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Duration : 3Y-1M-23D

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

MACP No.71/2023 with MACP No.72/2023

Exh. ____

MACP No.71/2023

Claimant: Kishorbhai Chhotubhai Solanki
R/o. Soneri Mahel, Dumvad,
Tal. Dist. Bharuch.

MACP No.72/2023

Claimants
1. Morkidevi Ranchhoda Ram
2. Manaram Ranchhoda Ram
3. Kantilal Ranchhoda Ram
All are R/o. Sargaro Ka Vas,
Bhorda, Jalor (Rajasthan).

V/s.

Opponents :
1. Dipeshkumar Harshadray Ramnandi
2. Nilaykumar Zinabhai Patel
Both are R/o. Jora Falia,
At. Godavadi, Tal. Mandvi,
Dist. Surat.
3. Shriram General Insurance Co. Ltd.
At. 7 X Corridor, Above Sales India,
Old N.H. No.8, Bholav, Bharuch.

Appearance:-
Ld. Advocate Mr. J. S. Patel, for the claimants in both petitions.
Ld. Adv. Mr.K.T.Patel, for opponent Nos.1&2 in both petitions.
Ld. Adv. Mr.M.N.Gohil, for opponent No.3 in both petitions

Claim petition to get compensation of ***Rs.5,00,000/-*** in ***MACP No.71/2023*** and ***Rs.50,00,000/-*** in ***MACP No.72/2023*** under the provisions of ***Section 166 of the Motor Vehicles Act, 1988.***

JUDGMENT

1. The claimant of MACP No.71/2023 is the injured who sustained bodily injuries and the claimants of MACP No.72/2023 are the legal heirs and representatives of deceased Ranchhoda Ram Vegta Ram who died in the accident. The claimants have filed claim petitions and claimed compensation of ***Rs.5,00,000/-*** in ***MACP No.71/2023*** and ***Rs.50,00,000/-*** in ***MACP No.72/2023*** under the provisions of ***Section 166 of the Motor Vehicles Act, 1988.***

1.1 In **MACP No.72/2023**, claimant No.1 is the wife of the deceased and claimant Nos.2&3 are the children of the deceased.

1.2 As both the claim petitions have arisen out of the same accident, to ensure consistency and avoid conflicting decisions, both the claim petitions are decided by this common judgment.

2. The brief facts of this petition are as under:-

2.1 That, on 19/12/2022 Kishorbhai was serving as 'Security Guard' and Ranchhoda Ram Vegta Ram was serving as 'Manager' in 'Patel ni Wadi'. On the date of accident, Ranchhoda Ram was travelling as pillion rider on Motorcycle No.GJ16-CG-6701, which was being driven by Kishorbhai (claimant of MACP No.71/2023) at moderate speed and proceeding towards another hotel.

When they reached near Vimco Showroom on Vadodara – Bharuch N.H. No.48, at that time opponent No.1 came by driving Car No.GJ19-BA-1048 at high speed with rash and negligent manner and dashed with motorcycle from behind. As a result, both the rider and the pillion rider thrown off the road, whereby Kishorbhai sustained bodily injuries and Ranchhoda Ram succumbed to injuries during the treatment on 27.12.2022 in Global Lifecare Multispeciality Hospital, Bharuch. The FIR with respect to the said accident was registered vide CR No.11199001221242/2022 with Bharuch City 'C' Division Police Station against opponent No.1 i.e. driver of car.

2.2 According to the claimant of **MACP No.71/2023**, he was aged 39 years at the time of accident. It is stated that the claimant was employed as 'Security Guard' in "Patel ni Wadi" and getting monthly salary of Rs.15,000/- at the time of the accident. It is further stated that in the said vehicular accident, claimant had sustained fracture on left shoulder and was immediately taken to Global Lifecare Multispeciality Hospital, Bharuch where he received indoor treatment from 20.12.2022 to 21.12.2022 and discharged from the hospital. He was, thereafter, admitted in Jayaben Modi Hospital, Ankleshwar where he received indoor treatment from 06.01.2023 to 09.01.2023. It is also stated that claimant had incurred expenses of Rs.1,00,000/- 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 the amount of Rs.5,00,000/- as compensation from the opponents under different heads.

2.3 According to the claimants of **MACP No.72/2023**, deceased Ranchhoda Ram was aged 65 years at the time of accident. It is stated that deceased was employed as 'Manager' in "Patel ni Wadi" and getting monthly salary of Rs.35,000/- at the time of accident. It is further stated that in the alleged vehicular accident, deceased sustained grievous head and chest injuries and was immediately taken to Global Lifecare Multispeciality Hospital, Bharuch where he received indoor treatment from 19.12.2022 to 27.12.2022. However, he succumbed to injuries during the treatment on 27.12.2022. It is also stated that the claimants had incurred Rs.10,00,000/- towards the medical treatment of deceased. It is further stated that had deceased been alive, he would have earned more but due to sad demise of deceased, the claimants have suffered economic loss and claimed Rs.50,00,000/- as compensation under different heads.

2.4 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. car driver and opponent No.2 being owner of the car has insured his vehicle with opponent No.3, hence all the opponents are jointly & severally liable to pay the amount of compensation to the claimant.

3. Upon due service of notices, opponent Nos.1&2 appeared through their advocate and filed reply at **Exh.10** & **Exh.11** (in MACP No.71/2023) and **Exh.21** & **Exh.23** (in MACP No.71/2023) respectively. It is inter alia contended that, all the averments made in the claim petition are not true and correct, and denied in toto. It is stated that opponent No.1 was driving his vehicle at moderate speed by observing traffic rules, however, the motorcyclist came on the wrong side of the road in negligent manner and dashed with his car. It is further stated that opponent No.1 i.e. driver of car was acquitted by the trial court vide judgment and order dated 18.09.2023 passed in CC No.1947/2023, and therefore it is clear that accident did not occur due to negligence of opponent No.1. It is also stated that Hundai Car No.GJ19-AB-1048 was insured with opponent No.3 on the date of accident, therefore the insurance company is liable to pay the amount of compensation to the claimants. It is therefore prayed that claim petitions are required to be dismissed against opponent Nos.1&2.

3.1 The opponent No.3 – Insurance Company has appeared through its advocate and filed reply at **Exh.15** (in MACP No.71/2023) and **Exh.19** (in MACP No.72/2023) 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, causing injuries and resultant disablement to injured Kishorbhai, injuries and resultant death of Ranchhoda Ram, age and income of the victims are not true and correct. It is stated that accident occurred due to sole negligent driving on the part of rider of motorcycle i.e. claimant of MACP No.71/2023. It is denied that accident occurred due to negligence of opponent No.1 – driver of car. It is contended that opponent No.1 i.e. driver of car was not holding valid and effective driving licence on the date of accident, and thereby the insured had committed breach of policy conditions. Thus, opponent No.3-insurance company may be exonerated from its liability to pay compensation to the claimants.

4. The claimant of **MACP No.71/2023** has adduced following oral as well as documentary evidences:

Sr. No.	**Evidences**	**Exh.**
	Oral Evidences	
1	Kishorbhai Chhotubhai Solanki (Claimant)	**17**
2	Pravinbhai Zaverbhai Patel, Accountant of 'Patel ni Wadi'	**35**
	Documentary Evidences	
1	Authority letter to Pravinbhai Patel to depose before the tribunal	**36**
2	Certificate of salary of claimant	**37**
3	Copy of FIR	**38**
4	Copy of Panchnama of place of occurrence	**39**
5	Discharge summary issued by Global Lifecare Multispeciality Hospital	**40**
6	Discharge summary issued by Jayaben Modi Hospital	**41**
7	Copy of RC Book of Car	**42**
8	Copy of Insurance policy of Car	**43**

9	Copy of Aadhar Card of claimant	**44**
10	Medical bills of Rs.27,900/-	**45**
11	Discharge summary issued by Jayaben Modi Hospital	**46**
12	Disability certificate	**47**

4.1 The claimants of **MACP No.72/2023** have adduced following oral as well as documentary evidences:

Sr. No.	**Evidences**	**Exh.**
	Oral Evidences	
1	Manaram Ranchhoda Ram (Claimant No.2)	**26**
2	Pravinbhai Zaverbhai Patel, Accountant of 'Patel ni Wadi'	**34**
	Documentary Evidences	
1	Authority letter to Pravinbhai Patel to depose before the tribunal	**35**
2	Certificate of salary of deceased	**36**
3	Copy of FIR	**37**
4	Copy of Panchnama of place of occurrence	**38**
5	Copy of Inquest Panchnama	**39**
6	Copy of Postmortem Report	**40**
7	Copy of Death summary of deceased	**41, 45**
8	Copy of RC Book of Car	**42**
9	Copy of Insurance policy of Car	**43**
10	Copy of Aadhar Card of deceased	**44**
11	Medical bills of Rs.4,47,261/-	**46**

4.2 The learned advocate for the insurance company has adduced following oral as well as documentary evidences:

Sr. No.	**Evidences**	**Exh.**
	Oral Evidences	

1	Dipeshkumar Harshadray Ramanandi i.e. opponent No.1 (in MACP No.71/2023)	**51**
2	Dipeshkumar Harshadray Ramanandi i.e. opponent No.1 (in MACP No.72/2023)	**50**
	Documentary Evidences	
1	Copy of judgment of CC No.1947/2023 (in MACP No.71/2023)	**52**
2	Copy of judgment of CC No.1947/2023 (in MACP No.72/2023)	**51**

5. On completion of evidence, Ld. Advocate for the claimant has filed closing pursis at **Exh.48** (in MACP No.71/2023) and **Exh.47** (in MACP No.72/2023), whereas, Ld. Advocate for the insurance company filed closing pursis at **Exh.53** (in MACP No.71/2023) and **Exh.52** (in MACP No.72/2023).

6. Heard Learned Advocates for the parties and perused the evidence produced on record.

7. Following issues are framed at **Exh.16** (in MACP No.71/2023) for determination of this claim petition:

1. Whether the claimant proves that the driver of the vehicle involved in this incident was rash and negligent in driving his vehicle ?
2. Whether the claimant proves that he sustained injuries and permanent disability due to rash and negligent driving of the driver of the vehicle involved in this accident ?
3. Whether the claimant is entitled to any amount of compensation ? If yes, to what extent ?
4. What order ?

8. Following issues are framed at **Exh.25** (in MACP No.72/2023) for determination of this claim petition:

1. Whether the claimants prove that the driver of the vehicle involved in this incident was rash and negligent in driving his vehicle ?
2. Whether the claimants prove that deceased died because of rash and negligent driving of the driver of the vehicle involved in this accident ?
3. Whether the claimants are entitled to any amount of compensation ? If yes, to what extent from whom ?
4. What order ?

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

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

REASONS

Issue Nos.1&2

10. 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 appears to it to be just.

10.1 So far as the question of negligence is concerned, the claimant has submitted his affidavit of examination-in-chief at **Exh.17** (MACP No.71/2023) and claimant No.2 who is the son of deceased Ranchhoda Ram (MACP No.72/2023) has filed his affidavit of examination-in-chief at **Exh.26** and narrated the facts as mentioned in their claim petitions. During cross-examination of claimant (MACP No.71/2023), he admitted that he was driving motorcycle at the time of accident. He stated that accident took place on highway. He denied that both the vehicles met with head-on-collision. He further stated that police complaint regarding the accident was lodged by him. He also stated that accident took place at about 12:00 midnight. He denied that accident occurred solely due to his negligence and there was no negligence of car driver. Claimant No.2 (MACP No.72/2023) has admitted in his cross-examination that, he was not the eyewitness to the accident.

10.2 Dipeshkumar Harshadray Ramanandi, Car driver (Opponent No.1) has been examined by Ld. Advocate for the insurance company at **Exh.51** (MACP No.71/2023) and **Exh.50** (MACP No.72/2023). In his examination-in-chief, he stated that on 19.12.2022 he was driving i20 Car No.GJ19-BA-1048 owned by Nilaykumar and proceeding towards his home from Ahmedabad. He stated that when he was going down over-bridge on the National Highway and taking a turn, motorcyclist suddenly came from the opposite side and in an attempt to save the motorcyclist, he turned his vehicle, as a result of which his car collided with the divider. He further stated that he does not know how the motorcycle collided with his car. According to him, accident occurred due to the motorcycle coming from the opposite direction. He further stated that charge-sheet was filed against him in the said case; however, he was acquitted by the trial court and copy of the judgment is produced at **Exh.52** (MACP No.71/2023) and **Exh.51** (MACP No.72/2023). During his cross-examination, he admitted that FIR and charge-sheet were filed against him and criminal case was registered against him. He admitted that the accident occurred at about 11:00 to 11:30 p.m., and he left the vehicle at the spot and fled away from the scene and surrendered before the police on the next day. He further admitted that, till filing of the charge-sheet, he never stated that accident occurred due to the motorcycle coming from the opposite direction. He admitted that he was travelling from Vadodara to Bharuch. He denied that the motorcycle was going ahead of his car and he dashed it from behind. He stated that he does not know the exact speed of his car; however, he voluntarily stated that he slowed down the speed of his vehicle while going down the over-bridge.

10.3 The claimant has produced on record the copy of the FIR at **Exh.38** (MACP No.71/2023) and spot panchnama at **Exh.39** (MACP No.71/2023), both of which mention the details of Car No.GJ19-BA-1048 and Motorcycle No.GJ16-CG-6701, and thereby prima facie established the involvement of the said vehicles. Upon perusal of the FIR, it appears that the same was lodged by the claimant himself, wherein he has narrated the facts as mentioned in his claim petition. It further transpires from the FIR that after the accident, the driver of the car left the vehicle at the spot and fled away from the scene. The spot panchnama at **Exh.39** (MACP No.71/2023) clearly indicates that the incident occurred on Vadodara–Bharuch N.H. No.48. The panchnama further reveals that the roadside railing was found broken and both the vehicles involved in the accident had been removed from the scene of offence. It is pertinent to note that no bloodstains or any other visible marks were found at the spot.

10.4 Upon careful consideration of the evidence on record, this Tribunal finds that the evidence of opponent No.1 i.e. car driver is not reliable and does not inspire confidence. Though he has attempted to shift the entire blame on the motorcyclist by alleging that the motorcycle came from the opposite side, such version is not supported by any reliable evidence. On the contrary, opponent No.1 has admitted in his cross-examination that the FIR and charge-sheet were filed against him and criminal case was also registered against him. It is also an admitted position that he fled from the scene of the accident after leaving the vehicle at the spot and surrendered before the police only on the next day which creates serious doubt about his version. The car driver has admitted that, till filing of the charge-sheet, he never stated before any authority that the accident occurred due to the motorcycle coming from the opposite direction. This material omission amounts to significant contradiction, thereby rendering his defence an afterthought. His inability to state the speed of his car further weakens his testimony. In view of these material contradictions, omissions and his doubtful conduct, the evidence of opponent No.1 cannot be relied upon and the same is not considered.

10.5 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 car driver did not apply the brakes in a timely manner while descending the National Highway near Vimco Showroom. The absence of brake marks also casts serious doubt on the contention of the car driver that he attempted to save the motorcyclist, his car collided with road side railing. There is no credible or cogent evidence on record to support the contention that the motorcyclist suddenly came on the road, nor is there any material to show that the car driver took timely steps to avoid the accident. The defence raised by the insurance company that the claimant–motorcyclist suddenly came on the road is not supported by any independent or corroborative evidence. The learned advocate for the insurance company has relied upon the judgment in Criminal Case No.1947/2023 produced at **Exh.52** (MACP No.71/2023), wherein the car driver came to be acquitted of the charges and was held not responsible for the accident. However, it is a well-settled principle of law that acquittal in a criminal case 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*. Further, upon perusal of the FIR, it is evident that the same was lodged by the claimant against the car driver. After due investigation, police filed charge-sheet against Dipeshkumar Harshadray Ramanandi i.e. opponent No.1 and this fact is admitted by him in his cross-examination at **Exh.51** (MACP No.71/2023). Being driver of the car, it was his duty to drive the vehicle at moderate speed with due care and caution, especially while going down the National Highway. Had he exercised reasonable care and reduced the speed of his vehicle, the accident could have been avoided. In view of the entire evidence on record, it is established that the accident occurred solely due to the negligence of the opponent No.1 i.e. car driver, resulting in bodily injuries and permanent disability to the claimant as well as death of Ranchhoda Ram. There is no material on record to attribute any negligence to the claimant–motorcyclist in causing the accident. Hence, I answer Issue Nos.1&2 accordingly in ***"Affirmative"***.

Issue No.3

In MACP No.71/2023 (Injury)

11. 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.

12. On perusing the Aadhar Card at **Exh.44**, claimant's birth date is mentioned as 19.05.1980. The claimant has not produced birth certificate or school leaving certificate to prove his age. However, in absence of the said evidence, Aadhar Card at **Exh.44** is considered to decide age of the claimant for the purpose of just compensation. Thus, claimant was 42 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 **14** is applicable.

13. The claimant has stated in his affidavit of examination-in-chief vide **Exh.17** that, he was employed as 'Security Guard' in 'Patel ni Wadi' and getting monthly salary of

Rs.15,000/- at the time of accident. To prove the income, the claimant has examined Pravinbhai Zaverbhai Patel, Accountant of ‘Patel ni Wadi’ at **Exh.35**. He deposed that he appeared before the Tribunal on the basis of authority letter signed by the proprietor Nareshbhai Bhagvanbhai which is produced at **Exh.36**. He further stated that the claimant was employed as ‘Security Guard’ at ‘Patel ni Wadi’ and was receiving monthly salary of Rs.15,000/- in cash and certificate to that effect is produced at **Exh.37**. However, during his cross-examination, he admitted that he has not produced any documentary evidence to establish that he was working as an ‘Accountant’ at ‘Patel ni Wadi’ or Nareshbhai Bhagvanbhai was the proprietor thereof. He further admitted that he has not produced any records to show payments made to employees in the register of “Patel ni Wadi.” He also admitted that no documentary evidence has been produced to establish that the injured Kishorbhai Chotubhai Solanki was employed at ‘Patel ni Wadi’ or any salary was paid to him. He further admitted that all income and expenditure of the establishment are required to be reflected in the Income Tax records; however, no such record has been produced to show payment of salary in cash to the claimant. He also admitted that the certificates and documents produced on record were typed on his own computer.

13.1 So far as income of the claimant is concerned, it is alleged that claimant was employed as ‘Security Guard’ at “Patel ni Wadi” and was getting monthly salary of Rs.15,000/- at the time of the accident. In support of this contention, claimant has examined Pravinbhai Zaverbhai Patel at **Exh.35** who claimed to be the Accountant of “Patel ni Wadi”. However, upon careful scrutiny of his cross-examination, it appears that the said witness has failed to substantiate his credentials as an Accountant or the status of the alleged proprietor. He has also failed to produce any documentary evidence, such as, salary registers, payment records or Income Tax documents to establish that the claimant was employed at “Patel ni Wadi” or he was receiving monthly salary of Rs.15,000/-. Moreover, the witness has admitted in his evidence that the documents produced were typed on his own computer, coupled with the absence of any supporting official or statutory record, renders the said evidence unreliable and unworthy of acceptance. Merely because it is mentioned in the FIR that claimant was employed as ‘Security Guard’ at “Patel ni Wadi” without any supporting material, the same cannot be considered. In the absence of cogent and convincing evidence to prove the actual income of the claimant, income as alleged by the claimant is not considered. However, considering the age and avocation of claimant, nature of work performed by the claimant and considering the minimum wages prevailing at the relevant time, it would be just and proper to consider the income of the claimant as **Rs.9,400/- p.m.** and **Rs.1,12,800/- p.a.**

13.2 Considering the age of the claimant at the time of accident, this is a fit case to give rise of **25%** in actual salary i.e. **Rs.28,200/-** (Rs.1,12,800 x 40%) in the actual income of the claimant and therefore, annual income including future rise in salary of the claimant would be Rs.1,12,800 + Rs.28,200 = **Rs.1,41,000/-**.

14. To prove the injuries, the claimant has categorically stated in his evidence at **Exh.17** that in the said vehicular accident, he sustained fracture on left shoulder and was immediately taken to Global Lifecare Multispeciality Hospital, Bharuch where he received indoor treatment from 20.12.2022 to 21.12.2022 and discharged from the hospital. He was, thereafter, admitted in Jayaben Modi Hospital, Ankleshwar where he received indoor treatment from 06.01.2023 to 09.01.2023.

14.1 So far as the disability sustained by the claimant is concerned, the claimant has relied upon the disability certificate issued by Dr. Rajendra L. Rana, M.S. (Orthopedic) which is at **Exh.47** from which it appears that claimant had sustained fracture of left clavicle. It also appears from discharge summary at **Exh.40 & Exh.41** that, claimant has received indoor treatment from 20.12.2022 to 21.12.2022 in Global Lifecare Multispeciality Hospital, Bharuch and from 06.01.2023 to 09.01.2023 in Shrimati Jayaben Modi Hospital, Ankleshwar. Considering the above clinical findings, the doctor has certified that the claimant has sustained permanent partial disability @ 23% of left upper limb. However, Ld. Advocates for the claimant and insurance company have no objection to consider 10% 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 **10%**.

15. Taking into considering the functional disability of the claimant which is assessed as **10%**, his yearly loss of income would come to round off **Rs.14,100/- p.a. [10% of Rs.1,41,000].** As above discussed, considering the age of the claimant, the multiplier of **14** would be applicable, hence, the future economic loss of income would come to **Rs.1,97,400/-** (Rs.14,100 x 14 multiplier).

16. 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.**

17. On perusing the discharge summary at **Exh.40 & Exh.41**, it appears that claimant has received indoor treatment from 20.12.2022 to 21.12.2022 in Global Lifecare Multispeciality Hospital, Bharuch and from 06.01.2023 to 09.01.2023 in Shrimati Jayaben Modi Hospital, Ankleshwar,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.**

18. According to say of claimant, he could not do his work on account of accidental injuries. Therefore, considering the nature of injury, he would not have worked for a period of around 2 months. Thus, actual loss of income would be Rs.9,400/- p.m. income x 2 months = Rs.18,800. Hence, it is just and reasonable to award sum of **Rs.18,800/- under the head actual loss of income.**

19. According to averments made in the oral evidence of claimant at **Exh.17**, he incurred Rs.1,00,000/- towards his medical treatment. However, claimant has produced medical bills of Rs.27,900/- at **Exh.45**. Therefore, it would be just and proper to award **Rs.27,900/- towards medical expenses**.

20. 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	19.12.2022
2	Name of the injured	Kishorbhai Chhotubhai Solanki
3	Age of the injured	42 Years
4	Occupation of the injured	Service
5	Income of the injured	Rs.9,400/- per month
6	Nature of injury	Fracture of left clavicle
7	Period of hospitalization	From 20.12.2022 to 21.12.2022 in Global Lifecare Multispeciality Hospital, Bharuch and from 06.01.2023 to 09.01.2023 Jayaben Modi Hospital,

		Ankleshwar
8	Whether any permanent disability? If yes, give details	Yes. 21% permanent disability.
9	**Computation of Compensation**	
Sr. No.	**Heads**	**Awarded by the Tribunal**
10	**Pecuniary Loss**	
(i)	Expenditure on treatment	Rs.27,900/-
(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.18,800/-
(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, dejectment 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	21%

(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	10%
(iv)	Loss of future income (Income x % Earning Capacity x Multiplier)	Rs.1,97,400/-
13	**Total Compensation**	**Rs.2,74,100/-**
14	Interest Awarded	**9%**

21. Hence, the claimant is entitled to get **Rs.2,74,100/-** as compensation.

<u>In MACP No.72/2023</u> (Fatal)

22. 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.

23. On perusing the Aadhar Card at **Exh.44**, deceased's birth date is mentioned as 23.09.1956. The claimants have not produced birth certificate or school leaving certificate of deceased. However, for deciding just compensation, the date of birth mentioned in Aadhar card is considered to determine age of the deceased. Therefore, deceased was 66 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 **5** is applicable.

24. The claimant No.2 who is the son of the deceased has submitted in his affidavit at **Exh.26** that, deceased was employed as 'Manager' in "Patel ni Wadi" and getting monthly salary of Rs.35,000/- at the time of accident. So far as income of the deceased is concerned, the claimants have examined Pravinbhai Zaverbhai Patel, Accountant of 'Patel ni Wadi' at **Exh.34**. He deposed that he appeared before the Tribunal on the basis of authority letter signed by the proprietor Nareshbhai Bhagvanbhai which is produced at **Exh.35**. He further stated that the deceased was employed as 'Manager' at 'Patel ni Wadi' and was receiving monthly salary of Rs.35,000/- in cash and certificate to that effect is produced at **Exh.36**. However, during his cross-examination, he admitted that he has not produced any documentary evidence to establish that he was working as an 'Accountant' at 'Patel ni Wadi' or Nareshbhai Bhagvanbhai was the proprietor thereof. He further admitted that he has not produced any records to show payments made to employees in the register of "Patel ni Wadi." He also admitted that no documentary evidence has been produced to establish that the deceased Ranchhoda Ram was employed at 'Patel ni Wadi' or any salary was paid to him. He further admitted that all income and expenditure of the establishment are required to be reflected in the Income Tax records; however, no such record has been produced to show payment of salary in cash to the deceased. He also admitted that the certificates and documents produced on record were typed on his own computer.

24.1 Considering the material on record and deposition of witness (**Exh.34**), it is the case of the claimants that deceased was employed as 'Manager' at "Patel ni Wadi" and was getting monthly salary of Rs.35,000/- at the time of the accident. In support of this contention, claimants have examined Pravinbhai Zaverbhai Patel at **Exh.34** who claimed to be the Accountant of "Patel ni Wadi". However, upon careful scrutiny of his cross-examination, it appears that the said witness has failed to substantiate his credentials as an Accountant or the status of the alleged proprietor. He has also failed to produce any documentary evidence, such as, salary registers, payment records or Income Tax documents to establish that the deceased was employed at "Patel ni Wadi" or he was receiving monthly salary of Rs.35,000/-. Moreover, the witness has admitted in his evidence that the documents produced were typed on his own computer, coupled with the absence of any supporting official or statutory record, renders the said evidence unreliable and unworthy of acceptance. Merely because it is mentioned in the FIR that deceased was employed as 'Manager' at "Patel ni Wadi" without any supporting material, the same cannot be considered. In the absence of cogent and convincing evidence to prove the actual income of the deceased, income as alleged by the claimants is not considered. However, considering the age and avocation of deceased, nature of work performed by the deceased and considering the minimum wages prevailing at the relevant time, it would be just and proper to consider the income of the deceased as **Rs.15,000/- p.m.** and **Rs.1,80,000/- p.a.**

24.2 Since deceased was aged 66 years, he is not entitled for future prospects as per the decision reported in the case **National Insurance Co. Vs. Pranay Sethi** reported in ***2017 (16) SCC 680.*** Hence, deceased's yearly income at the time of accident is considered as **Rs.1,80,000/-**.

25. As there are 3 (three) dependent family members of the deceased, therefore **1/3**rd amount is required to be deducted towards the personal and living expenses of the deceased to arrive at just compensation.

26. After deduction of personal and living expenses of the deceased, dependency loss would be Rs.1,80,000/- p.a. income – Rs.60,000/- (1/3 of total income Rs.1,80,000/-) = Rs.1,20,000 x 5 multiplier = Rs.6,00,000/-. Therefore, it is just and proper to award sum of **Rs.6,00,000/- under the head of loss of dependency.**

27. 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***.

27.1 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.*

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

28. It is stated by the claimant No.2 in his evidence at **Exh.26** that deceased Ranchhoda Rama has sustained grievous head injury, and therefore he was immediately taken to Global Lifecare Multispeciality Hospital, Bharuch where he received indoor treatment from 19.12.2022 to 27.12.2022; however, he succumbed to injuries on 27.12.2022 due to cardio respiratory arrest. The death summary issued by Global Lifecare Multispeciality Hospital, Bharuch at **Exh.45** corroborates the said fact. It is also stated by the claimants that they had incurred Rs.10,00,000/- towards the treatment of deceased. The claimants have produced medical bills of Rs.4,47,261/- at **Exh.46**. Thus, it would be just and proper to award round off **Rs.4,47,300/- towards medical bills**. Considering the amount of medical expenses, the disbursement amount in cash is passed accordingly by this tribunal.

29. 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	19.12.2022		
2	Name of the deceased	Ranchhoda Ram Vegta Ram		
3	Age of the deceased	66 Years		
4	Occupation of deceased	Service		
5	Income of the deceased	Rs.1,80,000/- p.a.		
6	Name, age and relationship of legal representatives of deceased			
	Name		**Age**	**Relation**
i	Morkidevi Ranchhoda Ram		60	Wife
ii	Manaram Ranchhoda Ram		48	Son
iii	Kantilal Ranchhoda Ram		43	“

COMPUTATION OF COMPENSATION

Sr. No.	Description	Amount
7.	Yearly Income of deceased **(A)**	Rs.1,80,000/- p.a.
8.	**Add** future Prospect **(B)**	**--**
9.	**Less** personal expenses of the deceased **(C)**	1,80,000 x 1/3 = **Rs.60,000/-**
10.	Annual Loss of Dependency **[(A + B) - C = D]**	1,80,000 - 60,000/- = **Rs.1,20,000/-**
11.	Multiplier **(E)**	**5**
12.	Total loss of dependency **(D x E) = (F)**	(1,20,000 x 5) **Rs.6,00,000/-**
13.	Compensation for loss of Spousal and Parental Consortium **(G)**	48,400 x 3 = **Rs.1,45,200/-**
14.	Compensation for loss of estate **(H)**	**Rs.18,150/-**
15.	Compensation towards funeral expenses **(I)**	**Rs.18,150/-**
16.	**Medical Expenses (J)**	**Rs.4,47,300/-**
17.	Total Compensation **(F + G + H + I + J = (K)**	**Rs.12,28,800/-**
18.	Rate of Interest Awarded	**9% p.a.**

30. Thus, the claimants are entitled to get **Rs.12,28,800/- as compensation**.

Liability

31. In view of above discussion, the present accident had occurred because of negligent driving of opponent No.1 i.e. car driver involved in the accident. The opponent No.2 was the owner of Car No.GJ19-BA-1048 at the relevant time is also established from the certificate of registration of the subject vehicle at **Exh.42** (MACP No.71/2023). Further, on perusing insurance policy of Car No.GJ19-BA-1048 at **Exh.43** (MACP No.71/2023), it transpires that the subject vehicle was insured with the opponent No.3 for the period from 02.10.2022 to 01.10.2023. Thus, it was valid insurance on 19.12.2022 i.e., the date of accident. Therefore, the claimant/s are 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.3 in the **'affirmative'** accordingly and for Issue No.4, the following final order is passed:-

ORDER

1. Both the claim petitions stands partly allowed.

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	71/2023	Rs.02,74,100/-
2	72/2023	Rs.12,28,800/-

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.72/2023**, claimant No.1 shall get **80%** share and claimant Nos.2&3 shall get **10% each** share in the awarded amount.

5. As per the award, the 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 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 opponents are also directed to intimate this tribunal on e-mail I.D. 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 No.72/2023 and considering the medical bills, **60%** amount shall be invested in FDR by the concerned bank in the name of concerned claimants for a period of 5 years. Whereas in MACP No.71/2023, **70%** amount shall be invested in FDR by the concerned bank in the name of 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. 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.

12. Award be drawn accordingly.

Pronounced in the open Court today on 16th April, 2026.

Date: 16/04/2026

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