bai

15. Ld. Advocate Mr. O G Mansuri for the MACP No. 29/13 argued that applicant is third party for the both the vehicles. Hence, as per the Apex court judgment he can claim compensation from any of the tort feasor. He further argued that from the deposition of doctor and medical papers it established that due to accident applicant has 44% body as whole. It is further argued that considering his injuries prospective income should be consider while considering future income loss.

16. Ld. Advocate for the opponent No.3 insurance company has also filed written arguments vide Ex. 113 and mainly argued that in the alleged accident two vehicles were involved and therefore driver of both the vehicles i.e. 50% each should be held negligent for the accident. It is further argued that driver of pick up bolero van was not having licence hence, insurance company is not liable to pay compensation. It is further argued that accident occurred after amendment in act, hence, this court can not pass order of pay and recover. It is further argued that income and disability mention in all application are very high, so same should not be consider. In support of his argument he relied on following judgments.

1. National Insurance Co v/s Ashokkumar Thobhanbhai, in FA no.2961/14
2. 2008 SCC 253,New Indian Assurance co. v/s Roshanben Rahemansha Fakir

17. Ld. Advocate for the original owner of Pick up bolero van argued that driver of maruti alto was driving his car in wrong side and negligently. Therefore driver of both the vehicles should be held negligent for the accident.

18. In support of their claim, applicants have produced following oral and documentary evidence.

MACP NO. 12/2023	
Ex. 17	Deposition of the applicant Rajuben Arjunsinh Mahida
Ex. 21	Copy of FIR
Ex. 22	Copy of Panchnama
Ex. 23	Copy of Inquest Panchnama
Ex. 24	Copy of PM report
Ex. 74	Copy of RC Book of Bolero
MACP NO. 24/2023	
Ex. 36	Deposition of the Applicant Meet Jayeshbhai Rabari
Ex. 114	Copy of Inquest Panchnama
Ex. 115	Copy of PM report
MACP NO. 27/2023	
Ex. 37	Deposition of the Applicant Swapnil Ajaysinh
Ex. 51	Deposition of Prasghant Gordhanbhai of Rudra Hospital
Ex. 60	Deposition of Dr. Nirav Prajapati
Ex. 61	Disability Certificate
Ex. 52	Copy of Discharge Summary
Ex. 53	Medical Bill for Rs. 1,42,258-00
MACP NO. 29/2023	
Ex. 37	Deposition of the Applicant Mahendrasinh Shivsinh
Ex. 60	Deposition of Dr. Nirav Prajapati
Ex. 62	Disability Certificate
Ex. 69	Medical Bills for rs. 5,66,234-00
MACP NO. 38/2025	
Ex. 48	Deposition of the Applicant Vishnubhai Hartanbhai

Ex. 51	Deposition of Prasghant Gordhanbhai of Rudra Hospital
Ex. 55	Copy of injury Certificate
Ex. 56	Copy of Discharge Summary
Ex. 57	Medical Bills for Rs. 2,34,235-00
Ex. 66	Disability Certificate
Ex. 64	Disability Pursis for 12% disability

19. Ld. advocate for the insurance company has also examined Following witnesses.

1. Ankit Khimjibhai Patel, RTO, Anand vide Ex. 90
2. Pradhyumansinh Ranubhai Gohil, PSI, Vidhyanagar Police Station, vide Ex. 94.
3. Krunal Tusharbhai Parikh, Legal Managar, ICICI, vide Ex. 100.

ISSUE NO. 1 ALL PETITION :-

20. Now, so far the negligence is concerned, Applicant Swapnil Ajaysinh Mahida, of MACP No.27/2023, applicant Vishnubhai Rabari, of MACP No.38/25 & applicant Mahendrabhai Shivabhai Mahida,of MACP no.29/23 have deposed vide Ex. 37,48, 40 in line of Ex. 1 claim petition. Copy of FIR, panchnama is produced vide Ex. 21 and 22 respectively. From the cross examination of all three applicant it transpires that both the vehicles were collide head on. It is admitted fact that the incident took place in night. Applicant for the MACP no.24/23 denied that accident took place in process of over take by Alto car driver . He admitted that he was sitting on rear side seat of driver. Now, if we peruse the copy of panchnama produced vide Ex.22 then the it appears that both the vehicles were lying at the place of incident. Here, charge sheet has been filed against the driver of Bolero pick up driver, hence, all the advocates for the applicants argued that as insurance company did not examine driver of pick up bolero and charge sheet is filed against him, driver of pick up bolero should be held sole negligent for the accident.

21. <u>Here, it is on record that accident was occurred in night and both the vehicle collide head on. Due to accident driver of alto car and sitting next to driver, both were expired. Though driver of bolero Pick-up did not step into witness box but looking to gravity of accident it transpires that driver of alto car was also driving his car in speed.</u> Hence, considering same I am of the view that the driver of alto car held liable for the negligence up to the extent of 10% and driver of pick up bolero is held liable to the extant of 90% for the occurrence of the alleged accident.

<u>ISSUE NO. 2 – MACP NO. 12/2023 :</u>

22. Now, so far as the compensation is concerned, widow of the deceased Arjunsinh Mahida has stated in her deposition vide Ex. 17 that her husband was 47 years old hale and hearty and he was doing driving, agricultural and animal husbandry work and earning Rs. 15,000-00 per month. In cross examination of ld. Advocate for the opponent No. 3, it is admitted that to prove income of her husband she has not produced any evidence. Ld Advocate for the applicant argued that deceased was working as paid driver and he was also doing agricultural work,so his income should be consider 15000/-Rs per month. I am of the view that as per pleading deceased was doing driving work hence, work of agricultural and animal husbandry done with the help of other person. So, even today also work of agricultural and animal husbandry can be done with the help of other person. In that case, in absence of any cogent evidence, considering the nature of work done by the deceased, age of the deceased and also considering the facts that the accident occurred in the year 2022, I fix **Rs.9,000-00** monthly income of the deceased.

23. So far as the age of the deceased is concerned, applicants have not produced any evidence, however in the copy of extract of driving licence of Arjunsinh produced on record wherein, the date of birth of the deceased Arjunsinh has been mention 22/10/1975 and alleged accident occurred on 31/12/2022, that means at the time of accident deceased was approximately 47 years old. Therefore, as per Sarla Varma's case **13 multiplier** is required to be applied in the present case. As discussed above deceased was 47 years old at the time of accident and therefore, ld. Advocate for the opponent has argued that no prospective income can be granted. However, as discussed above, deceased was self employed and therefore, as per the judgment of Hon'ble Supreme Court in the case of **National Insurance Co. Ltd., V/s Pranay Sethi and Ors., SLP (Civil) No. 25590/2014 dtd 31/10/2017** in which it is held that 25% of the actual income added as a prospective income when deceased victim was between the age of 41 to 50 years. This judgment is squarely applicable to the present case because deceased was 43 years old at the time of accident. Hence, the income of the deceased may be assessed at Rs.11,250/- as prospective income (i.e. Rs.9000-00 + 2,250-00 i.e.

25% of Rs. 9,000-00). As noted above, the deceased was aged about 47 years married at the time of accident and the Hon'ble Supreme Court in case of **Sarla Verma V/s Delhi Transport Corporation reported in 2009 ACJ 1298** has held that "the amount of personal expenses which the deceased would have spend on himself he been alive". In the present case deceased was married and there are total 5 dependents therefore 1/4th amount is required to be deducted towards personal expenses. Accordingly, the dependency would come to Rs.8,438/- (i.e. Rs.11,250 less Rs. 2,812-00). Hence, monthly dependency of the applicants is require to be multiplied by **13** which come to Rs.8,438-00 x 12 x 13 = Rs.13,16,328-00. Hence, applicants are entitled to **Rs.13,16,328-00** towards Loss of Dependency.

24. In view of the ratio laid down by the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd., V/s Pranay Sethi and Ors., SLP (Civil) No. 25590/2014 dtd 31/10/2017,** I am of the view that applicants are entitled for consortium, loss of estate and funeral expenses with 10% rise. In the present case applicants are parents of the deceased and therefore they are entitled to get **Rs. 77,000-00** towards, consortium, loss of estate and funeral expenses.

25. Hence, applicant is entitled to the following amount.

Future Loss of Income	13,16,328-00
Consortium	44,000-00
Funeral Expenses	16,500-00
Loss of Estate	16,500-00

TOTAL	Rs.13,93,328/-
10% self negligence deducted	Rs.1,39,332/- Rs.12,53,996/- Round of **Rs.12,54,000/-**

Here, deceased himself was held negligent upto the extant of 10%, hence, Rs.1,39,332/- should be detected from total amount of compensation. So, applicants are entitled to get 12,53,996/- Round of **Rs.12,54,000/-** as compensation. In view of above discussion claimants of MACP No. 12/2023 are entitled to get **Rs.12,54,000/-** .

ISSUE NO. 2 – MACP NO. 24/2023 :

26. Now, so far as the compensation is concerned, son of the deceased Jayeshbhai Savabhai has stated in his deposition vide Ex. 36 that his father was 39 years old, hale and hearty and he was doing agricultural and animal husbandry work and earning Rs. 25,000-00 per month. In cross examination of ld. advocate for the insurance company, applicant has admitted that to prove income of his father, he has not produced any evidence. Therefore, in absence of any cogent evidence, considering the nature of work done by the deceased, age of the deceased and also considering the facts that the accident occurred in the year 2022, I fix **Rs.9,000-00** monthly income of the deceased.

27. So far as the age of the deceased is concerned, applicants have not produced any evidence, however in the copy of PM report produced vide Ex. 115 the age of the deceased has been shown 33 years. As per affidavit of applicant, his father was 39 years old at the time of accident hence, same is required to be consider as applicant, son of deceased himself is 19 years old while giving affidavit. Therefore, as per Sarla Varma's case **15 multiplier** is required to be applied in the present case. As discussed above deceased was 39 years old at the time of accident and therefore, ld. Advocate for the opponent has argued that no prospective income can be granted. However, as discussed above, deceased was self employed and therefore, as per the judgment of Hon'ble Supreme Court in the case of **National Insurance Co. Ltd., V/s Pranay Sethi and Ors., SLP (Civil) No. 25590/2014 dtd 31/10/2017** in which it is held that 40% of the actual income added as a prospective income when deceased victim was below the age of 40 years. This judgment is squarely applicable to the present case because deceased was 39 years old at the time of accident. Hence, the income of the deceased may be assessed at Rs. 12,600-00 as prospective income (i.e. Rs. 9000-00 + 3,600-00 i.e. 40% of Rs. 9000-00). As noted above, the deceased was aged about 39 years married at the time of accident and the Hon'ble Supreme Court in case of **Sarla Verma V/s Delhi Transport Corporation reported in 2009 ACJ 1298** has held that "the amount of personal expenses which the deceased would have spend on himself he been alive". In the present case deceased was married and there are total 4 dependents therefore 1/4th amount is required to be deducted towards personal expenses. Accordingly, the dependency would come to Rs.9,450-00 (i.e. Rs.12,600-00 less Rs.3,150-00). Hence, monthly dependency of the applicants is require to be multiplied by **15** which come to Rs. 9,450-00 x 12 x 15 = Rs.17,01,000-00. Hence, applicants are entitled to **Rs.17,01,000-00** towards Loss of Dependency.

28. In view of the ratio laid down by the Hon'ble Supreme Court in the case of **National Insurance Co. Ltd., V/s Pranay Sethi and Ors., SLP (Civil) No. 25590/2014 dtd 31/10/2017,** I am of the view that applicants are entitled for consortium, loss of estate and funeral expenses with 10% rise. In the present case applicants are parents of the deceased and therefore they are entitled to get **Rs. 77,000-00** towards, consortium, loss of estate and funeral expenses.

29. Hence, applicant is entitled to the following amount.

Future Loss of Income	17,01,000-00
Consortium	44,000-00
Funeral Expenses	16,500-00
Loss of Estate	16,500-00
TOTAL Rs.	**17,78,000-00**

In view of above discussion claimants of MACP No. 24/2023 are entitled to get Rs.**17,78,000-00**.

MACP NO. 27/2023 :

30. The applicant Swapnil Ajaysinh Mahida has stated in his deposition at Ex. 37 that in the alleged accident he has sustained serious fracture of right tibia fibula,left acetabulum and left radius ulna and immediately he was shifted to Rudra Hospital, Nadiad, where he remained as indoor patient and operation was performed on his leg and rode was inserted. Further, he has stated that at the time of accident he was old hale and hearty and doing business of DJ playing and also doing agricultural work and from both these works he earning Rs. 15,000-00 per month. In cross examination of ld. Advocate for the opponent No. 3, applicant has admitted that he has not produced any evidence to prove his income. Therefore, in absence of any cogent evidence in respect of income of the applicant and considering the nature of work done by the applicant, I assessed Rs. 9,000-00 monthly income of the applicant at the time of accident. Hence, I fixed **Rs. 9,000-00** monthly income of the applicant at the time of accident.

31. So far as disability is concerned, the applicant has examined Dr. Nirav M. Prajapati, of Sparsh Hospital, Nadiad, vide Ex. 60. He stated that on 16/06/2025, he has examined patient namely Swapnil Ajaysinh for assessment of disability. After going through the injury certificates, discharge card, hospital case papers he has issued disability certificate. The patient has permanent total physical impairment in relation to whole body is 46%. He has identified his letter pad, signature and his designation on the disability certificate. This document exhibited as Ex.61. In cross examination of ld. advocate for the opponent No. 1 it is admitted that he examined patient for assessment of disability, he has not treated the patient. It is admitted that when patient approached him, he was fully recovered. He has examined patient for 15 to 30 minutes. He used clinical instrument during examination. It is admitted that fracture had healed. <u>In cross examination of ld. advocate for the opponent No. 3, it is admitted that he has not used casler book or R.M. Zala book for reference. It is admitted that if patient took physiotherapy treatment, then disability</u>

may be reduced to some extent. In the present case applicant had right tibia fibula fracture, fracture posterior column of right acetabulum and left radius ulna. As functional disability is not on record, considering judgment of Hon'ble Apex court in the case of Raj Kumar v/s Ajay kumar and from the cross examination of ld. advocate for the parties, I am of the opinion that the doctor has assessed excessive disability. Therefore, I am of the opinion that **35%** disability body as a whole is just and proper.

32. So far as the multiplier is concerned, applicant has not produced any evidence, however in the copy of discharge summary of Rudra Hospital, Nadiad produced vide Ex. 52, the age of the applicant has been shown as 27 years. Even from the xerox copy of pan card of applicant submitted along with claim petition ,date of birth is mention as 9-9-95. Therefore, as per Sarla Varma's case **17** multiplier is required to be applied. Therefore, the applicant would be entitled to Rs. 9,000-00 X 35% X 12X 17 years = **Rs.6,42,600-00** as against future loss of income.

33. Now, so far as bills for medicine and medical treatment is concerned, applicant examined Prashant Gordhanbhai Patel vide Ex. 51. In his deposition he produced medical bill's of applicant vide Exh.53 & 54. So, considering both medical bills I am of the view the applicant is entitled for Rs. 1,42,258-00 towards medical bills. Therefore, applicant is entitled to get **Rs. 1,42,258-00** towards medical expenses. Hence, I award the same.

34. Looking to the nature of injury and disability, I am of the opinion that the applicant is entitled to get **Rs.**

35,000-00 towards the Pain shock and suffering. Hence, I award the same.

35. As per the discharge summary produced on record vide Ex. 52 applicant was admitted in the Rudra hospital on 01/01/2023 and discharged on 09/01/2023. Therefore, looking to the nature of injury, applicant is entitled for 2 month income towards actual loss of income. Therefore, I am of the opinion that the applicant is entitled to get. **Rs. 18,000-00** towards actual loss of income and **Rs. 10,000-00** for rich diet, transportation charges, and attendant charges, would be just and proper. Therefore, the applicant is entitled to get the aforesaid amount of compensation which can be reclassified as follows:

Future Loss of Income	6,42,600-00
Medical Bills	1,42,258-00
Pain, Shock and sufferings	35,000-00
Actual Loss of Income	18,000-00
Special Diet, Transportation & Attendance	10,000-00
Total Rs.	**8,47,858-00 i.e. Round Off Rs. 8,47,900-00.**

36. Therefore, in view of above discussion, claimant of MACP No. 27/2023 is entitled to get Rs.**8,47,900-00** towards compensation. It is pertinent to note that in the present case applicant has restricted their claim of compensation to Rs. 5,00,000-00. However, as per above discussion applicant is entitled to get compensation of **Rs.8,47,900-00** and as per the ratio laid down in the case of Rajesh V/s Rajbir Singh reported in LAWS (SC) 2014-4-124 in para-13 of the

above cited judgment which reads as under;

> "In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal / court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary ignoring the claim made in the application for compensation".

37. Looking to this judgment of the Hon'ble Supreme Court, Tribunal can aware more amount than the claim, if it is just, fair and reasonable. Therefore, the applicant is entitled to get more amount than the claim.

MACP NO. 29/2023 :

38. The applicant Mahendrasinh Shivsinh Mahida has stated in his deposition at Ex. 40 that in the alleged accident he has sustained serious fracture on left side of nose, fracture of Left 3rd and 7th ribs, left posterior column acetabulum fracture, fracture left humerus with radial nerve palsy,fracture right femur and fracture left femur and immediately he was shifted to Madhav Orthopedic Hospital, Nadiad, where he remained as indoor patient and operation was performed on his leg and rode was inserted. Further, he has stated that at the time of accident he was old hale and serving as PBM Private Company and also doing animal husbandry work and from both these works he earning Rs. 20,000-00 per month. In cross examination of ld. Advocate for the opponent No. 3, applicant has admitted that he has not produced any evidence to prove his income. Therefore, in absence of any cogent evidence in respect of income of the applicant and considering the nature of work done by the applicant, I assessed Rs.9,000-00 monthly income of the applicant at the time of accident. Hence, I fixed **Rs.9,000-00** monthly income of the applicant at the time of accident.

39. So far as disability is concerned, the applicant has examined Dr. Nirav M. Prajapati, of Sparsh Hiospital, Nadiad, vide Ex. 60. He stated that on 09/04/2025, he has examined patient namely Mahendrasinh Shivsinh Mahida for assessment of disability. After going through the injury certificates, discharge card, hospital case papers he has issued disability certificate. The patient has permanent total physical impairment in relation to whole body is 44%. He has identified his letter pad, signature and his designation on the disability certificate. This document exhibited as Ex.62. In cross examination of ld. advocate for the opponent No. 1 <u>it is admitted that he examined patient for assessment of disability, he has not treated the patient. It is admitted that when patient approached him, he brought his treatment papers. It is admitted that bone was healed. It is admitted that he took new X-ray. It is admitted that in his certificate, he has not assessed Neurological assessment and radio logical disability assessment. He admitted that present applicant is doing his daily</u>

routine by himself. He admitted that he did not access disability as per his earing capacity. In cross examination from the ld. advocate for the opponent No. 3, witness admitted that he has not use casler book or R.M. Zala book for reference. It is admitted that he has not assessed functional disability. It is admitted that if patient took physiotherapy treatment, then disability may be reduced to some extent. Here, as per the admission of the doctor, the applicant is doing his entire daily routine by himself and considering cross examination of ld. advocate for the parties as well as judgment of Hon'ble Apex Court in the case of Raj Kumar v/s Ajay kumar, I am of the opinion that the doctor has assessed excessive disability. Therefore, I am of the opinion that **34%** disability body as a whole is just and proper.

40. So far as the multiplier is concerned, applicant has produced on record copy of his Aadhar card wherein date of birth of applicant Mahendrasinh has been shown as 17/09/1971 and alleged accident took place on 31/12/2022. That means at the time of accident applicant was approximately 51 years old. Therefore, as per Sarla Varma's case **11** multiplier is required to be applied. Therefore, the applicant would be entitled to Rs.9,000-00 X 34% X 12 X 11 years = **Rs.4,03,920-00** as against future loss of income.

41. Now, so far as bills for medicine and medical treatment is concerned, applicant has produced certain medical bills vide Ex. 69 for Rs. 5,66,234-00. The applicant has examined Dr. Bhargav Atulkumar Desai, vide Ex. 68. He deposed that he is running his own Madhav Hospital and on 01/01/2024 patient namely

Mahendrasinh Shivsinh was admitted and he has given treatment. He has also performed operation. He has identified signature and seal on the bills issued by his hospital. He has also identified bills of Dr. Harshil Chavda for Anesthesia. He has also identified pharmacy bills of his pharmacy. He has also identified bills for implant used in operation of Evan Hospital. The total amount of all these bill comes to Rs. 5,66,234-00. All these bills were given common exhibit as Ex. 69. In cross examination it is admitted that bills of hospital and all documents were maintained by him. He himself has prepared bills. All bills were prepared from computer system of his hospital. Pharmacy bills were computer type and no alteration was made in the bills. He admitted that patient has not taken benefit of any discount or insurance. He further admitted that physiotherapy treatment was not taken from his hospital and bills of Evan Enterprise not contained his signature. Now, it is admitted facts that all the bills were original bills. Doctor has also admitted that the implant was used in operation. Therefore, applicant is entitled to get **Rs. 5,66,234-00** towards medical expenses. Hence, I award the same.

42. Looking to the nature of injury and disability, I am of the opinion that the applicant is entitled to get **Rs. 34,000-00** towards the Pain shock and suffering. Hence, I award the same.

43. It is admitted fact that the applicant was admitted at Hadhav Hospital, Nadiad. Therefore, looking to the nature of injury, applicant is entitled for 2 month income towards actual loss of income. Therefore, I am of the opinion that the applicant is entitled to get.

Rs.19,000-00 towards actual loss of income and **Rs.10,000-00** for rich diet, transportation charges, and attendant charges, would be just and proper. Therefore, the applicant is entitled to get the aforesaid amount of compensation which can be reclassified as follows:

Future Loss of Income	4,03,920-00
Medical Bills	5,66,234-00
Pain, Shock and sufferings	34,000-00
Actual Loss of Income	18,000-00
Special Diet, Transportation & Attendance	10,000-00
Total Rs.	**10,32,154-00 i.e. Round off 10,32,200-00**

44. Therefore, in view of above discussion, claimant of MACP No. 29/2023 is entitled to get Rs.10,32,200-00 towards compensation. It is pertinent to note that in the present case applicant has restricted their claim of compensation to Rs. 10,00,000-00. However, as per above discussion applicant is entitled to get compensation of **Rs.10,32,200-00** and as per the ratio laid down in the case of Rajesh V/s Rajbir Singh reported in LAWS (SC) 2014-4-124 in para-13 of the above cited judgment which reads as under;

> “In a report on accident, there is no question of any reference to any claim for damages, different heads of damages or such other details. It is the duty of the Tribunal to build on that report and award just, equitable, fair and

> reasonable compensation with reference to the settled principles on assessment of damages. Thus, on that ground also we hold that the Tribunal / court has a duty, irrespective of the claims made in the application, if any, to properly award a just, equitable, fair and reasonable compensation, if necessary ignoring the claim made in the application for compensation”.

45. Looking to this judgment of the Hon'ble Supreme Court, Tribunal can aware more amount than the claim, if it is just, fair and reasonable. Therefore, the applicant is entitled to get more amount than the claim.

MACP NO. 38/2025 :

46. The applicant Vishnubhai Hartanbhai Rabari has stated in his deposition at Ex. 48 that in the alleged accident he has sustained serious fracture on right side chest ribs and left thigh and right hand and immediately he was shifted to Rudra Hospital, Nadiad, where he remained as indoor patient and operation was performed. Further, he has stated that at the time of accident he was hale and doing service and also doing animal husbandry work and from both these works he earning Rs. 10,000-00 per month. In cross examination of Id. Advocate for the opponent No. 3, applicant has admitted that he has not produced any evidence to prove his income. Therefore, in absence of any cogent evidence in respect of income of the applicant and considering the nature of work done by the applicant, I assessed Rs. 9,000-00 monthly income of the applicant at the time of accident. Hence, I fixed **Rs. 9,000-00** monthly income of the applicant at the time of accident.

47. So far as disability is concerned, the applicant has produced disability certificate vide Ex. 65 issued Dr. Kushal Suthar, MS Ortho., assessing 18% disability body as a whole. However, ld. advocate for the applicant has filed pursis vide Ex. 64 and declared to consider 12% disability body as a whole and ld. advocate for the opponent No. 3 has endorsed No Objection. Therefore, **12%** disability body as a whole agreed upon the parties.

48. So far as the multiplier is concerned, applicant has produced on record copy of discharge summary of Rudra Hospital, vide Ex.56 wherein age of applicant has been shown 30 years. Applicant has produced xerox copy of his Aadhar chard and pan card with his claim petition from which his date of birth transpires 6/12/89. So, at the time of accident he was 33 years old, therefore, as per Sarla Varma's case **16** multiplier is required to be applied. Therefore, the applicant would be entitled to Rs. 9,000-00 X 12% X 12X 16 years = **Rs. 2,07,360-00** as against future loss of income.

49. Now, so far as bills for medicine and medical treatment is concerned, applicant has produced certain medical bills vide Ex. 69 for Rs. 2,34,235-00. Therefore, applicant is entitled to get **Rs. 2,34,235-00** towards medical expenses. Hence, I award the same.

50. Looking to the nature of injury and disability, I am of the opinion that the applicant is entitled to get **Rs. 10,000-00** towards the Pain shock and suffering.

Hence, I award the same.

51. It is admitted fact that the applicant was admitted at Rudra Hospital, Nadiad. Therefore, looking to the nature of injury, applicant is entitled for 2 month income towards actual loss of income. Therefore, I am of the opinion that the applicant is entitled to get. **Rs. 18,000-00** towards actual loss of income and **Rs. 6,000-00** for rich diet, transportation charges, and attendant charges, would be just and proper. Therefore, the applicant is entitled to get the aforesaid amount of compensation which can be reclassified as follows:

Future Loss of Income	2,07,360-00
Medical Bills	2,34,235-00
Pain, Shock and sufferings	10,000-00
Actual Loss of Income	18,000-00
Special Diet, Transportation & Attendance	6,000-00
Total Rs.	**4,75,595-00 i.e. Round off 4,75,600-00**

51. Therefore, in view of above discussion, claimant of MACP No. 38/2025 is entitled to get Rs.**4,75,600-00** towards compensation.

Liability

52. Now, so far as liability for payment of compensation is concerned ld. advocate for the insurance company has mainly argued that the opponent No. 1 driver of Bolero pick up was not possessing any type of driving licence and therefore insurance company is not liable to pay any amount of compensation.

53. In support of his arguments, he has examined Ankit Khimjibhai Patel, ARTO, Anand, vide Ex.90. He deposed that he has brought the certificate issued by RTO Office, Anand, wherein it is certified that no driving licence was issued to Gopalbhai Jagdishbhai Thakor, from Anand RTO Office. He identified signature of RTO, D.K. Chavda. This document exhibited as Ex. 91. In cross examination of ld. advocate for the applicant, it is admitted that non resident of Anand district also apply for license at RTO Anand. It is admitted that only on the basis of name, information regarding license cannot be taken.

54. Insurance company has also examined Pradhyumansinh Ranubhai Gohil, PSI, Vidhyanagar Police Station, vide Ex. 94. He deposed that on 31/12/2022 he was present on his duty at Khambholaj Police Station at that time on Bhalej - Oden road accident took place and he has investigated the said crime. He has arrested Gopalbhai Jagdishbhai Thakor on 01/01/2023 and during interrogation he stated that he is not possessing any driving license. In his deposition he has produced copy of the same vide Exh. 95. In cross examination of ld. advocate for the opponent No. 2, he admitted that in charge sheet, it has not been mentioned that driver was not having license. He admitted that in charge sheet, section 3 and 181 of M.v. Act, was not mentioned. He admitted that he has not recorded statement of owner of the vehicle.

55. Insurance company has also examined Krunal Tusharbhai Parikh, Legal Manager, ICICI Lombard, vide ex.100. In his deposition he has produced certified copy of insurance policy vide Ex. 101. He further deposed that they issued notice to the owner regarding verification of driver's license. Copy of notice and acknowledgment is produced during deposition. Ld. Advocate for the applicant and owner cross examined him in detailed.

56. From the above discussed oral and documentary evidence, it is established that the driver of Bolero Pick-up No. GJ-13 AW-0739 was not possessing any driving license. On this point I have also gone through judgment of Hon'ble Apex Court in the case of civil appeal no. 2103/2018, **Singh Ram v/s Nirmala and ors,** wherein Hon'ble Apex Court confirmed judgment of pay and recover wherein driver and owner are same. In the present case admittedly applicants are third party. Even in the case of **Shamanna & Ors. v. The divisinal Manager, the Oriental Insurance Co. Ltd.** Hon'ble Apex Court held that if the driver of the offending vehicle does not possess a valid driving license, the principle of 'pay and recover' can be ordered to direct the insurance company to the pay the victim and then recover the amount from the owner of the offending vehicle.

57. Ld. Advocate for the insurance company argued that in the present case accident happened after the amendment in MV Act, and as per the provisions of sec.150 of new MV Act, court can not pass order of pay and recover. Hence, insurance company should be exonerated.

58. On this point I have gone through sec. 150 of MV Act, which is reproduced for reference.

> 150. Duty of insurers to satisfy judgments and awards against persons insured in

respect of third party risks. - (1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 164 is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the award any sum not exceeding the sum assured payable thereunder, as if that person were the decree holder, in respect of the liability, together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2)No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given the insurer had notice through the court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as its execution is stayed pending an appeal; and an insurer to whom notice of the bringing of any such proceedings is so given shall be entitled to be made a party thereto, and to defend the action on any of the following grounds, namely: -

(a)that there has been a breach of a specified condition of the policy, being one of the following conditions, namely: -

(i)a condition excluding the use of the vehicle -

(A)for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward; or

(B)for organised racing and speed testing; or

(C)for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle;

or

(D)without side-car being attached where the vehicle is a two-wheeled vehicle;

or (ii) a condition excluding driving by a named person or by any person who is not duly licenced or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification or driving under the influence of alcohol or drugs as laid down in section 185;

or(iii) a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion;

or(b)that the policy is void on the ground that it was obtained by nondisclosure of any material fact or by representation of any fact which was false in some material particular;

or(c)that there is non-receipt of premium as required under section 64VB of the Insurance Act, 1938.

(3)Where any such judgment or award as is referred to in sub-section (1) is obtained from a court in a reciprocating country and in the case of a foreign judgment is, by virtue of the provisions of section 13 of the Code of Civil Procedure, 1908 conclusive as to any matter adjudicated upon by it, the insurer (being an insurer registered under the Insurance Act, 1938 and whether or not that person is registered under the corresponding law of the reciprocating country) shall be liable to the person entitled to the benefit of the decree in the manner and to the extent specified in sub-section (1), as if the judgment or award were given by a court in India:Provided that no sum shall be payable by the insurer in respect of any such judgment or award unless, before the commencement of the proceedings in which the judgment or award is given, the insurer had notice through the court concerned of the bringing of the proceedings and the insurer to whom notice is so given is entitled under the corresponding law of the reciprocating country, to be made a party to the proceedings and to defend the action on grounds similar to those specified in sub-section (2).

(4)Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby, by reference to any condition other than those in sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect.

(5)No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (3) otherwise than in the manner provided for in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

(6)If on the date of filing of any claim, the claimant is not aware of the insurance company with which the vehicle had been insured, it shall be the duty of the owner of the vehicle to furnish to the tribunal or court the information as to whether the vehicle had been insured on the date of the accident, and if so, the name of the insurance company with which it is insured.

Explanation. - For the purposes of this section, - (a)"award" means an award made by the Claims Tribunal under section 168;

(b)"Claims Tribunal" means a Claims Tribunal constituted under section 165;

(c)"liability covered by the terms of the policy" means the liability which is covered by the policy or which would be so covered but for the fact that the insurer is entitled to avoid or cancel or has avoided or cancelled the policy; and

(d)"material fact" and "material particular" mean, respectively, a fact or particular of such a nature as to influence the judgment of a prudent insurer in determining whether he shall take the risk and, if so, at what premium and on what conditions."

59. So, considering above I am of the view that statutory liability of insurers under Section 150 remains intact, ensuring compensation to innocent victims regardless of policy violations by insured parties. On this point I have gone through judgment of **Hon'ble Madras High Court in case of Branch Manager, Sbi General Ins.Co. Ltd. Versus Muthulakshmi**

reported in 2025 (0) AIJEL-TN 1298300 wherein it is held that

> "17. In case, the insurer becomes successful in pleading and proving defences available to it under Section 150 Sub-Section 2, it need not honour its duty under the contract of insurance towards the insured. However, the statutory liability under Section 150(1) towards third party remains unaffected, the natural corollary would be after making payment under Section 150 (1), the insurer is entitled to recover the said amount from the insured by virtue of its successful defence raised under Section 150 (2). The liability of insurer under Section 149 (1) [New Section 150 (1)] is a statutory liability and on the other hand it is concomitant with liability of insurer towards insured. If we say that the liability of insurer to satisfy award passed against insured is subject to terms and conditions of contract between insurer and insured, over which innocent third party victims have no control, the very object of statutory liability enshrined in Section 147 (1)(b) read with Section 149 (1) [New Section 147 (1)(b) read with Section 150 (1)] of Motor Vehicles Act will get defeated. The object of said provision is better served by concept of pay and recovery enunciated in Swaran Singh case cited infra. Infact, in Swaran Singh case (in paragraphs 96 and 97), the Apex Court emphasised that the concept of pay and recovery has been holding the field for a long time and the same need not be deviated. The concept of pay

and recovery will achieve the object of providing hassle free mechanism for poor accident victims to recover the damages awarded to them with certainty and on the other hand it also takes care of insurer's right under contract of insurance by enabling insurer to recover the amount paid by it to third parties, which insurer is not bound to pay to the insured. 18. Therefore, the insurer has to pay and recover in the event of it's success in respect of defences under Section 150 (2). This position has been clearly declared by Apex Court in National Insurance Co. Ltd. vs. Swaran Singh and others, (2004) 3 SCC 297, wherein Apex Court held that in the event of insured being guilty of negligence or has failed to exercise reasonable care in fulfilling conditions of contract of insurance and the breach was so fundamental and was found to have contributed to the accident, the insurer is entitled to avoid it's liability towards insured. I would like to emphasis, even in that event insurer is not entitled to avoid it's statutory liability towards third parties. It can only avoid it's liability under contract of insurance towards insured and hence, entitled to recover the amount paid by it from insured. I would like to add that liability of insurer under Motor Vehicles Act is a blend of liability under statute and liability under contract of indemnity. Its liability under Section 150(1) towards third party is a statutory one. Its liability towards insured is under contract of indemnity (contract of insurance).

The proviso to Old Section 149 (4) declares that amount paid by the insurer by virtue of said subsection shall be recoverable by the insurer. The proviso is only declaratory in nature and its application is restricted to contingency contemplated under Section 149(4). It was vehemently argued by the learned counsel appearing for the Insurance Company that in view of deletion of proviso to Section 149 (4), the Tribunals are not entitled to order pay and recovery. The deleted proviso is not a substantive section which imposes obligation on the insurer to pay innocent third parties in respect of judgment and award obtained by them against the insured. As elaborately discussed above, the substantive provision is old Section 149(1). It imposes statutory obligation on the part of the insurer to pay amount to the third parties, which is due under the award obtained by them against insured. Therefore, the deletion of proviso will not take away the liability of the insurer imposed by Section 149(1) [New Section 150(1)] to satisfy the award or judgment passed against insured. The position can be seen in different angle also. A perusal of Old Section 149(4) [New Section 150(4)] makes it clear that any extra restriction agreed to by insurer and the insured under contract of insurance, which falls out side the defences enumerated under old Section 149(2)(b) [New Section 150(2)], will have no effect as far as statutory liability of insurer against third parties as enumerated under Section 147(1)(b).

When insurer is asked to pay more amount only by virtue of Section 149(4), proviso to said sub-section gets attracted and insurer is entitled to recover that excess amount paid by it by virtue of enlarged liability only by virtue of Section 149(4). Old Proviso to Section 149(4) only made applicable to any amount paid by insurer by virtue of Sub-Section (4). The said proviso is not made applicable to Sub-Section (1) of old Section 149. The same can be gathered from employment of expression by virtue only of this sub-section in proviso to Section 149 (4). **Therefore, I hold that deletion of proviso to Sub-Section 4 of Section 149 [in new Section 150] will not affect statutory liability of insurer under Section 149(1) [New Section 150(1)] and its entitlement to recover amount paid to third parties from insured in case of establishment of defence under Sub-Section (2). "**

60. On this point I have also gone through judgment of Hon'ble Allahabad High court in the case of **first appeal from order no.1776/24 in case of ICICI Lombard General Insurance Co Ltd v/s Smt Arti Devi and 4 others** wherein same view has been taken. Therefore, opponent No.3 insurance company can not be exonerated from the liability but insurance company may recover it from insured.

FOR MACP No. 12/23

61. Now, as discuss in issue no. 1, driver of alto car was negligent up to the extent of 10% for the occurrence of the alleged accident. So, for MACP No.

12 /23, only opponent no. 1 to 3 of are liable to pay compensation to applicants.

FOR MACP No. 24/23,27/23,29/23 & 38/35

62. All the applicant's are third party for alto car as well as pick up bolero. As per the judgment of Hon'ble Apex Court in the case of Khenyei v/s New India Assurance co. LTD, reported in 9 scc 273, wherein held that applicant is entitled to recover the amount of compensation from any of the tort feasor. Hence, for rest of the petition all the opponent's are jointly and severally liable to pay compensation.

63. However, The opponent No. 3 insurance company is entitled to recover the amount of compensation from the insured.

64. In case of **Dharmpal and Others V/s. U.P. Road Transport** reported in **A.I.R 2008 S.C 2312**. The Hon'ble Apex Court has held that award of interest would normally depends upon the bank rate prevailing at relevant time. Applying this ratio, presently nationalized bank on an average which giving 7% p.a. interest on fixed deposit. Therefore, in the present cases, end of justice would meet if the award of compensation carries interest at the rate of 7% per annum from the date of filing of claim petition till its realization. Hence, I have answered point no.2 accordingly and I pass the following final order in the interest of justice.

O R D E R

MACP No. 12/2023

1. The present claim petition under Sec.166 of the M.V. Act, is hereby partly allowed.
2. The opponents Nos. 1 to 3 are hereby directed to

pay jointly and severally **Rs.12,54,000/-**(Rupees Twelve Lac Fifty Four Thousand only) as compensation to the applicants along with interest at the rate of 7% p.a. from the date of filing of claim petition till the realization there of and to pay proportionate costs thereof.

3. After depositing the amount of compensation, the opponent No. 3 insurance company is entitled to recover the amount of compensation from the insured.
4. The aforesaid opponents are directed to deposit the awarded amount within one month from today in this Tribunal.
5. The amount of interim compensation paid to the applicants, if any, shall be deducted from the awarded amount.
6. When amount deposited, after deducting deficit court fees, remaining amount be equally distributed among the applicants and from the respective share, 30% amount be paid to the applicant by A/c payee cheque, and rest 70% be fixed deposited in any nationalized bank for a period of five years in the name of applicant with a condition that no loan or advances shall be floated on the said FDR without prior permission of the Tribunal. However, the applicant will be entitled to get periodical interest which accrues on the said FDR.
7. Copy of this judgment be kept in MACP No. 24/2023, 27/2023, 29/2023 and 38/2025.
8. Award be drawn accordingly.

MACP No. 24/2023

1. The present claim petition under Sec.166 of the M.V. Act, is hereby partly allowed.
2. All opponents are hereby directed to pay jointly and severally **Rs.17,78,000-00** (Rupees Seventeen Lac Seventy Thousand Only) as compensation to the applicants along with interest at the rate of 7% p.a. from the date of filing of claim petition till the realization thereof and to pay proportionate costs thereof.
3. After depositing the amount of compensation, the opponent No. 3 insurance company is entitled to recover the amount of compensation from the insured.
4. The aforesaid opponents are directed to deposit the awarded amount within one month from today in this Tribunal.
5. The amount of interim compensation paid to the applicants, if any, shall be deducted from the awarded amount.
6. When amount deposited, after deducting deficit court fees, remaining amount be equally distributed among applicants and from the respective share, 30% amount be paid to the applicants by A/c payee cheque, and rest of 70% be fixed deposited in any nationalized bank for a period of five years in the name of applicants with a condition that no loan or advances shall be floated on the said FDR without prior permission of the Tribunal. However, the applicant will be entitled to get periodical interest which accrues on the said FDR.
7. The entire share of minor applicant be invested in

any nationalized bank in the name of minor applicant through his/her natural guardian for a period of 5 years, or till minor attains age of majority whichever is later. The applicant shall be entitled to periodical interest accrued on such FDR, but shall not be entitled to premature withdrawal or any loan or advance without prior permission of this tribunal.

8. Copy of this judgment be kept in MACP No. 24/2023, 27/2023, 29/2023 and 38/2025.
9. Award be drawn accordingly.

MACP NO. 27/2023 :

1. The present claim petition under Sec.166 of the M.V. Act, is hereby allowed.

2. All opponents are hereby directed to pay jointly and severally **Rs.8,47,900-00** (Rupees Eight Lac Forty Seven Thousand Nine Hundred Only) as compensation to the applicants along with interest at the rate of 7% p.a. from the date of filing of claim petition till the realization thereof and to pay proportionate costs thereof.

3. After depositing the amount of compensation, the opponent No. 3 insurance company is entitled to recover the amount of compensation from the insured.

4. The aforesaid opponents are directed to deposit the awarded amount within one month from today in this Tribunal.

5. The amount of interim compensation paid to the applicant, if any, shall be deducted from the awarded amount.

6. When amount deposited, after deducting deficit court fees, 30% amount be paid to the applicant by A/c payee cheque, and rest 70% be fixed deposited in any nationalized bank for a period of five years in the name of applicant with a condition that no loan or advances shall be floated on the said FDR without prior permission of the Tribunal. However, the applicant will be entitled to get periodical interest which accrues on the said FDR.

7. Copy of this judgment be kept in MACP No. 24/2023, 27/2023, 29/2023 and 38/2025.
8. Award be drawn accordingly.

MACP NO. 29/2023 :

1. The present claim petition under Sec.166 of the M.V. Act, is hereby allowed.
2. All opponents are hereby directed to pay jointly and severally **Rs. 10,32,200-00** (Rupees Ten Lac Thirty Two Thousand Two Hundred only) as compensation to the applicants along with interest at the rate of 7% p.a. from the date of filing of claim petition till the realization thereof and to pay proportionate costs thereof.
3. After depositing the amount of compensation, the opponent No. 3 insurance company is entitled to recover the amount of compensation from the insured.
4. The aforesaid opponents are directed to deposit the awarded amount within one month from today in this Tribunal.
5. The amount of interim compensation paid to the applicants, if any, shall be deducted from the awarded amount.

6. When amount deposited, after deducting deficit court fees, 30% amount be paid to the applicant by A/c payee cheque, and rest 70% be fixed deposited in any nationalized bank for a period of five years in the name of applicant with a condition that no loan or advances shall be floated on the said FDR without prior permission of the Tribunal. However, the applicant will be entitled to get periodical interest which accrues on the said FDR.
7. Copy of this judgment be kept in MACP No. 24/2023, 27/2023, 29/2023 and 38/2025.
8. Award be drawn accordingly.

MACP NO. 38/2025 :

1. The present claim petition under Sec.166 of the M.V. Act, is hereby allowed.
2. All opponents are hereby directed to pay jointly and severally **Rs.4,75,600-00**(Rupees Four Lac Seventy Five Thousand Six Hundred only) as a compensation to the applicants along with interest at the rate of 7% p.a. from the date of filing of claim petition till the realization thereof and to pay proportionate costs thereof.
3. After depositing the amount of compensation, the opponent No. 3 insurance company is entitled to recover the amount of compensation from the insured.
4. The aforesaid opponents are directed to deposit the awarded amount within one month from today in this Tribunal.
5. The amount of interim compensation paid to the applicants, if any, shall be deducted from the

awarded amount.

6. When amount deposited, after deducting deficit court fees, 30% amount be paid to the applicant by A/c payee cheque, and rest 70% be fixed deposited in any nationalized bank for a period of five years in the name of applicant with a condition that no loan or advances shall be floated on the said FDR without prior permission of the Tribunal. However, the applicant will be entitled to get periodical interest which accrues on the said FDR.
7. Copy of this judgment be kept in MACP No. 24/2023, 27/2023 and 29/2023 & 38/2025.
8. Award be drawn accordingly.

➔ Pronounced in the open Court today on this 20th day of August, 2026.

Date : 20-08-2026
Place : PETLAD

(Zankhana V. Trivedi)
MAC Tribunal (Aux.) &
Additional District Judge, Petlad,
JUDGE CODE - GJ-00676

Tarun Patel
PS