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Filed On:	22/07/2024
Decided On :	22/04/2026
Duration :	1Y-9M-0D

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

MACP No.261 of 2024
Exh. ______

Claimants:
1. Sunilbhai Arvindbhai Shah
2. Beenaben Sunilbhai Shah
   Both are R/o. B-23, Natraj Society,
   B/h. Delux Society, Nizampura,
   Fatehgunj, Vadodara

Versus

Opponents:
1. Sunilkumar Jaybirsinh
   R/o. 1, Sector 96, At. Jhund-Sarat,
   Tehsil Forruknogar, Dist. Gurgaon,
   Hariyana.
2. New India Assurance Co. Ltd.
   R/o. Above Axis Bank, College Campus,
   Bholav, Bharuch.

Appearance:
Ld. Advocate Mr. C. R. Intwala, for the claimant.
Opponent No.1 Ex-parte.
Ld. Advocate Mr. K. N. Chavda, for the opponent No.2.

Claim : Rs.2,50,00,000/- U/s.166 of the M. V. Act, 1988.

JUDGMENT

1. The claimants being parents of deceased Niket Sunilbhai Shah (hereinafter referred to as the 'deceased' for short) who died in a road accident, have preferred the present claim petition u/s 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.2,50,00,000/- from the opponents.

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

2.1 That, on 15/06/2024 at about 11:30 am., Niket and his friends were traveling from Delhi to Chopta, Uttrakhand in Mini Tempo Trex No.HR55-AS-3679 (hereinafter referred to as the ‘Tempo’ for short). The said tempo was being driven by its driver at high speed and in a rash and negligent manner, and thereby lost control over the vehicle and the tempo fall into 200 meter deep valley. As a result, Niket along with others died on the spot. The FIR with respect to the said accident was registered with Rudraprayag Police Station vide FIR No.38/2024 against driver of tempo.

2.2 According to the claimants, the deceased was aged 27 years at the time of accident. It is stated that deceased was employed as ‘Management Trainee’ in American Express (I) Pvt. Ltd. Gurgaon and getting monthly salary of Rs.1,50,000/- at the time of the accident. It is further stated that claimants had incurred Rs.9,00,000/- towards dead body transportation in Air Ambulance. 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.2,50,00,000/- as compensation under different heads.

2.3 It is further submitted that the accident occurred due to rash and negligent driving of driver of tempo and opponent No.1 had insured his vehicle with opponent No.2 at the time of accident. Therefore, opponents are jointly and severally liable to pay the amount of compensation to the claimants.

3. Upon due service of notice, opponent No.1 has not appeared before the Tribunal, and therefore, the matter was ordered to be proceeded ex-parte against him vide order dated 19.06.2025.

3.1 The opponent No.2 – New India Assurance Company appeared through its advocate and filed reply at **Exh.13** 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 vehicle, causing injuries and resultant death of the deceased, age and income of the deceased are not true and correct. It is denied that the deceased was the passenger in the alleged tempo. It is further denied that driver of the alleged vehicle lost control over the vehicle, and thereby the vehicle fell into valley and all the persons died. It is contended that seating capacity of the vehicle was 20 whereas 26 persons including driver were travelling in the vehicle, and thereby violated condition of the permit by the insured. It is further contended that accident occurred on hilly region of Uttrakhand Sate but driving licence of driver Karan Singh was not endorsed for driving vehicle on hilly regions. It is also contended that accident occurred on 15.06.2024 at 11:30 am, and driver died on the spot but his driving licence was endorsed for hill roads of Uttarakhand on 15.06.2024 at 3:28:38 pm., i.e., after 4 hours his death, which suggest that someone else made arrangement to endorse his driving licence with hill endorsement. Thus, it is established that driver of the tempo was not holding valid and effective driving licence to drive vehicle on hilly region of Uttarakhand State at the time of accident, and thereby the insured had committed breach of policy conditions. Thus, insurance company may be exonerated from its liability to pay compensation to the claimants.

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

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

Oral Evidence		
1	Sunilbhai Arvindlal Shah	**16**
2	Aryan Pankajbhai Dhingra, Employee of American Express (I) Pvt. Ltd.	**23**
Documentary Evidences		
1	Authority letter for witness Aryan Dhingra	**24**
2	Certificate u/s 63 of BSA	**25**
3	Copy of appointment letter of deceased	**26**
4	Salary slips from July, 2023 to June, 2024	**27**
5	Performance and Compensation Statement of deceased for year 2022 & 2023	**28**
6	Form-16-A of deceased	**29**
7	Copy of FIR	**31**
8	Copy of Inquest Panchnama	**32**
9	Copy of Postmortem Report	**33**
10	Copy of PAN Card of deceased	**34**
11	Copy of Aadhar card & PAN Card of claimant No.1	**35**
12	Copy of Aadhar card & PAN Card of claimant No.2	**36**
13	Copy of Cheque of BOB	**37**
14	Copy of charge-sheet	**38**

4.1 Ld. Advocate for the insurance company has adduced following oral as well as documentary evidences:

Sr. No.	Evidences	Exh.
Oral Evidence		
1	Prashant Mishra, Administrative Officer, New India Assurance Company	**55**
Documentary Evidences		
1	Certificate of compliance of section 64 VB of Insurance Act, 1938	**42**
2	RC Book of tempo	**43**

3	Vehicle particulars of tempo	**44**
4	All India permit of tempo	**45**
5	All India Tourist vehicle authorization certificate of tempo	**46**
6	PUC certificate of tempo	**47**
7	Driving licence of driver of tempo	**48**
8	Certificate of Hill Endorsement on driving licence of tempo driver	**49**
9	e-Greencard and Tripcard of tempo driver	**50**
10	Certificate of hill endorsement on driving licence of tempo driver	**51**
11	Insurance policy of tempo with terms & conditions	**54**

5. On completion of evidence, Ld. Advocate for the claimant has filed closing pursis at **Exh.30** and Ld. Advocate for the insurance company filed its closing pursis at **Exh.56.**

6. Heard Learned Advocate for the parties, perused the evidence and written submissions produced by Ld. Advocate for the claimants at **Exh.57** and Ld. advocate for the insurance company at **Exh.59.**

7. Following issues are framed at **Exh.15** for determination of this claim petition:

1. Whether claimants prove that the deceased died on account of rashness and negligent in driving on the part of the driver of the vehicle involved in the accident ?
2. What amount, the claimants are entitled to by way of compensation and from which of the opponents ?

3. What order ?

8. My findings on the aforesaid issues, for the reasons stated below are as under:

1.In affirmative.

2.In affirmative – As per final order.

3.As per final order.

REASONS

Issue No.1

9. 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.

9.1 The claimant No.1 who is the father of the deceased has submitted his affidavit of examination-in-chief at **Exh.16** and has narrated the facts as mentioned in his claim petition. During his cross-examination by Ld. Advocate for the insurance company, he admitted that he was not the eyewitness to the accident.

9.2 The claimants have produced on record copy of the FIR at **Exh.31** which has been lodged by Pramod Karnatak. As stated therein, vehicle No.HR55-AS-3679 met with accident at about 11:30 am. in Raitoli, wherein, 15 people died and 11 were injured. It is stated in the FIR that upon checking the registration documents of the vehicle, the seating capacity of the vehicle including driver was 20, however, total 26 people including driver were traveling in the vehicle at the time of accident. It is further stated in the FIR that the owner of the vehicle in order to earn extra profit had allowed to travel 26 persons instead of the permitted capacity of 20. It is also stated in FIR that, the cause of accident was due to negligent and careless driving of the driver.

9.3 Further, from the documents, such as, Inquest Panchnama (**Exh.32)** and P.M. Report (**Exh.33**), it is established that the deceased died due to shock and haemorrhage resulted from head injury in a road accident. The said evidence led by the claimants has not been controverted by the opponents.

9.4 Therefore, considering the facts and circumstance of the case and material on record, it is evident that the tempo was being driven by the driver in a rash and negligent manner in hilly area. Therefore, the FIR (**Exh.31**) was lodged against the driver of tempo and upon completion of the investigation, police filed charge-sheet (**Exh.38**) against the owner of the tempo. It appears from the charge-sheet that, the driver has also died in the said accident and charge-sheet was filed against owner of the vehicle. Further, the circumstances narrated in the FIR coupled with the fact that the vehicle fell into deep valley of about 200 meters strongly suggest that the driver failed to exercise reasonable care and caution expected of a prudent driver. If driver of tempo taken reasonable care in driving the tempo in hilly area, this incident could have been avoided. Thus, it can safely be inferred that the accident occurred solely due to the rash and negligent driving of the driver of tempo. Hence, I answer Issue No.1 in ***"Affirmative"***.

<u>Issue No.2</u>

10. 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.

11. According to say of the claimants, deceased was aged 27 years at the time of accident. On perusing the PAN Card at **Exh.34,** deceased's birth date is mentioned as 18.09.1996. The claimants have not produced birth certificate or school leaving certificate of deceased. However, for deciding just compensation, the date of birth mentioned in PAN Card is considered to determine age of the deceased. Therefore, deceased was 27 years old at the time of accident. Thus, considering the decision in the case of **Sarla Varma v/s Delhi Transport Corporation & Ors [2009 ACJ 1298]**, multiplier of **17** is applicable.

12. The claimant No.1 who is the father of the deceased has stated in his evidence at **Exh.16** that, deceased was employed as 'Management Trainee' in American Express (I) Pvt. Ltd., Gurgaon and getting monthly salary of Rs.1,50,000/- at the time of the accident. The claimants have examined Aryan Pankajbhai Dhingra who is working in HR Department of American Express (I) Pvt. Ltd. He stated that he deposed before the tribunal as per the authority letter produced at Exh.24. He further stated that deceased Niket was appointed as 'Management Trainee' on 10.06.2022, and thereafter working as Analyst and the same is produced on record at Exh.25 & Exh.26. He stated that deceased was permanent employee of his company. He further stated that he has produced salary slips of deceased from July, 2023 to June, 2024 at Exh.27; order of performance increment at Exh.28 and Form-16A at Exh.29. During his cross-examination by the insurance company, he stated that deceased had received Rs.10,00,000/- under personal group accident policy.

12.1 So far as the income of the deceased is concerned, the appointment letter dated 10.06.2022 produced at **Exh.26** establishes that the deceased was initially appointed as 'Management Trainee' in American Express (I) Pvt. Ltd., Gurgaon with basic salary of Rs.52,325/- per month. The salary slips for the period from July, 2023 to June, 2024 at

Exh.27 indicates that deceased was earning gross monthly income of Rs.1,57,406/- in May, 2024, i.e., immediately prior to the accident, and similar earnings of Rs.1,57,406/- in April, 2024 and Rs.1,58,869/- in March, 2024. Though the salary slip for June, 2024 reflects gross earnings of Rs.78,63,817/-, the same includes ex-gratia amount of Rs.75,63,055/- and leave encashment of Rs.1,48,226/-, which are one-time payments and cannot be treated as part of regular income. It further transpires from the documents at **Exh.28** and **Exh.29** that the deceased was also entitled to annual bonus and performance-based incentives depending upon the targets achieved. Considering the consistent gross monthly earnings immediately preceding the accident along with the additional component of bonus and incentives, it would be just and reasonable to assess income of the deceased at **Rs.1,57,406/- p.m.** and **Rs.18,88,872/- p.a.**

12.1 The deceased was aged 27 years and he having permanent job, 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 **50%** i.e. **Rs.9,44,436/- [Rs.18,88,872/- p.a. income x 50% future prospects].** Hence, deceased's yearly income at the time of accident including future prospects is considered as Rs.18,88,872 + Rs.9,44,436 = **Rs.28,33,308/-**. 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.28,33,308 p.a. income – tax i.e. Rs.4,79,992 (income tax as it was applicable in the A.Y. 2025-26 upto Rs.3 lac is Nil, Rs.3 to Rs.7 lac is 5%, Rs.7 to Rs.10 lac is 10%, Rs.10 to 12 lac is 15%, Rs.12 to 15 lac is 20% and Rs.15 lac above is 30%) = Rs.23,53,316/- p.a. Thus, **income of the deceased including future prospects after tax would be Rs.23,53,316/- p.a.**

13. As the deceased was unmarried at the time of accident, therefore 50% would be treated as the personal and living expenses of the bachelor. Thus, in view of **Sarla Verma (supra), ½** amount is required to be deducted towards the personal and living expenses of the deceased to arrive at just compensation.

14. After deduction of personal and living expenses of the deceased, dependency loss would be Rs.23,53,316/- p.a. income – Rs.11,76,658/- (½ of total income Rs.23,53,316/-) = Rs.11,76,658 x 17 multiplier = Rs.2,00,03,186/-. Therefore, it is just and proper to award sum of **Rs.2,00,03,186/- under the head of loss of dependency.**

15. 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***.

15.1 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** that,

> ***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.*

15.2 Therefore, claimant Nos.1&2 parents of the deceased are entitled to get **Rs.48,400/- each towards Filial consortium.**

16. The learned advocate for the insurance company has contended that an amount of Rs.10,00,000/- received by the family of the deceased towards personal accident policy is liable to be deducted from the awarded compensation. However, the said submission is not accepted as the said amount was payable under separate contractual or beneficial arrangement, independent of the accident and would have been receivable even in the event of death occurring due to reasons other than the accident in question. In the decision of the Hon'ble Apex Court in the case of **Helen C. Rebello v. Maharashtra State Road Transport Corporation** reported in **1999 (1) SCC 90**, it has been held that the amounts received by the claimants on account of life insurance or other pecuniary advantages, which are not directly relatable to the accidental death, cannot be deducted from the compensation awarded under the Motor Vehicles Act. Thus, the amount received by the family of the deceased towards personal accident policy is not required to be deducted from the awarded compensation.

17. 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	15.06.2024	
2	Name of the deceased	Niket Sunilbhai Shah	
3	Age of the deceased	27 Years	
4	Occupation of deceased	Service	
5	Income of the deceased	Rs.1,57,406/- p.m.	
6	Name, age and relationship of legal representatives of deceased		
	Name	**Age**	**Relation**
i	Sunilbhai Arvindbhai Shah	59	Father
ii	Beenaben Sunilbhai Shah	55	Mother

COMPUTATION OF COMPENSATION

Sr No	Description	Amount
7.	Yearly Income of deceased **(A)**	Rs.18,88,872/- p.a.
8.	**Add** future Prospect **(B)**	**50%** of 18,88,872/- = **Rs.9,44,436/-**
9.	Income including future prospects of the deceased **(C)**	18,88,872 + 9,44,436= **Rs.28,33,308/-**
10.	**Less** Applicable income-tax on the income of the deceased in the A.Y. 2016-17 **(D)** **(As per Para-12.1)**	**Rs.4,79,992/-**
11.	Actual income of the deceased i.e. Actual salary less tax **(C - D) = (E)**	28,33,308 – 4,79,992 = **Rs.23,53,316/-**
12.	**Less** personal & living expenses of the deceased **(F)**	23,53,316 x ½ = **Rs.11,76,658/-**
13.	Multiplier **(G)**	**17**

14.	Total loss of dependency **(E – F) x G = (H)**	(23,53,316 – 11,76,658) = Rs.11,76,658 x 17 **Rs.2,00,03,186/-**
15.	Compensation for loss of spousal consortium **(I)**	**Rs.96,800/-**
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.2,01,36,286/-**
19.	RATE OF INTEREST AWARDED	**9% p.a.**

18. Hence, claimants are entitled to get **Rs.2,01,36,286/-** as compensation.

<u>Liability of Insurance Company with respect to dispute of Driving licence of tempo driver</u>

19. Ld. Advocate for the Insurance Company has filed written submissions at **Exh.59** and submitted that, seating capacity of the tempo was 20 whereas 26 persons including driver were travelling in the vehicle, and thereby violated condition of the permit by the insured. It is further submitted that the accident occurred on hilly region of Uttrakhand Sate but driving licence of driver Karan Singh was not endorsed for driving vehicle on hilly regions at the time of accident. Therefore, no hill endorsement was available on his driving licence produced at Exh.48. It is also submitted that the accident occurred on 15.06.2024 at 11:30 am, and driver died on the spot but his driving licence was endorsed for hill roads of Uttarakhand on 15.06.2024 at 3:28:38 pm., i.e., after 4 hours his death, which suggest that someone else made arrangement to endorse his driving licence with hill endorsement. Thus, it is established that driver of the tempo was not holding valid and effective driving licence to drive vehicle on hilly region of Uttarakhand State at the time of accident, and thereby the insured had committed breach of policy conditions and violated Rule 195 and Rule 2(1)(j) of Uttrakhand Motor Vehicles Rules, 2011. The witness Prashant Mishra, Administrative Officer of insurance company also corroborates the said facts in his examination-in-chief at Exh.55. Thus, insurance company may be exonerated from its liability to pay compensation to the claimants. He has relied upon the following decisions in support of his submissions:

(1) **Reliance General Insurance Co. Ltd. v. Vikramsinh Ranjeetsinh Zala** reported in **2025(0) GUJHC 40063.**

(2) **New India Assurance Co. Ltd. v. Govind Singh Fartiyal** reported in **2010(2) CPJ 393** (Uttaranchal State Consumer disputes Redressal Commission, Dehradun).

19.1 Per contra, Ld. Advocate for the claimants has vehemently submitted that, mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the opposite party. There has to be causal relationship between violation and the accident caused. He has further submitted that, order of pay and recover can be passed by the Tribunal if the driver was not holding driving licence at the time of accident. Thus, insurance company cannot be absolved from its liability to pay compensation to the claimants.

19.2 So far as the dispute regarding the driving licence of driver of the alleged tempo is concerned, if driving licence of driver Karan Singh Chandrapal Singh is perused at **Exh.48**, it appears that the driver was holding licence to drive Non-Transport Vehicle from 24.09.2019 to 18.03.2028 and licence to drive Transport Vehicle from 24.09.2019 to 23.09.2024. It transpires that the driver was holding driving licence on 15.06.2024, i.e., the date of accident. However, on perusal of certificate of Hill Endorsement on Driving Licence at **Exh.51**, it appears that the certificate of hill endorsement was issued by Transport Department, Uttarakhand on 15.06.2024 at about 3:28:30 hours in the name of driver Karan Singh. Accident occurred on 15.06.2024 at about 11:30 am. It transpires that after 4 hours of death of driver Karan Singh, the hill endorsement was made in the driving licence of the driver. Therefore, it is established that the driver was not having valid endorsement to drive vehicle on hill region of Uttrakhand State on 15.06.2024, i.e., the date of accident. The witness Prashant Mishra, Administrative Officer of insurance company also corroborates the said fact in his examination-in-chief at **Exh.55**. It is fruitful to refer **Rule 195 of Uttrakhand Motor Vehicles Rules, 2011**, as under:

> ***195.*** *"No person shall drive a public service vehicle or a goods vehicle on a hill road unless his license to drive such public service vehicle or goods vehicle has been endorsed by a registering authority with a permission to drive upon hill roads situated within the jurisdiction of such registering authority or in the case of a public service vehicle hired by tourists, by the registering authority of the State with which reciprocal arrangements on the point have*

been agreed upon."

19.3 Further, **Rule 2(1)(j) of Uttrakhand Motor Vehicles Rules 2011** provides as under :-

> *'Hill Road' means all roads within Pithoragarh, Champawat, Almorah, Bageshwar, Rudraprayag, Chamoli, Uttarkashi and Tehri-Garhwal districts, tahsil Chakrata of Dehradun district and those portions of Nainital and Garhwal district which lie on the north of the base of foothills directly from Tanakpur in the east via Kathgodam, Ramnagar in the west and all roads beyond municipal limits of Dehradun city towards Mussoorie;*

19.4 Thus, in view of the above Rules, no person shall drive a public service vehicle or a goods vehicle on a hill road unless his license to drive such public service vehicle or goods vehicle has been endorsed by a registering authority with a permission to drive upon hill roads. In the present case, the driver of tempo was driving his vehicle from Delhi to Chopta, Dist. Rudraprayad, Uttarakhand State without valid endorsement to drive vehicle on hilly region, and thereby the insured had committed breach of policy condition.

19.5 The Hon'ble Apex Court in case of ***Kempaiah v/s S. S. Murthy*** reported in ***2018 (12) SCC 706***, has held by relying upon the decision in the case of ***National Insurance Co. Ltd. v. Swarna Singh and Ors.,*** reported in ***2004(2) GLR 989 (SC)***, has held that-

> *"Disqualification of the driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of Section 149, has to be proved to have been committed by the insured for avoiding liability by the insurer. Mere*

absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defence available to the insurer against either the insured or the third parties. Further, it is held that, insurance company has to satisfy the award and thereafter would be at liberty to recover the said amount from the owner of the vehicle."

19.6 Therefore, in view of the fact that the driver of tempo was not having valid endorsement to drive vehicle on hilly region of Uttarakhand State on the date of accident. However, considering the decisions of the Hon'ble Apex Court in the case of (1) **National Insurance Co. Ltd. v. Swarna Singh and Ors.,** reported in **2004(3) SCC 297;** (2) **Pappu v. Vinod Kumar Lamba** reported in **2018(3) SCC 208;** (3) **Kempaiah v/s S. S. Murthy** reported in **2018 (12) SCC 706;** (4) **Shamanna v. Divisional Manager, The Oriental Insurance Co. Ltd.** reported in **2018(9) SCC 650** and (5) **Singh Ram v. Nirmala** reported in **2018(3) SCC 800,** it would be just and proper if the order of pay and recover is passed against insurance company. Therefore, the insurance company is directed to pay the amount of compensation to the claimants, and thereafter, is at liberty to recover the compensation from the owner of the vehicle i.e. opponent No.1.

19.7 So far as seating capacity of the tempo is concerned, if the RC Book of tempo is perused at **Exh.43**, seating capacity of the tempo is 20 persons including driver. However, on perusal of FIR (**Exh.31**), it appears that 26 persons including driver were traveling in the tempo at the time of accident, and thereby violated condition of the policy by the insured. The Hon'ble High Court of Gujarat in the case of *Vikramsinh Ranjeetsinh Zala (supra)*, has held that when the passengers traveling in excess of seating capacity covered by the insurance policy, primary liability of insurance company to pay compensation is limited only to the number of passengers covered by the policy. It is also held by the Hon'ble High Court that, insurance company, however, retains the right to recover the amount paid for the uncovered/excess passengers from the owner of vehicle (insured). In the present case, only one claim petition has been filed before this Tribunal for compensation in the State of Gujarat, and therefore, the present claim falls within the seating capacity of 20 persons. The insurance company has not produced any evidence on record to show that other claim petitions are filed in any other Tribunal or Forum.

19.8 In view of above discussion, the present accident had occurred because of negligent driving of driver of tempo involved in the accident. The opponent No.1 was the owner of tempo No.HR55-AS-3679 at the relevant time is also established from the certificate of registration of the subject vehicle at **Exh.43**. Further, on perusing insurance policy of tempo No.HR55-AS-3679 at **Exh.54**, it transpires that the subject vehicle was insured with the opponent No.2 for the period from 15.12.2023 to 14.12.2024. Thus, it was valid insurance on 15.06.2024, i.e., the date of accident. Therefore, the claimants are entitled for the compensation with interest @ 9% p.a. from the date of claim petition till realization from opponent No.1 and opponent No.2 is directed to first pay the awarded amount to the claimants, and in turn, insurance company can recover the same from the owner of the vehicle i.e. opponent No.1. Hence, I answer Issue No.2 in the **'Partly Affirmative'** accordingly and for Issue No.3, the following final order is passed:-

ORDER

1. The claim petition stands partly allowed against opponent No.1, whereas, opponent No.2 is exonerated.

2. The claimants are entitled to recover **Rs.2,01,36,286/- (Rupees Two Crore One Lac Thirty Six Thousand Two Hundred Eighty Six only)** as compensation with cost and interest at the rate of 9% p.a. from the date of the claim petition till realization of the amount from the opponent No.1.

3. The opponent No.2 is exonerated from its liability, however, opponent No.2 is directed to first pay the amount of compensation in favour of the claimants and then recover the same from the owner i.e. opponent No.1.

4. 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.

5. The claimant No.1 shall get **30%** share and claimant No.2

shall get **70%** share in the awarded amount.

6. As per the award, the opponent No.2 is 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**

7. After depositing the amount of court fees in the account of Additional District Judge, Bharuch, the opponent No.2 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.

8. 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 opponent No.2 is 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 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.

9. The opponent No.2 is 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.

10. Out of the amount deposited by the insurance company, **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.

11. The cost of the proceedings incurred by the claimants as well as the opponents shall be born by the opponents.

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 22nd April, 2026.

Date: 22/04/2026

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