

GJBH010000482021 Filing No.: MACP/18-148-156/2021



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**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(MAIN), AT. BHARUCH**

MACP No.18/2021 with MACP Nos.148 & 156 of 2021

Exh. _____

MACP No.18/2021

Claimants

1. Shakuntalaben wd/o Prakashchandra
Badriprasad Agrawal
2. Kalpeshkumar Prakashbhai Agrawal
3. Jayeshkumar Prakashbhai Agrawal
4. Achiben Badriprasad Agrawal
All are R/o. Kocharpada Road,
Nr. Water Tank, At. Selamba,
Tal. Sagbara, Dist. Narmada.

V/s.

Opponents :

1. Kishor Laxman Jadav
(*Driver of Truck No.MH20-DE-4377*)
R/o. Kasba Galli, At. Pishor,
Tal. Kannad, Dist. Aurangabad (MH).
2. Shankarsing Kapurchand Bainade
(*Owner of Truck No.MH20-DE-4377*)
R/o. At. Alapur, Tal. Kannad,
Dist. Aurangabad (MH).
3. The New India Assurance Co. Ltd.
(*Insurance Co. of Truck No.MH20-DE-4377*)
At. Above Axis Bank, College Campus,
Bholav, Bharuch.

4. Santoshkumar Badriprasad Agrawal
(*Owner of truck No.GJ16-AU-6948*)
R/o. Kocharpada Road,
Nr. Water Tank, At. Selamba,
Tal. Sagbara, Dist. Narmada.
5. Bajaj Allianz General Insurance Co. Ltd.
(*Insurance Co. of truck No.GJ16-AU-6948*)
At. R. K. Kasta, B/h. Super Market,
Bharuch.

MACP No.148/2021

Claimant

Santoshkumar Badriprasad Agrawal
R/o. Kocharpada Road,
Nr. Water Tank, At. Selamba,
Tal. Sagbara, Dist. Narmada.

V/s.

Opponents :

1. Kishor Laxman Jadav
(*Driver of Truck No.MH20-DE-4377*)
R/o. Kasba Galli, At. Pishor,
Tal. Kannad, Dist. Aurangabad (MH).
2. Shankarsing Kapurchand Bainade
(*Owner of Truck No.MH20-DE-4377*)
R/o. At. Alapur, Tal. Kannad,
Dist. Aurangabad (MH).
3. The New India Assurance Co. Ltd.
(*Insurance Co. of Truck No.MH20-DE-4377*)
At. Above Axis Bank, College Campus,
Bholav, Bharuch.
4. Bajaj Allianz General Insurance Co. Ltd.
(*Deleted vide order passed below Exh.20*)
At. R. K. Kasta, B/h. Super Market,
Bharuch.

MACP No.156/2021

Claimant

Kishorbhai Laxmanbhai Jadav
R/o. Kasba Galli, At. Pishor,
Tal. Kannad, Dist. Aurangabad (MH).

V/s.

- Opponents :** Heirs of Late Prakashchandra Badriprasad Agrawal
1. Shakuntalaben Prakashchandra Agrawal
R/o. Kocharpada Road,
Nr. Water Tank, At. Selamba,
Tal. Sagbara, Dist. Narmada.
 2. Santoshkumar Badriprasad Agrawal
(*Owner of truck No.GJ16-AU-6948*)
R/o. Kocharpada Road,
Nr. Water Tank, At. Selamba,
Tal. Sagbara, Dist. Narmada.
 3. Bajaj Allianz General Insurance Co. Ltd.
(*Insurance Co. of truck No.GJ16-AU-6948*)
At. R. K. Kasta, B/h. Super Market,
Bharuch.
 4. Shankarsing Kapurchand Bainade
(*Owner of Truck No.MH20-DE-4377*)
R/o. At. Alapur, Tal. Kannad,
Dist. Aurangabad (MH).
 5. The New India Assurance Co. Ltd.
(*Insurance Co. of Truck No.MH20-DE-4377*)
At. Above Axis Bank, College Campus,
Bholav, Bharuch.

Appearance in MACP No.18/2021:-

Ld. Advocate Mr. C. R. Intwala, for the claimants.

Opponent No.4 ex-parte.

Ld. Advocate Ms. S. N. Kundiyana, for the opponent Nos.1&2.

Ld. Advocate Mr. K. N. Chavda, for opponent No.3.

Ld. Advocate Mr. N. R. Modi, for opponent No.5.

Appearance in MACP No.148/2021:-

Ld. Advocate Mr. C. R. Intwala, for the claimant.

Ld. Advocate Ms. S. N. Kundiyana, for the opponent No.1.

Opponent No.2 ex-parte.

Ld. Advocate Mr. K. N. Chavda, for opponent No.3.

Appearance in MACP No.156/2021:-

Ld. Advocate Ms. S. N. Kundiyana, for the claimant.

Opponent Nos.1,2&4 ex-parte.

Ld. Advocate Mr. N. R. Modi, for opponent No.3.

Ld. Advocate Mr. K. N. Chavda, for opponent No.5.

Claim petition to get compensation of **Rs.50,00,000/-** in **MACP No.18/2021**; **Rs.5,00,000/-** in **MACP No.156/2021** under the provisions of **Section 166 of the Motor Vehicles Act, 1988**, and **Rs.6,00,000/-** in **MACP No.148/2021** under the provisions of **Section 166(1)(b) of the Motor Vehicles Act, 1988**.

JUDGMENT

1. The claimants of MACP No.18/2021 are the legal heirs and representatives of deceased Prakashchandra Agrawal who died in the accident and claimant of MACP No.156/2021 is the injured who sustained bodily injuries. The claimant of MACP No.148/2021 is the owner of Truck No.GJ16-AU-6948 has filed the petition seeking compensation for the damage caused to his vehicle in the accident. The claimants have filed claim petitions and claimed compensation of **Rs.50,00,000/-** in **MACP No.18/2021**; **Rs.5,00,000/-** in **MACP No.156/2021** under the provisions of **Section 166 of the Motor Vehicles Act, 1988**, and **Rs.6,00,000/-** in **MACP No.148/2021** under the provisions of **Section 166(1)(b) of the Motor Vehicles Act, 1988**.

1.1 In **MACP No.18/2021**, claimant No.1 is the wife of the deceased, claimant Nos.2&3 are the children of the deceased and claimant No.4 is the mother of the deceased.

1.2 All the claim petitions have arisen out of the same accident. MACP Nos.148 & 156 of 2021 have been consolidated with MACP No.18/2021 vide order passed below **Exh.25** and MACP No.18/2021 is treated as main

claim petition. Hence, as all the claim petitions have arisen out of the same accident, to ensure consistency and avoid conflicting decisions, all claim petitions are decided by this common judgment.

2. The brief facts of **MACP No.18/2021** are as under:-
 - 2.1 That, deceased Prakashchandra was employed as 'driver' of Truck No.GJ16-AU-6948. On 25/12/2020 at about 13:30 hours, deceased was proceeding from Nizar to Palej by driving the said truck on the left side of the road at moderate speed. When he reached near bridge of village Kavtha on Velda – Kukarmunda road, at that time Truck No.MH20-DE-4377 came at high speed with rash and negligent manner, and thereby its driver lost control over the vehicle and dashed with Truck No.GJ16-AU-6948 by coming wrong side of the road. As a result, deceased trapped inside the cabin of his truck and died on the spot. The FIR with respect to the said accident was registered vide CR No.11824007200497/2020 with Nizar Police Station against driver of truck No.MH20-DE-4377.
 - 2.2 According to the claimants, deceased was aged 50 years at the time of accident. It is stated that deceased was employed as 'driver' on Truck No.GJ16-AU-6948 at the time of accident. Besides this, he was engaged in the business of purchase/sale of truck and earning Rs.40,000/- p.m. It is further stated that had deceased not died in the accident, he would have continued to earn substantial income, thereby providing financial security and support

for the well-being of his dependents. It is also stated that due to sad demise of deceased, the claimants have suffered economic loss and claimed Rs.50,00,000/- as compensation under different heads.

2.3 It is further submitted that the said vehicular accident has occurred due to rash and negligent driving on the part of the opponent No.1 i.e. driver of truck No.MH20-DE-4377 and opponent No.2 being owner of the truck had insured his vehicle with opponent No.3. Therefore, the opponent Nos.1 to 3 are jointly & severally liable to pay the amount of compensation. It is also stated that, opponent Nos.4&5 impleaded as necessary party to the petition.

3. The brief facts of **MACP No.148/2021** are as under:-

3.1 That, the claimant is the owner of Truck No.GJ16-AU-6948. On 25/12/2020 at about 13:30 hours, driver Prakashchandra was driving the said truck on the left side of the road at moderate speed and going towards Palej from Nizar. When he reached near bridge of village Kavtha on Velda – Kukarmunda road, at that time Truck No.MH20-DE-4377 came at high speed with rash and negligent manner, and thereby its driver lost control over the vehicle and dashed with Truck No.GJ16-AU-6948 by coming wrong side of the road. As a result, Prakashchandra trapped inside the cabin of his truck and died on the spot and damage was caused to Truck No.GJ16-AU-6948 in the accident.

3.2 According to the claimant, truck No.GJ16-AU-6948 sustained significant damage to its front and rear side due to accident. Therefore, the applicant incurred total repair cost of Rs.6,80,000/- which includes payment to Sainath Service Center to the tune of Rs.6,07,319/-, Rs.29,000/- to Agrawal Auto Parts for battery & wheel rims, Rs.19,700/- for tyres and Rs.25,000/- for Sai Crane & Patil Crane Services. It is further stated that opponent No.4 has paid only Rs.4,37,800/- towards the repairs and the remaining amount of Rs.2,42,200/- was paid by him and suffered loss. It is also stated that the truck remained under repair from 25.12.2020 to 16.03.2021, and thereby suffered loss of transport income, and thereby he was forced to pay three monthly installments of Rs.66,450/- total amounting to Rs.1,99,350/-. The applicant has also suffered loss of income for 4 months due to the vehicle being grounded. Thus, the claimant has claimed compensation of Rs.6,00,000/- from the opponents for the damage caused to the alleged truck.

3.3 It is further submitted that the said vehicular accident has occurred due to rash and negligent driving on the part of the opponent No.1 i.e. driver of truck No.MH20-DE-4377 and opponent No.2 being owner of the truck had insured his vehicle with opponent No.3. Therefore, the opponent Nos.1 to 3 are jointly & severally liable to pay the amount of compensation. It is pertinent to note that opponent No.4 was deleted pursuant to the order passed below **Exh.20**.

4. The brief facts of **MACP No.156/2021** are as under:-
- 4.1 That, the claimant was employed as 'driver' of Truck No.MH20-DE-4377. On 25/12/2020 at about 13:30 hours, claimant was proceeding from Ankleshwar to Nizar (Maharashtra) by driving the said truck. When he reached near bridge of village Kavtha on Velda – Kukarmunda road, he met with Truck No.GJ16-AU-6948 coming from opposite side. As a result, he sustained grievous injuries in the accident.
- 4.2 According to the claimant, he was aged 30 years at the time of accident. It is stated that the claimant was employed as 'driver' of truck No.MH20-DE-4377 and earning Rs.15,000/- per month at the time of the accident. It is further stated that in the said vehicular accident, claimant had sustained fracture on both the legs and was immediately taken to Government Hospital, Nizar and from where he was shifted to Civil Hospital, Nandurbar, but due to seriousness, he was taken to Government Medical College, Aurangabad where he received indoor treatment from 26.12.2020 to 09.01.2021 and discharged from the hospital. It is also stated that claimant had incurred expenses of Rs.50,000/- towards his medical treatment. It is further submitted that claimant's working capacity has been reduced on account of accidental injuries and suffered loss of income. It is also stated that due to such injuries, he is suffering difficulties in his daily routine life. Hence, claimant has claimed amount of Rs.5,00,000/- as compensation from the opponents under different heads.

- 4.3** It is further submitted that the said vehicular accident has occurred due to rash and negligent driving on the part of the opponent No.1 i.e. driver of truck No.GJ16-AU-6948 and opponent No.2 being owner of the truck had insured his vehicle with opponent No.3. Therefore, the opponent Nos.1 to 3 are jointly & severally liable to pay the amount of compensation.
- 5.** Despite due service of notices, opponent No.4 has not appeared before the tribunal, and therefore, the matter was ordered to be proceeded ex-parte against him vide order dated 19.07.2025 (in MACP No.18/2021). Opponent Nos.2&3 appeared through their advocates but not filed reply. Therefore, their right to file reply was closed by the tribunal pursuant to the order dated 19.07.2025 (in MACP No.18/2021).
- 5.1** Opponent No.2 has not appeared before the tribunal, and therefore, the matter was ordered to be proceeded ex-parte against them vide order dated 10.10.2024 (in MACP No.148/2021). Opponent No.1 appeared through his advocate but not filed reply. Therefore, the right to file reply was closed by the tribunal vide order dated 10.10.2024 (in MACP No.148/2021).
- 5.2** Opponent Nos.1,2&4 have not appeared before the tribunal, and therefore, the matter was ordered to be proceeded ex-parte against them vide order dated 07.07.2025 (in MACP No.156/2021). The opponent No.3

appeared through its advocate but not filed reply. Hence, the right to file reply was closed by the tribunal pursuant to the order dated 07.07.2025 (in MACP No.156/2021).

5.3 The New India Assurance Company has appeared through its advocate and filed reply at **Exh.19** (in MACP No.148/2021) & **Exh.12** (in MACP No.156/2021) inter alia contending that, all the averments made in the claim petition are not true and correct, and denied in toto. It is contended that, the facts regarding occurrence of accident, involvement of offending vehicles, age and income of the claimant, injury and resultant disablement to Kishorbhai, and loss suffered by the claimant Santoshkumar due to damage to the truck No.GJ16-AU-6948 in the accident are not true and correct. It is stated that Bajaj Allianz Insurance Company has already paid Rs.4,37,800/- to the claimant against own damage claim as per the report approved by surveyor. Therefore, any further compensation to the claimant is against the basic principle of indemnity. It is also stated that no additional premium was paid by the insured to cover the risk of third party property damages, hence even in case of the liability, insurance company is liable to pay limited to the extent of Rs.6,000/- only. It is contended that driver of truck No.MH20-DE-4377 was not holding valid and effective driving licence on the day of accident and thereby, the insured had committed breach of policy conditions. Thus, the Insurance Company has prayed to exonerate from its liability to pay compensation to the claimant.

5.4 Bajaj Allianz General Insurance Company has appeared through its advocate and filed reply at **Exh.23** (in MACP No.18/2021) inter alia denying all the averments made in the claim petition in toto. It is stated that FIR & charge-sheet were filed against opponent No.1 (Kishorbhai Laxmanbhai Jadav) i.e. driver of Truck No.MH20-DE-4377, and therefore he was sole responsible for the cause of accident. It is denied that driver of truck No.GJ16-AU-6948 was driving his vehicle in a rash and negligent manner. It is denied that deceased Prakashchandra was paid driver of opponent No.4. Thus, the Insurance Company has prayed to exonerate from its liability to pay compensation to the claimants.

6. The claimants have adduced following oral as well as documentary evidences:

Sr. No.	Evidences	Exh.
<u>Oral Evidences</u>		
1	Kalpeshkumar Prakashbhai Agrawal (MACP No.18/21)	26
2	Santoshkumar Badriprasad Agrawal (MACP No.148/21)	27
3	Kishorbhai Laxmanbhai Jadhav (MACP No.156/21)	35
<u>Documentary Evidences</u>		
	(MACP No.18/2021)	
1	Copy of Suchi Patra	36
2	Copy of FIR	37
3	Copy of Panchnama of place of occurrence	38
4	Copy of Inquest Panchnama	39
5	Copy of RC Book of truck No.MH20-DE-4377	40

6	Copy of Driving licence of deceased	41
7	Copy of RC Book of truck No.GJ16-AU-6948	42
8	Copy of Insurance policy of truck No.GJ16-AU-6948	43
9	Copy of National Permit of truck No.GJ16-AU-6948	44
10	Copy of Postmortem report	45
11	Income tax return for AY 2017-18	46
12	Income tax return for AY 2018-19	47
13	Income tax return for AY 2019-20	48
14	Statement of Income for AY 2020-21	49
15	Income tax return for AY 2021-22	50
	(MACP No.156/2021)	
1	Medical bills of Rs.23,402/-	53
2	Disability certificate	54

6.1 Ld. Advocate for the New India Assurance Company has produced Driving licence of Prakashchandra (deceased) at **Exh.64**, RC Book of truck No.MH20-DE-4377 at **Exh.65**, National Permit of truck No.MH20-DE-4377 at **Exh.66**, Authorization certificate of truck No.MH20-DE-4377 at **Exh.67**, Insurance policy of truck No.MH20-DE-4377 at **Exh.68**, Certificate of Fitness of truck No.MH20-DE-4377 at **Exh.69**, PUC Certificate of truck No.MH20-DE-4377 at **Exh.70**, Tax receipt of truck No.MH20-DE-4377 at **Exh.71** and Driving licence of Kishorbhai at **Exh.72**.

6.2 The learned advocate for Bajaj Allianz General Insurance Company has produced copy of charge-sheet at **Exh.75**.

7. On completion of evidence, Ld. Advocates for the claimants

and opponents have filed their respective closing pursis.

8. Heard Learned Advocates for the parties, perused the evidence and written submissions produced by learned advocate for Bajaj Allianz General Insurance Company at **Exh.77**.
9. Following issues are framed at **Exh.24** (in MACP No.18/2021) for determination of this claim petition:
 1. Whether the claimants prove that the deceased died on account of rash and negligent driving of the driver of the vehicle involved in this accident ?
 2. What amount, the claimants are entitled to by way of compensation and from which opponents ?
 3. What order ?
10. Following issues are framed at **Exh.28** (in MACP No.148/2021) for determination of this claim petition:
 1. Whether the claimant proves that he sustained damages to his vehicle due to rash and negligent driving of the driver of the vehicle involved in this accident ?
 2. Whether the claimant is entitled to any amount of compensation ? If yes, to what extent ?
 3. What order ?
11. Following issues are framed at **Exh.18** (in MACP No.156/2021) for determination of this claim petition:
 1. Whether the claimant proves that he sustained

injuries on account of rashness or negligent driving on the part of driver of the vehicle involved in the accident ?

2. What amount, the claimant is entitled to get by way of compensation and from which of the opponents ?
3. What order ?

12. My findings on the aforesaid issues in all the claim petitions, for the common reasons stated below are as under:

1. In affirmative.
2. In affirmative – As per final order.
3. As per the final order.

REASONS

Issue No.1

13. It is settled legal position of law that the claim tribunal has to decide the negligence on the touchstone of preponderance of probability. Strict rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal. Further, the Tribunal has to hold an inquiry to determine compensation which must appear to it to be just.

13.1 Ld. Advocate for the New India Assurance Company has submitted that the accident took place between two trucks, therefore 50% negligence may be attributed upon the driver of truck No.GJ16-AU-6948.

13.2 Ld. Advocate for Bajaj Allianz General Insurance Company

has filed written submissions at **Exh.77** and submitted that the FIR & charge-sheet were filed against driver of truck No.MH20-DE-4377, and therefore the said driver was responsible for the cause of accident. He has submitted that, police papers does not contain any averments of negligence of driver of truck No.GJ16-AU-6948. He has further submitted that FIR is the document on the basis of which the factum of accident is to be proved by the claimants, therefore claimants cannot turn back and allege that accident occurred due to negligence of driver of truck No.GJ16-AU-6948. He has also submitted that the contents of FIR & charge-sheet cannot be ignored and the said evidence are sufficient to prove that accident occurred due to sole negligence of driver of truck No.MH20-DE-4377. He has further submitted that charge sheet was filed by police after due investigation can be accepted as evidence of negligence, and if any parties do not accept such charge-sheet, the burden must be on such party to establish negligence on the basis of relevant evidence. He has also submitted that driver of truck No.MH20-DE-4377 has admitted in his cross-examination (Exh.35) that the steering of the truck had locked, causing him to lose control over the vehicle, which resulted in the accident. Therefore, it is clear admission by the driver of truck No.MH20-DE-4377 (claimant of MACP No.156/2021) that accident occurred due to losing control over the vehicle, and therefore he is responsible for the cause of accident. He has relied upon the following decisions in support of his

submissions:

- (1) **Oriental Insurance Co. Ltd. v. Premlata Shukla** reported in **2007(4) ALD 85 (SC)**.
- (2) **Surender Kumar Arora v. Manoj Bisla** reported in **2012(4) SCC 552**.
- (3) **ICICI Lombard General Insurance Co. Ltd. v. Rajani Sahoo & Ors.**
- (4) **Usha Devi & Ors. v. The New India Insurance Co. Ltd.** reported in **2019(0) Supreme (SC) 2366**.
- (5) **New India Assurance Co. Ltd. v. Smt. Jyoti w/o Ashok Thorat** reported in **2023(0) Supreme (Bom) 1316**.

13.3 The claimant No.2 who is the son of deceased Prakashchandra (MACP No.18/2021) has filed his affidavit of examination-in-chief at **Exh.26**; claimant of MACP No.148/2021 has filed his affidavit of examination-in-chief at **Exh.27** and claimant of MACP No.156/2021 has filed his affidavit of examination-in-chief at **Exh.35** and narrated the facts as mentioned in their claim petitions. During cross-examination of claimant (MACP No.18/2021) by Ld. Advocate for the opponent No.3, he denied that accident occurred in the middle of the road. He further denied that accident occurred due to negligence of deceased. He stated that he has no personal knowledge of the accident being caused by a vehicle coming from the wrong side of road, and this fact is not mentioned in the FIR. During cross-examination by Ld. Advocate for the opponent No.5, he admitted that he was not the eye-witness to the incident. He admitted that opponent Nos.4&5 were formally impleaded as party to avoid any objection on the ground of non-joinder of necessary party. However, during cross-examination of

claimant of MACP No.148/2021, nothing material emerged regarding the cause of accident.

13.4 During cross-examination of claimant of MACP No.156/2021 by Ld. Advocate for the opponent No.3, claimant has admitted that FIR was lodged against him. He stated that the steering of truck had locked, causing him to lose control over the vehicle, which resulted in the accident. He further stated that the speed of the truck was approximately 30–40 km/h. He denied that accident occurred due to his negligence. He was cross-examined by Ld. Advocate for the opponent No.5, wherein, he admitted that he was acquitted in criminal case. He admitted that his truck was on the left side of road when another truck came from the wrong side and collided with his truck. He admitted that accident occurred due to negligence of driver of truck No.GJ16-AU-6948.

13.5 The claimants have produced on record the copy of FIR at **Exh.37** and spot panchnama at **Exh.38** mention the details of truck No.MH20-DE-4377 and truck No.GJ16-AU-6948, and thereby prima facie established the involvement of the said vehicles. Upon perusal of the FIR, it appears that the same was lodged by Yogeshbhai Santoshbhai Agrawal. As stated therein, the complainant received a telephone call at 1:47 hours from his uncle Prakashchandra informing him that he met with an accident near bridge of village Kavtha and he was trapped inside the truck No.GJ16-AU-6948.

Upon receiving the information, the complainant and others immediately rushed to the spot, where he found Prakashchandra inside the cabin of truck No.GJ16-AU-6948 with grievous head injuries. Another truck No.MH20-DE-4377 was also found stationary at opposite side. Prakashchandra was thereafter extricated from the truck with the help of crane and was declared dead by 108 Ambulance personnel. Accordingly, the complainant lodged the FIR against driver of truck No.MH20-DE-4377 in connection with the accident. The spot panchnama at **Exh.38** clearly indicates that the accident occurred near the bridge of village Kavtha, approximately 250 meters on the southern side of the road, where pieces of spare parts of both vehicles were found scattered. The place of the accident was on the left edge of the road. It further reveals that truck No.MH20-DE-4377 was found at the spot, facing towards southern side with its front portion severely damaged. Similarly, truck No.GJ16-AU-6948 was found on the road at a distance of about 20-40 feet from truck No.MH20-DE-4377, facing northern side and its front portion was totally smashed in the accident.

13.6 In the present case, the material on record indicates that both the trucks met with head-on-collision near bridge of village Kavtha, resulting in Prakashchandra driver of Truck No.GJ16-AU-6948 trapped in the cabin and subsequently succumbed to injuries. The evidence further reveals that the accident occurred on the left

edge of the road near village Kavtha on Velda Tanki to Kukarmunda route. The impact of the collision was severe, as the front portion of truck No.GJ16-AU-6948 was completely smashed, leading to the driver being trapped inside the cabin. Further, the driver of truck No.MH20-DE-4377 has admitted in cross-examination (**Exh.35**) that the steering of truck had locked, causing him to lose control over the vehicle, which resulted in the accident. This clearly indicates that due to technical defect in truck No.MH20-DE-4377, the driver lost control and the vehicle moved on the wrong side of the road and collided with truck No.GJ16-AU-6948. Upon careful consideration of the evidence on record, this Tribunal finds that the evidence of claimant Kishorbhai (MACP No.156/2021) i.e. driver of truck No.MH20-DE-4377 is not reliable and does not inspire confidence. Although he has attempted to shift the entire blame on the driver of truck No.GJ16-AU-6948 by alleging that accident did not occur due to his negligence, such version is not supported by any reliable evidence. On the contrary, he has admitted in his cross-examination that the FIR and charge-sheet were filed against him and criminal case was also registered against him. Mere acquittal for the charges does not *ipso facto* absolve a person from civil liability. The standard of proof in a criminal trial is that of *proof beyond reasonable doubt*, whereas in motor accident claim proceedings, the matter is decided on the basis of *preponderance of probabilities*. In view of the material contradictions and his doubtful conduct, the evidence of

driver Kishorbhai cannot be relied upon to hold the driving truck No.GJ16-AU-6948 (deceased of MACP No.18/2021)

13.7 Therefore, considering the facts and circumstances of the present case and material on record, it appears that no brake marks were found at the place of the accident. This circumstance indicates that the driver of truck No.MH20-DE-4377 did not apply the brakes in a timely manner even after the steering had locked. If driver of truck No.MH20-DE-4377 has reduced speed of his vehicle, he would have controlled and could have averted this incident. Further, the FIR was lodged against the driver of truck No.MH20-DE-4377, and after due investigation, the police filed charge-sheet against him. Being driver of the truck, it was his duty to drive the vehicle at moderate speed with due care and caution. In light of the entire evidence on record, it is established that the accident occurred solely due to the rash and negligent driving of the driver of truck No.MH20-DE-4377. There is no material on record to attribute any negligence to the driver of truck No.GJ16-AU-6948 i.e. deceased Prakashchandra. Hence, I answer Issue No.1 accordingly in "*Affirmative*".

Issue No.2

In MACP No.18/2021 (Fatal)

14. It is settled legal position of law that award must be just,

which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner.

- 15.** According to say of claimants, deceased Prakashchandra was aged 50 years. On perusing the driving licence at **Exh.41**, deceased's birth date is mentioned as 15.04.1970. The claimants have not produced birth certificate or school leaving certificate of deceased. However, for deciding just compensation, the date of birth mentioned in driving licence is considered to determine age of the deceased. Therefore, deceased was 50 years old at the time of accident. Thus, considering the decision in the case of **Sarla Varma v/s Delhi Transport Corporation & Ors.** reported in **2009 ACJ 1298 SC**, multiplier of **13** is applicable.
- 16.** The claimant No.2 who is the son of the deceased has submitted in his affidavit at **Exh.26** that, deceased was employed as 'driver' on truck No.GJ16-AU-6948 and getting monthly salary of Rs.15,000/- at the time of accident. The claimants have produced income-tax returns at **Exh.46** to **Exh.48**. On perusing the said income-tax returns, it appears that the gross total income was Rs.3,60,444/- in AY 2017-18; Rs.2,25,507/- in AY 2018-19 & Rs.2,44,723/- in AY 2019-20 and the said returns were filed prior to the date of accident. However, on perusing the income-tax

return at **Exh.50**, total income was Rs.3,08,000/- in AY 2021-22 and the said return was filed on 27.01.2022 i.e. after the date of accident. Therefore, the said return filed after the accident is required to be considered with more scrutiny and the reliability of such return is also required to be decided. Further, merely because the return is filed at later stage, it cannot be *per se* ground for discarding the said evidence.

16.1 It is fruitful to refer the decision in the case of **Vijayalaxmi @ Roopa v. Shenoy & Anr. v. National Insurance Co. Ltd. & Ors.** in Civil Appeal No.2320/2025, the Hon'ble Apex Court has held in **para-7** as under:-

*7. We have heard the learned counsel for the parties. We are unable to agree with the view taken by the Tribunal and High Court on the income of the deceased. It has been clarified in **Malarvizhi & Ors. v. United India Insurance Co. Ltd. & Ors.** that the determination of income must proceed on the basis of Income Tax Return when available, being a statutory document. More recently, this Court in **New India Assurance Co. Ltd. v. Sonigra Juhi Uttamchand** while determining the income of the deceased therein had observed:*

"8. Monthly income could be fixed taking into account the tax returns only if the details of payment of tax are appropriately brought into evidence so as to enable the Tribunal/Court to calculate the income in accordance with law."

16.2 Therefore, in view of the above decision, income of the deceased can be considered on the basis of income-tax returns being a statutory documents. Further, it is also required to be noted that the said documents are not challenged by the opponents being concocted or forged. Hence, the said documents are required to be considered to

determine the income of the injured. If the income for AY 2021-22 is considered, the same was Rs.3,08,000/-. Looking to the income-tax returns of the previous year, income was Rs.3,60,444/- in AY 2017-18; Rs.2,25,207/- in AY 2018-19 and Rs.2,44,723/- in AY 2019-20. In the present case, the claimants have produced statement of income for AY 2020-21 at **Exh.49**, however, no income tax return has been produced for the said assessment year. Therefore, the said statement remains unverified, and therefore, cannot be relied upon for the purpose of determining income of the deceased. Further, it is undisputed fact that the deceased was working as driver at the time of accident. The income tax return for AY 2021-22 at **Exh.50** has been filed after the death of the deceased, i.e., subsequent to the accident. Although such a post-accident return requires careful scrutiny, it may still be considered in light of the material available on record. On perusal of the earlier income tax returns, particularly for AY 2017-18, it is evident that the income reflected therein is comparatively higher than that shown in AY 2018-19 and AY 2019-20. Therefore, income tax return for AY 2021-22 is considered to assess the income of the deceased. Under the circumstances, income tax returns for AY 2018-19, 2019-20 and 2021-22 are considered for the purpose of determining the income of the deceased. Hence, considering the average income for three years i.e. AY 2018-19, 2019-20 and 2021-22, the income of the deceased is considered as **Rs.2,59,310/- p.a.** (Rs.2,25,207 + Rs.2,44,723 + Rs.3,08,000 = Rs.7,77,930 divided by 3 = Rs.2,59,310/-).

16.3 The deceased was aged 50 years, and therefore as per the decision in the case **National Insurance Co. Vs. Pranay Sethi** reported in **2017 (16) SCC 680**, the income of the deceased is required to be increased by **10%** i.e. **Rs.25,931/- [Rs.2,59,310/- p.a. income x 10% future prospects]**. Hence, deceased's yearly income at the time of accident including future prospects is considered as Rs.2,59,310 + Rs.25,931 = **Rs.2,85,241/-**. In view of **Sarla Varma (supra)**, if the annual income is in the taxable range, the word '*actual salary*' should be read as '*actual salary less tax*'. Thus, deceased yearly income at the time of accident was Rs.2,85,241 p.a. income – tax i.e. Rs.1,762 (income tax as it was applicable in the A.Y. 2021-22 upto Rs.2.5 lac is Nil, Rs.2.51 to Rs.5 lac is 5%, Rs.5 to Rs.7.5 lac is 10%) = Rs.2,83,479/- p.a. Thus, **income of the deceased including future prospects after tax would be Rs.2,83,479/- p.a.**

17. As there were 4 (four) dependent family members of the deceased, therefore **1/4th** amount is required to be deducted towards the personal and living expenses of the deceased to arrive at just compensation.

18. After deduction of personal and living expenses of the deceased, dependency loss would be Rs.2,83,479/- p.a. income – Rs.70,870/- (**1/4** of total income Rs.2,83,479/-) = Rs.2,12,609 x 13 multiplier = Rs.27,63,917/-. Therefore, it is just and proper to award sum of **Rs.27,63,917/- under the head of loss of dependency.**

19. As held in *Para No. 61 (viii) of Pranay Sethi's case* that reasonable figures on conventional heads, namely; *Loss of Estate, Loss of Consortium and Funeral Expenses* should be *Rs.15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively*. The aforesaid amounts should be enhanced at the rate of *10%* in every three years. As six years have been passed from the date of pronouncement of the *Pranay Sethi (supra)*, therefore, this Tribunal deems fit to enhance the amount to be paid under the conventional head. The date of judgment of *Pranay Sethi's case* is 31.10.2017 and therefore, 10% amount under loss of estate would be *Rs.16,500/-*, loss of consortium would be *Rs.44,000/-* and funeral expenses would be *Rs.16,500/-* after 01.11.2020. Now after 01.11.2023, further 10% is required to be enhanced. Therefore, the amount under loss of estate would be *Rs.18,150/-*, loss of consortium would be *Rs.48,400/-* and funeral expenses would be *Rs.18,150/-*. Therefore, as per the directions of the Hon'ble Supreme Court in *Pranay Sethi (supra)*, the claimants are entitled to *Rs.18,150/- towards Loss of Estate* and *Rs.18,150/- towards Funeral Expenses*.

19.1 Further, so far as the grant of consortium to the claimants are concerned, the Hon'ble Supreme Court in the case of *New India Insurance Company Ltd. Vs. Somwati 2020 SCC Online SC 720, United Insurance Co. Ltd. Vs. Satinder Kaun 2020 SCC Online SC 410, Joginder Singh Vs. ICICI Lombard General Insurance Company 2019 SCC Online SC 1029, Magma General Insurance Co. Ltd.*

v. Nanu Ram Alias Chuhru Ram reported in 2018 (0) AIJEL-SC 62739 has categorically held that in addition to spouse, the children are entitled to parental consortium in the case of death of the parents and parents are entitled to filial consortium in the case of death of their child and the amount to be awarded for Loss of Consortium will be as per the amount fixed in ***Pranay Sethi (supra)***. It is held by the Hon'ble Supreme Court in the case of ***Magma General Insurance Co. Ltd. (supra)*** at **para 8.7 to para-8.7.8** as under:-

- 8.7** *A Constitution Bench of this Court in [Pranay Sethi \(supra\)](#) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.*
- 8.7.1** *In legal parlance, “consortium” is a compendious term which encompasses ‘spousal consortium’, ‘parental consortium’, and ‘filial consortium’.*
- 8.7.2** *The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. (Rajesh and Ors. vs. Rajbir Singh and Ors. [JT 2013 (8) SC 288].*
- 8.7.3** *Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, co-operation, affection, aid the other in every conjugal relation.”*
- 8.7.4** *Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training.”*
- 8.7.5** *Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection,*

companionship and their role in the family unit.

- 8.7.6** *Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*
- 8.7.7** *The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.*
- 8.7.8** *Parental Consortium is awarded to children who lose their parents in motor vehicle accidents under the Act.*

19.2 Therefore, the claimant No.1 wife of the deceased is entitled to get **Rs.48,400/- towards Spousal Consortium**, claimant Nos.2&3 children of the deceased are entitled to get **Rs.48,400/- each towards Parental Consortium** and claimant No.4 mother of the deceased is entitled to get **Rs.48,400/- towards Filial Consortium**

20. Now, coming to the computation of compensation and by applying the settled guideline, the compensation is calculated as under: -

SUMMARY OF COMPUTATION OF AWARD AMOUNT

1	Date of accident	25.12.2020
2	Name of the deceased	Prakashchandra Badriprasad Agrawal
3	Age of the deceased	50 Years
4	Occupation of deceased	Service
5	Income of the deceased	Rs.2,59,310/- p.a.

6	Name, age and relationship of legal representatives of deceased		
	Name	Age	Relation
i	Shakuntalaben wd/o Prakashchandra Badriprasad Agrawal	48	Wife
ii	Kalpeshkumar Prakashbhai Agrawal	21	Son
iii	Jayeshkumar Prakashbhai Agrawal	20	“
iv	Achiben Badriprasad Agrawal	70	Mother

COMPUTATION OF COMPENSATION

Sr. No.	Description	Amount
7.	Yearly Income of deceased (A)	Rs.2,59,310/- p.a.
8.	Add future Prospect (B)	10% of 2,59,310/- = Rs.25,931/-
9.	Income including future prospects of the deceased (C)	2,59,310 + 25,931= Rs.2,85,241/-
10.	Less Applicable income-tax on the income of the deceased in the A.Y. 2021-22 (D) (As per Para-16.3)	Rs.1,762/-
11.	Actual income of the deceased i.e. Actual salary less tax (C - D) = (E)	2,85,241 – 1,762 = Rs.2,83,479/-
12.	Less personal & living expenses of the deceased (F)	2,83,479 x ¼ = Rs.70,870/-
13.	Multiplier (G)	13
14.	Total loss of dependency (E – F) x G = (H)	(2,83,479 – 70,870) = Rs.2,12,609 x 13 Rs.27,63,913/-
15.	Compensation for loss of spousal consortium (I)	Rs.48,400 x 4 = Rs.1,93,600/-
16.	Compensation for loss of estate (J)	Rs.18,150/-
17.	Compensation towards funeral expenses (K)	Rs.18,150/-
18.	Total Compensation (H + I + J + K = (L)	Rs.29,93,817/-
19.	Rate of interest awarded	9% p.a.

21. Thus, the claimants are entitled to get **Rs.29,93,817/-** as

compensation.**In MACP No.148/2021 (Damage to vehicle)**

22. The claimant in his evidence at **Exh.27** has stated that the Truck No.GJ16-AU-6948 owned by him was severely damaged in the accident. Therefore, the applicant incurred total repair cost of Rs.6,80,000/- which includes payment to Sainath Service Center to the tune of Rs.6,07,319/-, Rs.29,000/- to Agrawal Auto Parts for battery & wheel rims, Rs.19,700/- for garg tyres and Rs.25,000/- for Sai Crane & Patil Crane Services. It is further stated that opponent No.4 has paid only Rs.4,37,800/- towards the repairs and the remaining amount of Rs.2,42,200/- was paid by him and suffered loss. It is also stated that the truck remained under repair from 25.12.2020 to 16.03.2021, and thereby suffered loss of transport income, and he was forced to pay three month installments of Rs.66,450/- total amounting to Rs.1,99,350/-. He also stated that due to the damage to the vehicle truck, his business activities were adversely affected, resulting in substantial financial loss. During cross-examination, he stated that survey of vehicle was conducted at the spot of accident and the vehicle was insured with Bajaj Allianz Insurance Company. He further stated that he neither submitted the spot survey report nor conducted private survey to assess the extent of damage caused to the vehicle in the accident. He admitted that final survey report was prepared by the insurance company; however, he did not

produce the said report in the present case. He further admitted that he has not produced documentary evidence to establish the extent of damage to his vehicle, nor submitted proof of payment towards the repair costs. He also admitted that he has not produced evidence regarding the income derived from the said vehicle and has not led any evidence to show the period during which the vehicle remained non-operational.

23. On perusing the R. C. Book at **Exh.42**, it appears that Truck No.GJ16-AU-6948 was registered in the name of claimant i.e. Santoshkumar Badriprasad Agrawal.
24. Ld. Advocate for the New India Assurance company has submitted that, Bajaj Allianz Insurance Company has already paid Rs.4,37,800/- to the claimant against own damage claim. Therefore, any further compensation to the claimant is against the basic principle of indemnity. It is also stated that no additional premium was paid by the insured to cover the risk of third party property damages, hence even in case of the liability, insurance company is liable to pay limited to the extent of Rs.6,000/- only.
25. Having considered the submissions advanced by the insurance company, it is evident that the Truck No.GJ16-AU-6948 involved in the accident was damaged in the accident. On perusal of document at **mark-56/3**, claimant had paid Rs.6,07,319/- to Sainath Service Center towards repairing cost. However, the claimant admitted during cross-

examination that he neither submitted the spot survey report nor conducted any private survey to assess the extent of damage to the vehicle. Although a final survey report was prepared by the insurance company, the same has not been produced on record. He further admitted that he has not produced documentary evidence to establish the extent of damage, nor any proof of payment towards repair costs. Further, the claimant has not produced any evidence regarding the income derived from the vehicle or the period for which it remained non-operational.

26. Ld. Advocate for the claimant has submitted that the claimant is entitled for the entire amount of loss i.e. Rs.6,07,319/- and claimant can claim against tort-feasor and his insurance company and amount received from his own insurance company is not required to be deducted. On the other side, Ld. Advocate for the insurance company has submitted that once the pecuniary loss is received from his own insurance company, the amount received by the insurance company of the claimant is required to be deducted. It is fruitful to refer the decision of the Hon'ble High Court in the case of **United India Insurance Company Limited V. Hasumatiben Kanubhai Patel** reported in **2015 (2) GLR 1446**. In *Hasumatiben Kanubhai (supra)*, the division bench of the Hon'ble High Court has held that the claimant should not be permitted to earn profit out of the accident which he met. It is also held that claimant is entitled to get reimbursement but no law provides that he can get reimbursement from two sources

resulting in undue enrichment. Hence, as per the decision of the Hon'ble High Court, if the contention of the claimant is accepted, he will get more amount than the actual market value / value of the vehicle and to that extent the claimant shall earn profit which is not permissible. Hence, considering the decision of the Hon'ble High Court in case of *Hasumatiben Kanubhai (supra)*, there is a clear distinction between personal loss and pecuniary loss. Medical expenses and personal injury falls within the category of personal loss, whereas damage to motor vehicle is a pure pecuniary loss capable of exact monetary computation. In case of pecuniary loss, the principle of indemnity squarely applies and the claimant cannot be permitted to obtain double benefit or unjust enrichment. Hence, the law laid down by the division bench of the Hon'ble High Court in the case of *Hasumatiben Kanubhai (supra)* is required to be followed.

27. In light of the evidence on record, though the claimant has established that Truck No.GJ16-AU-6948 sustained damage in the accident and certain repair works were undertaken, he has failed to prove the actual extent of the loss with cogent and reliable evidence. The production of repair bills amounting to Rs.6,07,319/- issued by Sainath Service Center (mark-56/3), in the absence of supporting documents such as the survey report, final assessment of the insurer and proof of full payment is insufficient to substantiate the claim. Further, no independent evidence including books of accounts, transport records or income details have been

adduced to demonstrate any consequential financial loss during the period the vehicle remained off-road. It is an admitted position that the claimant had already been indemnified by Bajaj Allianz General Insurance Company to the extent of Rs.4,37,800/- towards own damage. In such circumstances and in the absence of reliable proof of any additional loss, awarding any further amount would be contrary to the settled principle of indemnity which requires that the compensation must strictly correspond to the loss proved and must not result in unjust enrichment. Therefore, this tribunal is of the considered opinion that the claimant is not entitled to any further compensation towards the alleged damage to the vehicle. As regards the claim for loss of income and payment of installments, in absence of any documentary or oral evidence establishing income, period of non-use or financial liability, the same cannot be granted. Accordingly, the claim petition deserved to be dismissed.

In MACP No.156/2021 (Injury)

28. It is settled legal position of law that, if victim of an accident suffers permanent or temporary disability, then efforts should be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to accident, loss of earnings and victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident. The purpose of compensation under the Motor Vehicles Act is to fully and

adequately restore the aggrieved to the position prior to the accident.

29. According to say of claimant, he was 30 years old at the time of accident. On perusing the driving licence at **Exh.72**, claimant's birth date is mentioned as 02.02.1991. The claimant has not produced birth certificate or school leaving certificate to prove his age. However, in absence of the said evidence, driving licence is considered to decide age of the claimant for the purpose of just compensation. Thus, claimant was 30 years old at the time of accident. Therefore, considering the decision in the case of **Sarla Varma v/s Delhi Transport Corporation & Ors.** reported in [2009 ACJ 1298], multiplier of 17 is applicable.
30. The claimant has stated in his affidavit of examination-in-chief vide **Exh.35** that, he was employed as 'driver' of truck No.MH20-DE-4377 and was receiving salary of Rs.15,000/- per month at the time of accident. The claimant has not led any documentary evidence to prove his income. However, considering the age, avocation of claimant, nature of work performed by the claimant and minimum wages prevailing at the relevant time, it would be just and proper to consider income of the claimant as **Rs.10,000/- p.m.** and **Rs.1,20,000/- p.a.**
- 30.1 Considering the age of the claimant at the time of accident, this is a fit case to give rise of **40%** in actual salary i.e. **Rs.48,000/-** (Rs.1,20,000 x 40%) in the actual income of the

claimant and therefore, annual income including future rise in salary of the claimant would be Rs.1,20,000 + Rs.48,000 = **Rs.1,68,000/-**.

31. To prove the injuries, the claimant has categorically stated in his evidence at **Exh.35** that in the said vehicular accident, he sustained fracture on both the legs and was immediately taken to Government Hospital, Nizar and from where he was shifted to Civil Hospital, Nandurbar, but due to seriousness, he was taken to Government Medical College, Aurangabad where he received indoor treatment from 26.12.2020 to 09.01.2021 and discharged from the hospital.

31.1 So far as the disability sustained by the claimant is concerned, claimant has relied upon the disability certificate issued by Dr. Rajendra L. Rana, M.S. (Orthopedic) which is at **Exh.54** from which it appears that claimant had sustained close fracture shaft femur right, fracture proximal tibia-fibula left leg and soft tissue injury on left leg. Considering the above clinical findings, the doctor has certified that the claimant has sustained permanent partial disability @ 33% of left lower limb and 23% of right lower limb. Thus, the claimant had sustained 56% permanent partial disability. However, Ld. Advocates for the claimant and insurance company have no objection to consider 20% disability of the claimant body as whole, and therefore the doctor has not been examined. Hence, considering the nature of injury, physical disability, age and avocation of the claimant, it would be just and proper if the functional disability of the

claimant is considered as **20%**.

- 32.** Taking into considering the functional disability of the claimant which is assessed as **20%**, his yearly loss of income would come to round off **Rs.33,600/- p.a. [20% of Rs.1,68,000]**. As above discussed, considering the age of the claimant, the multiplier of **17** would be applicable, hence, the future economic loss of income would come to **Rs.5,71,200/-** (Rs.33,600 x 17 multiplier).
- 33.** Considering the nature of injuries sustained by the claimant and the evidence of medical treatment, **Rs.15,000/-** is awarded under the head of **Pain, Shock & Sufferings**.
- 34.** According to say of claimant, he received treatment from 26.12.2020 to 09.01.2021 in Government Medical College, Aurangabad, and therefore, he might have required help of attendant. Further, he might have incurred expenses towards transportation, special diets and nutritious food and other miscellaneous expenses also. Hence, looking to nature of injuries, period of hospitalization as well as other facts on record, it would be just & proper to award a sum of **Rs.15,000/- towards Attendant, Special diets and Transportation Expenses**.
- 35.** According to say of claimant, he could not do his work for 8 months on account of accidental injuries. Therefore, considering the nature of injury, he would not have worked for a period of around 3 months. Thus, actual loss of income

would be Rs.10,000/- p.m. income x 3 months = Rs.30,000. Hence, it is just and reasonable to award sum of **Rs.30,000/- under the head actual loss of income.**

- 36.** According to averments made in the oral evidence of claimant at **Exh.35**, he incurred Rs.50,000/- towards his medical treatment. However, claimant has produced medical bills of Rs.23,402/- at **Exh.53**. Therefore, it would be just and proper to award round off **Rs.23,400/- towards medical expenses.**

- 37.** Thus, the claimant is entitled to get amount of compensation under the following different heads:-

SUMMARY OF THE COMPUTATION OF AWARD AMOUNT

1	Date of accident	25.12.2020
2	Name of the injured	Kishorbhai Laxmanbhai Jadhav
3	Age of the injured	30 Years
4	Occupation of the injured	Service
5	Income of the injured	Rs.10,000/- per month
6	Nature of injury	Close fracture shaft femur right, fracture proximal tibia-fibula left leg and soft tissue injury on left leg
7	Period of hospitalization	From 26.12.2020 to 09.01.2021 in Government Medical College, Aurangabad
8	Whether any permanent disability? If yes, give details	Yes. 56% permanent disability.
9	Computation of Compensation	

Sr. No.	Heads	Awarded by the Tribunal
10	Pecuniary Loss	
(i)	Expenditure on treatment	Rs.23,400/-
(ii)	Expenditure on conveyance	Rs.15,000/-
(iii)	Expenditure on special diet	
(iv)	Cost of nursing/attendant	
(v)	Cost of artificial limb	--
(vi)	Loss of earning capacity	--
(vii)	Actual Loss of income	Rs.30,000/-
(viii)	Any other loss which may require any special treatment or aid to the injured for the rest of his life	--
11	Non-Pecuniary Loss	
(i)	Compensation for mental and physical shock	Rs.15,000/-
(ii)	Pain and Suffering	
(iii)	Loss of amenities of life	--
(iv)	Disfiguration	--
(v)	Loss of marriage prospects	--
(vi)	Loss of earning, inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc.	--
12	Disability resulting in loss of earning capacity	
(i)	Percentage of disability assessed and nature of disability as permanent or temporary	56%
(ii)	Loss of amenities or loss of expectation of life span on account of disability	--
(iii)	Percentage of loss of earning capacity in relation to disability	20%

(iv)	Loss of future income (Income x % Earning Capacity x Multiplier)	Rs.5,71,200/-
13	Total Compensation	Rs.6,54,600/-
14	Interest Awarded	9%

38. The injured claimant has, in claim petition, claimed compensation of **Rs.5,00,000/-**. But the Tribunal can award the amount more than the amount claimed in the claim petition if the same is found to be just compensation. Hence, the claimant is entitled to get **Rs.6,54,600/-** as compensation.

Liability of New India Assurance Company in MACP No.156/2021

39. Ld. Advocate for the opponent No.5 has submitted that, if the claimant himself is held to be negligent then he is not entitled for any compensation for his own wrongful act.

39.1 Here, the question is whether the injured Kishorbhai was paid driver of opponent No.5 and whether the additional premium was paid covering the risk of paid driver is required to be considered.

39.2 If the evidence of claimant at **Exh.35** is perused, it is specifically stated that he was employed as 'Driver' of the truck No.MH20-DE-4377 at the time of accident. The said fact is not controverted by the opponent No.5. Further, injured Kishorbhai sustained bodily injuries while driving

the truck, and therefore it is also required to be inferred that he was paid driver of opponent No.5. Further, no rebuttal evidence is produced by the opponent No.5 with respect to the fact that injured Kishorbhai was not paid driver of truck. So far as the fact whether the additional premium was paid or not, on perusing the insurance policy of truck No.MH20-DE-4377 vide **Exh.68**, it appears that the policy issued by the opponent No.5 - insurance company was Commercial Vehicle Package Policy, which clearly indicates that the opponent No.4 i.e. owner of the truck had paid additional premium of Rs.100/- towards legal liability to paid driver, conductor and cleaner. At this juncture, the decision of the Hon'ble Gujarat High Court in the case of **Valiben Laxmanbhai Thakore (Koli) Wd/o Late Laxmanbhai Ramsingbhai Thakore (Koli) v. Kandla Dock Labour Board** reported in **2022 (1) GLR 440** is required to be considered.

39.3 In the case of **Valiben Laxmanbhai Thakore (Koli) (supra)**, the Hon'ble High Court has held at **para-13** and **para-15** that-

13. Thus, when the owner of a vehicle pay additional premium and same is accepted by the Insurance Company, liability of the Insurance Company gets extended under the Motor Vehicles Act. Section 147 of the Act clearly prescribes for statutory liability to cover risk of paid Driver and Conductor under the Insurance Policy, which is a matter of contract. On payment of such additional premium by the owner, the liability of the owner shifts upon the Insurance Company. Thus, the risk of paid Driver and Conductor would be covered under the Insurance Policy. Only when the additional premium is not paid, liability

would be as per the Employees Compensation Act, 1923 and in such cases, compensation would be computed as prescribed under the Act which is limited to the extent provided under provisions of the Act. However, when owner pays additional premium to cover the legal liability of his paid driver and conductor to the Insurance Company, as such, the Insurance Company is enlarging the scope for unlimited liability for payment of compensation, when additional premium is accepted. The liability of the Insurance Company gets extended and it has no right to raise issue of self negligence or otherwise of the such class of the driver of the Insured vehicle. By accepting additional premium as per the IMT 28, the Insurance Company expressed its willingness to extend its liability under the Clause of Legal Liability to the Paid driver and conductor as envisaged under Section 147 of the Act. Thus, in our opinion, Insurance Company has no legal right to avoid its legal liability under the indemnity clause arising from the contract of insurance towards the insured - owner of such classes of vehicles.

15. *In our opinion, by accepting additional premium, insurance company indemnifies owners for paid driver and/or conductor and risk of driver/ conductor is covered under it upon death or bodily injury caused to paid driver and/or conductor, insurance company would be liable to satisfy such claim irrespective of self negligence.*

39.4 Thus, it can certainly be said that, opponent No.5 - insurance company has extended the coverage for the risk of truck driver i.e. injured Kishorbhai (claimant of MACP No.156/2021), and hence the insurance company cannot be absolved from liability by contending that the injured was not third party and not entitled to get compensation. Hence, in view of **Valiben Laxmanbhai Thakore (Koli) (supra)**, the claimant is entitled to get

the compensation from the opponent No.5 - insurance company for the bodily injuries to the truck driver i.e. injured Kishorbhai on the ground that, the case is covered under the terms of the policy irrespective of negligence on the part of the injured Kishorbhai. Thus, the present accident had occurred because of negligent driving of claimant i.e. driver of truck No.MH20-DE-4377 involved in the accident. The opponent No.4 was the owner of truck No.MH20-DE-4377 at the relevant time is also established from the certificate of registration of the subject vehicle at **Exh.68**. Further, on perusing insurance policy of truck No.MH20-DE-4377, it transpires that the subject vehicle was insured with the opponent No.5 for the period from 28.09.2020 to 27.09.2021. Thus, it was valid insurance on 25.12.2020 i.e., the date of accident. Since the tribunal has not found negligence on the part of driver of truck No.GJ16-AU-6948, claim against opponent Nos.1 to 3 is hereby rejected. Therefore, the claimant is entitled for the compensation with interest @ 9% p.a. from the date of claim petition till realization from opponent Nos.4&5, jointly & severally.

Liability in MACP Nos.18 & 148 of 2021

40. The present accident had occurred because of negligent driving of driver of truck No.MH20-DE-4377 involved in the accident. The opponent No.2 was the owner of truck No.MH20-DE-4377 at the relevant time is also established from the certificate of registration of the

subject vehicle at **Exh.68**. Further, on perusing insurance policy of truck No.MH20-DE-4377, it transpires that the subject vehicle was insured with the opponent No.3 for the period from 28.09.2020 to 27.09.2021. Thus, it was valid insurance on 25.12.2020 i.e., the date of accident. Since the tribunal has not found negligence on the part of driver of truck No.GJ16-AU-6948, claim against opponent Nos.4&5 is hereby rejected. Therefore, the claimant is entitled for the compensation with interest @ 9% p.a. from the date of claim petition till realization from opponent Nos.1 to 3, jointly & severally. Hence, I answer Issue No.2 in the ‘**affirmative**’ accordingly and for Issue No.3, the following final order is passed:-

ORDER

1. MACP No.18/2021 stands partly allowed against opponent Nos.1 to 3, whereas, opponent Nos.4&5 are exonerated. MACP No.148/2021 stands dismissed against opponent Nos.1 to 3. MACP No.156/2021 stands allowed against opponent Nos.4&5, whereas, opponent Nos.1 to 3 are exonerated.
2. The claimants are entitled to recover the amount of compensation as mentioned in below table against their claim petitions with cost and interest at the rate of 9% p.a. from the date of the claim petitions till realization of the amount from the opponent Nos.1 to 3, jointly and severally.

Sr. No.	MACP Nos.	Amount of compensation awarded by the Tribunal
1	18/2021	Rs.29,93,817/-

2	156/2021	Rs.6,54,600/-
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3. The interim amount of compensation, if any, paid or deposited under the principle of No Fault Liability, will be adjusted from the aforesaid amount of compensation awarded in this final adjudication.
4. In **MACP No.18/2021**, claimant No.1 shall get **60%** share, claimant Nos.2&3 shall get **10% each** share and claimant no.4 shall get **20%** share in the awarded amount.
5. As per the award, the concerned opponents are directed to transfer the amount of court fees through RTGS or NEFT mode in the account of Additional District Judge, Bharuch, the details of account are as under:

A/c. Name	Additional District Judge, Bharuch
Branch Name	State Bank of India, Muktinagar Branch, Bharuch
A/c. No.	40759978524
IFSC Code	SBIN0008278
MICR	392002002

6. After depositing the amount of court fees in the account of Additional District Judge, Bharuch, the concerned opponents shall inform with full details, such as, MACP Number, Date of Award, Transfer of Court Fee Amount and Date of Transfer to this Tribunal on e-mail I.D. mactbha@gmail.com.
7. The claimants are hereby directed to furnish the details of their bank account maintained with Nationalized Bank along with first page of the Passbook showing Account Number, Name of the Account Holder, IFSC Code and

other required details duly supported by an affidavit within reasonable time before this Tribunal. It is further directed to the claimants to submit the certificate of the banker certifying that the account is of the concerned claimants. Upon receipt of the aforesaid bank details, as per the decision of the Hon'ble Apex Court in the case **Paraminder Singh v. Honey Goyal & Ors.** in Civil Appeal arising out of SLP (C) No.4484 of 2020, the concerned opponents are directed to transfer the awarded amount into bank account of concerned claimants within 30 days. Before transferring the amount into the bank account of the concerned claimant/s, the concerned opponents shall inform the concerned bank of the claimants well in advance regarding the transfer of the awarded amount, so that the concerned bank is able to give effect to the direction of this tribunal regarding depositing of respective amount in fixed deposit.

8. The concerned opponents are also directed to intimate this tribunal on [e-mail I.D. mactbha@gmail.com](mailto:mactbha@gmail.com) with respect to transfer of awarded amount in the bank account of the concerned claimant along with proof of such transfer, such as, MACP Number, Name of Claimant, Amount Transfer, Date of Transfer, Name of Claimant's Bank with Account Number within 7 days from date of transfer.
9. Out of the amount deposited by the opponents in MACP Nos.18 & 156 of 2021, **70%** amount shall be invested in FDR by the concerned bank in the name of concerned claimants for a period of 5 years. The bank of the claimants is directed to intimate the details with respect to the Fixed

Deposit/s made as per the present award in the name of claimant/s to this tribunal immediately after depositing the amount in FDR. The concerned Bank is directed not to grant any loan, advances or withdrawal against the said FDRs without obtaining prior permission of this Tribunal. However, the claimant/s will be at liberty to withdraw the periodical interest accrued on the said FDRs. The Nazir of the District Court to ensure the compliance of this award.

10. The cost of the proceedings incurred by the claimants as well as the opponents shall be born by the opponents.
11. A certified copy of this judgment be kept in case record of MACP Nos.148 & 156 of 2021.
12. Registry is directed to forward the copy of the judgment through e_mail to the insurance company as well as concerned bank of the claimants.
13. Award be drawn accordingly.

Pronounced in the open Court today on 5th May, 2026.

Date: 05/05/2026

(Rajesh Karmarsinh Desai)
MAC Tribunal (Main)
Bharuch
Code No.GJ00912