Before the 2nd Additional District and Sessions Judge cum Motor Accident Claim Tribunal (Auxiliary) at Bharuch.

M.A.C.P. No.: 701/2013

Exhibit: -____.

GJBH010029192013	सत्यमेव जयते	FILED ON / REGISTERED ON	16.12.2013
		DATE OF DECISION	06.06.2026
		DURATION	**12Yrs. 05M 21D**

Claimants:-

1	Rabiyabanu Munna
2	Kamruddin Tajubali
3	Sabijun Kamruddin All are residing at: Patulki, At & PO. Laxmanpur, Tal. Lalganj, Azara, Dist. Pratapgadh (U.P.)

Versus

Opponents:-

1.	Hasifkhan Aashiqali Pathan
2.	Speed Carrier Bombay Pvt. Ltd. Both are R/o. 802, Citi Ratna Building, Panchvati Circle, Law Garden, Ahmedabad.

3.	HDFC Ergo General Insurance Co. Ltd. At. 1st Floor, Shan Complex, Bs. City Bank, Race Course, Gotri Road, Vadodara.

Claim : Rs.20 Lacs U/s.166 of the M. V. Act, 1988.

Appearance:

Learned Advocate Mr.H.S.Kharva appearing for and on behalf of claimants.
Ld. Advocate Mr. R.S.Patanwadia, appearing for and on behalf of the opponent no.2.
Learned Advocate Mr. P.G.Shah, appearing for and on behalf of Opponent no.3 – Insurance Company.

: JUDGMENT :

1. An appeal was preferred before the Hon'ble High Court of Gujarat, by the Opponent no.2 - Speed Carriers Bombay Pvt. Ltd. against the judgment and award dated 27/02/2020 passed by the Ld. MAC Tribunal (Main), Bharuch in MACP No. 701 of 2013, wherein the Ld. Tribunal had exonerated the Insurance Company from its liability & directed to "pay & recover" the amount from the owner on the ground that, on the date of the accident the driver of the offending vehicle was holding a fake driving license & the Ld. Tribunal held the owner as liable.

1a. The appeal of the Opponent no.2 - Speed Carriers Bombay Pvt. Ltd. was partly allowed by the Hon'ble High Court of Gujarat, the order at Para-8 is reiterated below.

> *8. In view of the above, the present appeal deserves consideration. The appeal is* ***partly allowed.*** *The direction issued by the learned Tribunal to* ***"pay and recover"*** *is hereby* ***quashed and set aside.*** *The matter is* ***remitted to the learned Tribunal*** *for fresh adjudication, preferably within three months from the date of receipt of this order, subject to the appellant – opponent no.3 (Speed Carrier Bombay Pvt. Ltd.) depositing the entire amount awarded, along with interest and costs, before the Tribunal within four weeks. On deposit of the amount, the learned Tribunal shall restore the MACP and shall thereafter give an opportunity to opponent no.3 to lead evidence and to prove its defence".*

2. On 31/01/2026 vide Exh.50 the Opponent no.2 - Speed Carriers Bombay Pvt. Ltd. gave an application to restore the case, as the amount, directed by the Hon'ble High Court of Gujarat was deposited by him.

2a. Considering the details of the Nazir, stating the amount, as directed by the Hon'ble High Court of Gujarat being deposited, the MACP No.701/2013 was restored.

2b. The Ld. Advocate Mr. R.S.Patanwadia present before this Tribunal was directed to remain present in the Tribunal along with his witnesses and evidence, so that the matter can be proceeded further and can be decided within the time limit prescribed by the Hon'ble High Court.

2c. The Vakalatnama of Ld. Advocate Mr. S.K.Bhimani was filed on 05/02/2026 on behalf of the opponent no.2 - Speed Carriers Bombay Pvt. Ltd. vide Exh.51, an adjournment application at Exh.52 was submitted to file reply by the opponent no.2 - Speed Carriers Bombay Pvt. Ltd.

3. Notice was issued to the opponent no.3 – Insurance Company i.e. HDFC Ergo General Insurance Co. Ltd.

3a. Reply was filed vide Exh.53 by opponent no.2 - Speed Carriers Bombay Pvt. Ltd. on 07/02/2026 along with the list of documents, which included the copy of the driving license, Copy of Insurance policy of Vehicle No. GJ 10 X 5474 & Authority Letter.

3b. Vide Exh. 55 – Vakalatnama on behalf of opponent no.3, – Insurance Company, was filed on 16/02/2026, on 23/02/2026 report on behalf of opponent no.2 - Speed Carriers Bombay Pvt. Ltd. Vide Exh.56 was submitted and thereafter on 11/03/2026 the opponent no.2 - Speed Carriers Bombay Pvt. Ltd. had submitted affidavit i.e. examination-in-chief and on the very same day, the opponent no.2 was cross-examined by the Ld. Advocate for the opponent no.3 – Insurance Company.

3c. On 11/03/2026, the report on behalf of opponent no.2 - Speed Carriers, Bombay Pvt. Ltd. Was submitted for examining other witnesses. Again on 30/03/2026, the opponent no.2 - Speed Carriers Bombay Pvt. Ltd. has submitted his report and on 18/07/2026 vide Exh.62 closing pursis was submitted on behalf of the opponent no.2 and vide Exh.63 adjournment was sought for arguments.

Vide Exh.64 on 20/04/2026, the opponent no.2 - Speed Carriers Bombay Pvt. Ltd. submitted his written arguments and sought adjournment for oral submission. On 24/04/2026 vide Exh.69 the Ld. Advocate Mr. P.G.Shah had given authority to hand over the case to the Ld. Advocate Mr. H.M.Patel and Vide Exh.70, points of written arguments were submitted. The Ld. Advocate has relied upon the following authorities.

(1) 2018(0) AIJEL SC 61544 Supreme Court of India, Pappu V/s. Vinod Kumbar Lamba.

(2) 2021(0) AIJEL HC 243358 Gujarat High Court, United India Insurance Company Limited V/s. Gamirbhai @ Gamirabhai @ Gambhirbhai @ Gemarbhai Panglabhai Meda.

(3) CMA No.134/2026 & CMA No. 1345/2026.Hon'ble Madras High Court.

3d. Vide Exh.71, the opponent no.2 - Speed Carriers Bombay Pvt. Ltd. has submitted the copy of judgments with list, the details of the judgments relied upon are mentioned at Sr. Nos. 1 to 9, which was submitted on 24/04/2026.

4. Thus, opportunity is given to the appellant I.e the opponent no.2 - Speed Carriers Bombay Pvt. Ltd. to lead his evidence and to prove his defense. After submitting closing pursis on behalf of the opponent no.2 - Speed Carriers Bombay Pvt. Ltd. vide Exh.62, both the parties are heard, the written submissions and the judgments relied upon by both the Ld. Advocates are also considered. Now, considering the evidence, this Tribunal has to adjudicate the matter, and the issue of " pay & recover" was in dispute and other issues were undisputed, this tribunal has first discussed the issue of liability.

5. The facts of the petition is that, On 17/08/2013 the deceased was working as a cleaner on the Truck, bearing registration No.GJ10-X-5474 and the said truck which was loaded with plastic grains & it was parked by the opponent No.1 - driver at the gate of Krishna Plastic, GIDC, Bharuch where the live electric wire was passing over it and at about 15.00 hours, the deceased climbed over the truck to remove the tarpaulin, during that time his hand touch the wire of electric line he was got electrocuted, as a result of which he fell down from the truck and sustained grievous injuries and died on the spot.

5a. Thus, the claimants i.e the legal heirs of the deceased Munna Kamruddinn Pathan, who died in the road accident, had preferred the present cliam petition u/s 166 of the Motor vehicle Act, 1988.

5b. This Tribunal has taken note that the claimants had initially sought compensation of Rs. 5,00,000/- which was subsequently enhanced to Rs.20,00,000/- as per the order passed below Exh.39 on 11/07/2016.

6. It is to be noted that, the issue is now only between the Insurance Co. and the Insured. Previously, the present opponent no.2 - Speed Carriers Bombay Pvt. Ltd. though served had not remained present, but as per the order of the Hon'ble High Court of Gujarat, he had been now given opportunity and he has submitted his evidence now.

7. The opponent no.2 - Speed Carriers Bombay Pvt. Ltd. has filed his reply at Exh.53, wherein he has mainly stated that the opponent no.1 is engaged in the business of transportation since 42 years. It has offices almost in all major cities of Gujarat. It is submitted that Shri Hasifkhan Aashiqali Pathan, who is the driver for the commercial vehicle was introduced through one of its driver Shri Mustak Pathan who has been working with the opponent no.2

since more than 5 years at Ahmedabad office. Opponent no.1 and Shri Mustak Pathan visited the Ahmedabad office of the opponent no.2 around one and half years before the date of the present accident. It is further stated that, the original driving license and proof of permanent residence from opponent no.1 was demanded by opponent no.2 . He had provided original copy of his driving license bearing No. 0552/H/53/RBC/2009, dated 02/04/2009 issued by RTO Raibareli, Uttar Pradesh. The opponent found, upon reading the said driving license that, opponent no.1 had authorization to ply motorcycle with gear, Light Motor Vehicle and Heavy Goods vehicle. It was found on an apparent reading of driving license that it was genuine. There was no facility to check the genuineness of driving license online during such period. The authorized person of the opponent no.2 asked the opponent no.1 to drive LMV and HGV type of vehicles which were lying at Garage of the opponent no.2. The driving test was personally verified by the authorized person of opponent no.2, namely Chirag Piyushbhai Shah, who was personally present there and also accompanied with opponent no.1. It is further stated that it has also verified the character of opponent no.1 through his previous employer. The driver Shri Mustak Pathan also gave his personal guarantee for opponent no.1. it was also represented that the opponent no.1 has not met with any accident during his last 5 years. He had confirmed that his driving license was never suspended or cancelled in past. Thus, opponent no.1 joined the services of opponent no.2 to drive the truck involved in the incident. It is submitted that thereafter the unfortunate incident of the death of the son of the claimant no.2 and 3 and husband of the claimant occurred on 17/08/2013, while the truck was parked and the deceased was wrapping and tightening the tarpaulin on the truck. Therefore, also the opponent no.2 cannot be made as the truck was stationery and parked. It is further submitted that thereafter the claimants filed the subject petition on 16/11/2013. It is further submitted that opponent no.2 visited the office of opponent no.3 situated at Ahmedabad after receipt of summons of the subject claim on 09/01/2014. The Ahmedabad office instructed opponent no.2 to meet Mr. Atul Purohit, employee of insurance company. He indicated that it is a third-party claim. He assured that the insurance company will look after the interest of the opponent no.1 and 2 since opponent no.2 had insured its fleet of commercial vehicles with the opponent no.3 being valued customer. It is further submitted that opponent no.2 has paid approximately premium Rs.47,12,290/- to opponent no.3 for the years between 2012 to 2014. The claim petition, driving license of opponent no.1 and Registration papers of the Truck No. GJ 10 X 5474 were handed over to him.

8. Vide Exh.20 – Opponent no.3 – Insurance Company had filed its written statement, wherein the contents of the claim petition and all the material allegations are not admitted and it is stated that the allegations made in the above petition are false and the petition is not maintainable, neither on facts nor as per law, against the opponent and hence, the petition is liable to be dismissed with costs against the opponent, the contents of the claim petition are not bonafide and not admitted.

9. At the end of evidence, both the parties were heard. The written submissions at Exh.64 of opponent no.2 as well as the oral submissions of both the sides are considered, the written submission of opponent no.3 – Insurance company at Exh.45 & 46 and now at Exh.70 are also considered.

9a. Evidence of claimants :

Sr. No.	**Particulars**	**Exh./ Mark**
	Oral Evidence	
1	Kamruddin Tajubali	24
	Documentary Evidences	
1	Copy of Police complant	25
2	Copy of Panchnama of scene of occurrence	26
3	Copy of Inquest Panchnama of decased	27
4	Copy of Post Mortem Note of the deceased	28

9b. Evidence on behalf of opponent no.3 – Insurance Company

Sr.	**Particulars**	**Exh./ Mark**

No.		
Oral Evidence		
1	Deposition of Ashokkumar H. Singh	**34**
Documentary Evidences		
1	Copy of Register of Driving License No. H552/RBC/09 issued by Raibareli RTO	**35**
2	Insurance Policy of Truck No. GJ 10 X 5474	**42**
3	R.C.Book of Truck No. GJ 10 X 5474	**43**

9c. Evidence on behalf of opponent no.2 – Speed Carriers Bombay Pvt. Ltd.

Sr. No.	**Particulars**	**Exh./ Mark**
Oral Evidence		
1	Deposition of Chirag Piyushbhai Shah, Authorized person of Speed Carriers Bombay Pvt. Ltd.	**58**
Documentary Evidences		
1	Copy of Driving License of opponent no.1.	**66**
2	Insurance Policy of Truck No. GJ 10 X 5474	**67**
3	Authority Letter	**68**

9d. It is to be noted that the above documents are exhibited considering the endorsement of the other side.

10. Following issues were framed at Exh.22 for its determination.

1. Whether petitioners proves that, the deceased died on account of rashness and negligence in driving on the part of the driver of the vehicle involved in the accident ?

2. What amount, if any, the claimants are entitled to by way of compensation and from which of the opponents?

3. What order ?

10a. My findings on the aforesaid issues, for the reasons stated below are as under:

1. In Affirmative.
2. In Affirmative.
3. As per the final order.

11. Apart from the other evidence on record now, the evidence of opponent no.2 – Chirag Piyush Shah at Exh.58 is also considered which is based on their written statement at Exh.53. During his deposition, it is deposed that the opponent no.1 is engaged in the business of transportation since 42 years. It has offices almost in all major cities of Gujarat. It is submitted that Shri Hasifkhan Aashiqali Pathan who is the driver for the commercial vehicle, was introduced through one of its driver Shri Mustak Pathan who has been working with the opponent no.2 since more than 5 years at Ahmedabad office. Opponent no.1 and Shri Mustak Pathan visited the Ahmedabad office of the opponent no.2 around one and half years before the date of the present accident. It is further stated that the original driving license and proof of permanent residence form was also demanded and he had provided original copy of his driving license bearing No. 0552/H/53/RBC/2009, dated 02/04/2009 issued by RTO Raibareli, Uttar Pradesh. The opponent found upon reading the said driving license that opponent no.1 had authorization to ply motorcycle with gear, Light Motor Vehicle and Heavy Goods vehicle. It was found on an apparent reading of driving licnese that it was genuine. There was no facility to check the genuineness of driving license online during that period. The authorized person of the opponent no.2 asked the opponent no.1 to drive LMV and HGV type of vehicles which were lying at Garage of the opponent no.2. The driving test was personally verified by the authorized person of opponent no.2, namely Chirag Piyushbhai Shah, the deponent, who was personally present there and also accompanied with opponent no.1. It is further deposed that it has also verified the character of opponent no.1 through his previous employer. The driver Shri Mustak Pathan also gave his personal guarantee for opponent no.1. it was also represented that the opponent no.1 has not met with any accident during his last 5 years. He had confirmed that his driving license was never suspended or cancelled in past. Thus, opponent no.1 joined the services of opponent no.2 to drive the truck involved in the incident. It is further deposed that, thereafter the unfortunate incident of the death of the son of the claimant no.2 and 3 and husband of the claimant occurred on 17/08/2013, while the truck was parked and the deceased was wrapping and tightening the tarpaulin on the truck. Therefore, also the opponent no.2 cannot be made as the truck was stationery and parked. It is deposed that thereafter the claimants filed the subject petition on 16/11/2013. It is further deposed that opponent no.2 visited the office of opponent no.3 situated at Ahmedabad, after receipt of summons of the subject claim on 09/01/2014. The Ahmedabad office instructed opponent no.2 to meet Mr. Atul Purohit, employee of insurance company. He indicated that it is a third-party claim. He assured that the insurance company will look after the interest of the opponent no.1 and 2 since opponent no.2 had insured its fleet of commercial vehicles with the opponent no.3 being valued customer. It is further deposed that opponent no.2 has paid approximately premium Rs.47,12,290/- to opponent no.3 for the years between 2012 to 2014. The claim petition, driving license of opponent no.1 and Registration papers of the Truck No. GJ 10 X 5474 were handed over to him. He has further deposed that the local investigator of the opponent no.3 also visited the office of opponent No.2 and he had collected Police papers, copy of the driving license of the opponent no.1 and GJ 10 X 5474 papers. He has also recorded the statement of opponent no.2. Opponent no.1 was not available in the office of the opponent no.2 without prior appointment. Opponent no.2 tried its best to arrange meeting between opponent no.1 and the said investigator, but it had not materialized. Opponent no.1 in the meantime stopped attending the office of opponent no.2 for the reasons best known to opponent no.1. Opponent no.2 tried to contact opponent no.1 through Mustak Pathan. Mustak Pathan who informed to opponent no.2 that opponent no.1 had left Ahmedabad and he was not in contact with him.

11a. During the cross-examination on behalf of the Insurance Company – Opponent no.3, it is stated by Chirag Piyush Shah that the opponent no.2 Speed Carriers Bombay Pvt. Ltd. is in existence, today also he continues as Director in it. He had not appeared in Tribunal till the case was disposed in Bharuch Tribunal, ex-parte order was passed. Opponent no.1 was their driver. It is admitted that no receipt is available today with them regarding the salary paid to the opponent no.1. It is also admitted that 10 months prior, before the accident, opponent no.1 had joined the service and no cleaner is kept. It is also admitted that the register of driver is not brought today, attendance of driver were mentioned in the driver register and in the register, license number or license address, telephone number and address of Ahmedabad was not written, according to the witness, separate form was filed and they were having such form of all the drivers, which he had not brought today and he is not having the transport receipt today regarding the goods transportation. It is also admitted that he had had not went to the site after receiving the information of the accident, the vehicle was given by the opponent no.1 and no cleaner was there. It is also admitted that the Truck number was GJ 10X 5474, goods were loaded from Jamnagar and it was coming to Bharuch and the witness inquired about the incident from the driver on phone, he didn't remember that the driver told that, while unloading goods his conductor's hand touched the electric wire and due to the electric shock he fell. It is also admitted that their company has not given any amount as, workmen compensation to the heirs of the deceased, who was loading/ un-loading goods. It is also admitted that no entry (record) is kept regarding its driver or any form or any drivers, no verification of license given by driver was got verified at relevant point of time. It is denied & stated that there was no facility of driving license details on RTO website. It is stated that at the relevant point of time, no such facility was available.

It is also admitted that as on date, the opponent no.1 – driver is not with them, his address is also not known. At relevant point of time, the opponent no.1 was asked about where he was previously serving, but its details are not available. It is further admitted that after disposal of this case and filing of appeal in the Hon'ble High Court of Gujarat, till today, the witness has not inquired about the license of opponent no.1 in RTO – Raibareilly. He has not having information that today the details of the license of opponent no.1 can be inquired on the website of RTO Raibareilly. It is also admitted that they are not having details regarding where, the opponent no.1 was serving and the driver Mustak is not now serving with opponent no.2. It is also admitted that they are having license of Mustak Pathan and what salary was given to him and how long salary was given is not remembered. It is denied that they have not verified the driving license of opponent no.1 and are giving false evidence. It is further stated that on receiving the bank details the same will be produced regarding the salary paid to opponent no.1, rest of the questions are denied by the above witness.

12. Hence, apart from other evidence, now the evidence on record of opponent no.2, Chirag Piyushbhai Shah, is to be considered, but before further discussion, at this juncture, the judgments relied upon by the opponent no.2 - Speed Carriers Bombay Pvt. Ltd. Is required to be referred, wherein, the Hon'ble Supreme Court has also referred the other judgments relied upon by the opponent no.2.

13. The Ld. Advocate for the opponent no.2 - Speed Carriers Bombay Pvt. Ltd. Has relied on the judgment of the Hon'ble Supreme Court, I.e (2026) 2 Supreme Court Cases 773 i.e. **Hind Samachar Limited (Delhi Unit) V/s. National Insurance Company Limited and others.** In this judgment, the other judgements relied upon by the opponent no.2 are also referred which are mentioned below :

(1) (2024) 13 SCC 755 , IFFCO Tokio General Insurance Co. Ltd. V/s. Geeta Devi.

(2) (2013) 10 SCC 217, Pepsu RTC V/s. National Insurance Co.

(3) (2004) 3 SCC 297, National Insurance Co. Ltd. V/s. Swaran Singh.

(4) (2003) 3 SCC 338, United India Insurance Co. Ltd. V/s. Lehru.

13a. Paragraphs **Nos. 12 to 17** are required to be considered of the judgment of the Hon'ble Supreme Court i.e. Hind Samachar Limited (Delhi Unit) V/s. National Insurance Company Limited and others. The said Paragraphs are reiterated below.

> ***12.*** *We do not find any substance in the argument of the respondent-insurer that a collusion can be validly inferred since the driving licence was produced by the owner. In fact, the owner of the truck is not an individual and is a company, as we see from the cause title. Undisputedly, even if the tort-feasor is the driver, the liability for any negligence of the driver rests on the owner of the vehicle, vicariously. There can be no suspicion raised merely because the owner had produced the driving licence before the court. It only indicates that the owner had been diligent enough to procure the driving licence from the driver and produce it before the Tribunal, so as to validly raise a case for indemnification by the insurer.*
>
> ***13.*** *The office of the DTO, Gurdaspur had also issued a certificate indicating that the driving licence No.5288 issued in the name of the first respondent was so issued on 05.04.1991 valid from 05.04.1991 to 04.04.1994 and, thereafter renewed from 11.08.1994 to 10.08.1997 vide entry*

No.2903 dated 11.08.1994, produced along with the additional documents by the appellant and marked before the Tribunal as R-1.

14. *The driving licence issued from the office of DTO Gurdaspur was produced as R1W1/1 and R3W3 was a Clerk from the office of DTO Gurdaspur who claimed that Exhibit R1W1/1 was not issued from their office and no amount was deposited in the name of R1 towards driving licence fees in their office on 21.08.1990. Immediately, we have to notice that the date 21.08.1990 has no nexus with the date of issuance of R1W1/1, which was first issued on 05.04.1991 and the renewal effected on 11.08.1994.*

15. *Further, it is to be noticed that the DL register produced from the office of DTO Gurdaspur was full of interpolations. A colour photograph of 1st respondent was found in the register but the name shown was different. In cross examination, it has come out that there were interpolations and deletions made as against other entries too. Also on the ground of there being no possibility of a colour photograph in the year 1990, the High Court found collusion between the owner and the driver. The collusion at best can be only alleged* *for the production of the licence and not with respect to the entrustment of the vehicle.*

16. *As has been noticed in Geeta Devi (supra) there is no pleading or substantiation of due diligence having not been employed at the time of entrustment. R1W1 was the Advertising In-charge of the appellant who produced the licence before the Court as Exhibit R1W1/1. The certificate issued by the RTO Gurdaspur was also marked as R1 which we referred to from the additional documents. In examination, there was only a bland suggestion made to the witness that the Directors of R2 knew that R1 possessed only a fake driving licence. There were no questions put to the witness, who was examined on behalf of the owner, as to the actual entrustment of the vehicle or whether R1 was employed regularly or temporarily and when such employment commenced, which are crucial insofar as proving or disproving due diligence by the owner at the time of engagement of the driver and the entrustment of the vehicle. As has been rightly held by the precedents above noticed, the owner of a vehicle employing a driver can only look at the licence produced by the person seeking employment and is not expected to verify from the* *licence issuing authority whether the licence is fake or not.*

17. *The insurance company from the totality of the circumstances has to bring out the absence of due diligence in the employment of the driver or the entrustment of the vehicle, to prove breach by the insured, which is totally absent in the present case. The High Court had erred in finding that there was collusion between the employer and the employee merely for reason of the driving licence having been produced by the employer and the driver having not contested the claim. The driver, as has been noticed in a number of decisions of this Court, would have kept himself away from the box, for fear of incriminating himself; since a prosecution was pending against him. In any event, the vicarious liability to satisfy the damages caused by the negligence of the employee is on the employer, the later of whom has to contest the matter. Not only was the driving licence, as issued to the driver produced, but, a certificate showing its further renewal was also produced. In fact, we specifically notice that the renewal made is not an automatic renewal which has to be carried out within 30 days of the expiry of a driving licence, as per the Motor Vehicles Act and the Rules made* *thereunder. Herein the validity period of the licence, originally issued expired on 04.04.1994 and the renewal was on 11.08.1994.*

13b. In the above said judgment of Hind Samachar Limited (Delhi Unit) V/s. National Insurance Company Limited and others, the Hon'ble Supreme Court has also referred the judgment of Geeta Devi, the Para-10 of the judgment is reproduced here under :

> ***10.*** *In Geeta Devi (supra) this Court deprecated the practice of the insurance companies blithely claiming that the deceased vehicle owner did not conduct due diligence while employing a driver; which is not a condition prescribed either in the statute or in the insurance policy, despite the wealth of precedents. It was held so in paragraph 18, as under: -*
>
>> ***"18.*** *Applying the afore-stated edicts to the case on hand, it may be noted that the petitioner-insurance company did not even raise the plea that the owner of the vehicle allowed Ujay Pal to drive the vehicle knowing that his licence was fake. Its stand was that the accident had occurred due to the negligence of the victim himself. Further, the insurance policy did not*

> *require the vehicle owner to undertake verification of the driving licence of the driver of the vehicle by getting the same confirmed with the RTO. Therefore, the claim of the petitioner- insurance company that it has the right to recover the compensation from the owners of the vehicle, owing to a willful breach of the condition of the insurance policy, viz., to ensure that the vehicle was driven by a licenced driver, is without pleading and proof."*

14. The next judgment on which, the Ld. Advocate for the opponent no.2 has relied upon is the **New India Assurance Co. Ltd. V/s. Maniben Wd/o Mohanbhai Parsotbhai Patel & Ors**, in R/First Appeal No. 1243 of 2022. The relevant paragraphs of the said judgment i.e. Paragraph nos. 11 & 12 are reiterated below.

> ***11.** Further, so far as the liabilities of owner is concerned, the law requires the owner only to verify the driving skill of the driver and not to investigate the genuineness of the licence. In the present case, the record indicates that the driver possessed a licence to drive heavy motor vehicles, which was sufficient for the owner to believe that he*

was competent to drive the vehicle. Hence, even on this ground, the appellant fails in this regard, reference may be made to Rishipal Singh v. New India Assurance Co. Ltd., 2022 ACJ 1868 and IFFCO Tokio General Insurance Co. Ltd. v. Geeta Devi & Ors., (2023 INSC 954).

12. *In view of the above conspectus, as the Insurance Company failed to prove the said defence, this Court is of the considered view that the learned Tribunal did not commit any error in saddling the liability on the Insurance Company. Therefore, no interference is required, and the appeal is dismissed. No order as to costs. The Registry is directed to return the Record & Proceedings, if any, to the learned Tribunal forthwith.*

15. The other judgment relied upon by the opponent no.2 is (2020) 4 Supreme Court Cases 49 i.e. **Nirmala Kothari V/s. United India Insurance Company Limited.** The relevant paragraph nos. 9 to 12 are reiterated below :

9. Having set forth the facts of the present case, the question of law that arises for consideration is what is the extent of care/diligence expected of the employer/insured while employing a driver? To answer this question, we shall advert to the legal position regarding the liability of the Insurance Company when the driver of the offending vehicle possessed an invalid/fake driving licence. In the case of United India Insurance Co. Ltd. vs. Lehru & Ors.1 a two Judge Bench of this court has taken the view that the Insurance Company cannot be permitted to avoid its liability on the ground that the person driving the vehicle at the time of the accident was not duly licenced. It was further held that the willful breach of the conditions of the policy should be established. The law with this respect has been discussed in detail in the case of Pepsu RTC vs. National Insurance Co.2 We may extract the relevant paragraph from the Judgment: (Pepsu case, SCC P. 223-24, para10)

> *10.In a claim for compensation, it is certainly open to the insurer under Section 149(2)(a)(ii) to take a defence that the driver of the vehicle involved in the accident was not duly licensed. Once such a defence is taken, the onus is on the insurer. But even*

after it is proved that the licence possessed by the driver was a fake one, whether there is liability on the insurer is the moot question. As far as the owner of the vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence. Thereafter he has to satisfy himself as to the competence of the driver. If satisfied in that regard also, it can be said that the owner had taken reasonable care in employing a person who is qualified and competent to drive the vehicle. The owner cannot be expected to go beyond that, to the extent of verifying the genuineness of the driving licence with the licensing authority before hiring the services of the driver. However, the situation would be different if at the time of insurance of the vehicle or thereafter the insurance company requires the owner of the vehicle to have the licence duly verified from the licensing authority or if the attention of the owner of the vehicle is otherwise invited to the allegation that the licence issued to the driver employed by him is a fake one and yet the owner does not take appropriate action for verification of the matter regarding the genuineness of the *licence from the licensing authority. That is what is explained in Swaran Singh's case (supra). If despite such information with the owner that the licence possessed by his driver is fake, no action is taken by the insured for appropriate verification, then the insured will be at fault and, in such circumstances, the insurance company is not liable for the compensation."*

10. While the insurer can certainly take the defence that the licence of the driver of the car at the time of accident was invalid/fake however the onus of proving that the insured did not take adequate care and caution to verify the genuineness of the licence or was guilty of willful breach of the conditions of the insurance policy or the contract of insurance lies on the insurer.

11. The view taken by the National Commission that the law as settled in the Pepsu case (Supra) is not applicable in the present matter as it related to third-party claim is erroneous. It has been categorically held in the case of National Insurance Co. Ltd. vs. Swaran Singh & Ors.3 (SCC pp.341,para 110) that,

"110. (iii) 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 insurer against either the insured or the third parties. To avoid its liability towards the insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by a duly licenced driver or one who was not disqualified to drive at the relevant time."

12. While hiring a driver the employer is expected to verify if the driver has a driving licence. If the driver produces a licence which on the face of it looks genuine, the employer is not expected to further investigate into the authenticity of the licence unless there is cause to believe otherwise. If the employer finds the driver to be competent to drive the vehicle and has satisfied himself that the driver has a driving licence there would be no breach of Section 149(2)(a)(ii) and the Insurance Company would be liable under the policy. It would be unreasonable to place such a high onus on the insured to make enquiries with RTOs all over the country to ascertain the veracity of the driving licence. However, if the Insurance Company is able to prove that the owner/insured was aware or had notice that the licence was fake or invalid and still permitted the person to drive, the insurance company would no longer continue to be liable.

16. What appears from the record and the evidence is that, the negligence on behalf of the driver of the Truck, in the case on hand is that, he parked the vehicle where the electric line was passing, its not a case that the person electrocuted climbed the truck on instruction of the opponent no.1 – driver or the opponent no.2. Under such circumstances, the Insurance Company could not have repudiated the claim, solely on the ground that the driver didn't have a valid license at the time of incident in question.

17. At this juncture, the judgement of the Hon'ble Supreme Court i.e. **Civil Appeal No.2499-2500 of 2018 Mangalaram V/s. The Oriental Insurance Co. Ltd.** and others is required to be considered, wherein, it is held that a holistic view of the evidence has to be taken into consideration by the Tribunal and the strict proof of an accident caused by a particular vehicle in a particular manner is not be establish by the claimants. The claimants have to establish their case on the touchstone of preponderance of the probability. The standard of proof beyond reasonable doubt can not be applied while considering the petition seeking compensation on account of the death or a injury in a road traffic accident.

18. Same is held in the judgment of **Mathew Alexzandar V/s. Mohd Shafi & another** as well as in the case of **Anita Sharma V/s. New India Insurance Company & ICICI Lombard V/s. Rajani Sahu & another** Civil Appeal No._2025@ SLP© No. 29302 of 1990.

19. This Tribunal has considered the written statement of the opponent no.3 – HDFC Ergo General Insurance Co. Ltd. Produced at Exh.20, in para -11, it is an admitted fact that the policy was issued of Vehicle No. GJ 10X 5474 Tata Truck in favour of the insured – Speed Carriers Bombay Pvt. Ltd. bearing No. 2315200396693200000 for the period from 30/12/2012 to 29/12/2013.

20. The contentions raised by the Insurance Company was that the driver of the Insured vehicle was not holding a valid & effective license at the time of the incident. Further was not qualified for holding or obtaining such driving license and has not satisfied the requirements of the Rule No.3 of the Central Motor Vehicles Rules, 1989 & the insured opponent no.2 has handed over the possession of the vehicle No. GJ 10 X 5474 to the driver and contravened the proviso of the M.V.Act and the rules framed there under and has committed the breach of the policy & its terms & conditions.

21. This Tribunal has also noted that the contentions raised by the opponent no.2 – Speed Carriers Bombay Pvt. Ltd. In its written statement at **Exh.53** at Para nos. 7 & 8 are not denied which runs as under :

> **Para-7** : It is further submitted that opponent no.2 visited the office of opponent no.3 situated at Ahmedabad after receipt of summons of the subject claim on 09/01/2014. The Ahmedabad office instructed opponent no.2 to meet

Mr. Atul Purohit, employee of insurance company. He indicated that it is a third-party claim. He assured that the insurance company will look after the interest of the opponent no.1 and 2 since opponent no.2 had insured its fleet of commercial vehicles with the opponent no.3 being valued customer. It is further submitted that opponent no.2 has paid approximately premium Rs.47,12,290/- to opponent no.3 for the years between 2012 to 2014. The claim petition, driving license of opponent no.1 and Registration papers of the Truck No. GJ 10 X 5474 were handed over to him. The local investigator of the opponent no.3 also visited the office of opponent no.2 and he had collected Police papers, copy of the driving license of the opponent no.1 and GJ 10 X 5474 papers. He has also recorded the statement of opponent no.2 at that time since the investigator visited the office of opponent no.2 without prior appointment. Opponent no.2 tried its best to arrange meeting between opponent no.1 and the said investigator, but it had not materialized. Opponent no.1 in the meantime stopped attending the office of opponent no.2 for the reasons best known to opponent no.1. Opponent no.2 tried to contact opponent no.1 through Mustak Pathan. Mustak Pathan informed opponent no.2 that opponent no.1 had left Ahmedabad and he was not contact with him.

Para – 8 : It is submitted that opponent no.3 assured that, cases of such nature are forming part of regular course of business, and it will take appropriate steps to defend the claim petition on behalf of opponent no.1 and 2 along with its own defense. There was assurance on behalf of opponent no. 3 that opponent no.1 and 2 are not required to further act in the matter. The subject practice is common and prevalent in the transport industry. Opponent no.2 believed the said instructions and suggestions in a bonafide manner. In such circumstances, opponent no.2 had believed the assurance of opponent no.3 and keeping bonafide faith in the fiduciary relationship amongst the parties, it had not remained present in the subject proceedings at the material time.

21a. Considering the written statement of opponent no.2, this Tribunal has noted that, it was the duty of the concerned officer of insurance company to ask the opponent no.2 to appear before the Tribunal and raise his defence, as per the written statement of opponent no.2, claim petition, driving license of opponent no.1 and registration papers of Truck No. GJ 10 X 5474 were handed over to the concerned officer.

21b. As per the written statement of opponent no.2- Speed Carriers Bombay Pvt. Ltd., the opponent no.3 – Insurance Company assured that it will take appropriate steps to defend the claim petition on behalf of the opponent nos. 1 & 2 along with its own defence, There was assurance on behalf of opponent no.3 that opponent nos. 1 & 2 are not required to further act in the matter. Hence what appears from the written statement of opponent No.2 at Exh.53 is that, as if the opponent No.3 employees had misguided the opponent no.2.

21c. This Tribunal has also taken not that even during the arguments at Exh.46, contentions of para nos. 7 & 8 of written statement of opponent no.2 at Exh.53 are not denied, the same are not rebutted during the cross-examination of the opponent no.2 I.e. Mr. Chirag Piyush Shah and same are not denied even during the written argument at Exh.70.

21d. Now, coming to the evidence of the opponent no.2 – Speed Carriers Bombay Pvt. Ltd. Mr. Chirag Piyush Shah, the Authorized person of opponent no.2 has deposed that, the opponent no.1 – Hasifkhan Ashikali Pathan who was the driver of commercial vehicle was introduced by another driver – Mustak Pathan, who was serving since 5 years, the opponent no.2 asked for his driving license and the driver i.e. opponent no.1 gave copy of his original driving license No. 0552/H/53/RBC/2009 Date 02/04/2009 issued by RTO Raibareli, Uttar Pradesh, which from the face of it appeared to be genuine. According to the opponent no.2, no online facility was available for verifying the genuineness of the driving license. As per the said witness, he himself took the driving test and no history of past accident, was found, or driving license being suspended or cancelled and the opponent no.1 – driver joined service and was driving the Truck.

21e. During the cross-examination of the Authorized person of opponent no.2 – Speed Carriers Bombay Pvt. Ltd., questions regarding the salary paid to the driver, the register & record regarding the salary, are asked. This Tribunal has also taken note that its not a case of any mischief during his service with opponent no.2, no accident had occurred as per the evidence on record, the opponent no.1 had loaded goods from Jamnagar and reached Bhruch safely, as deposed by the witness in his cross-examination, and rest of the questions put on submission of opponent no.3 are denied. During the cross-examination, the above witness has also stated that at the relevant point of time, there was no cleaner on the vehicle i.e. (આ વાહન ઉપર અમારા તરફ થી કોઈ કલિનર હતો નહિ). Hence, from the cross-examination, also it appears that the facts stated at Paragraph nos. 7 & 8 of the written statement of opponent no.2 at Exh.53 are not rebutted or denied. Wherein, it is also stated that Mr. Atul Purohit employee of Insurance Company indicated that it is a third party claim.

22. As per the written statement & written argument of insurance company at Exh.20 and 70 respectively, it is an admitted fact that the policy of Truck No. GJ 10 X 5474 was issued by the opponent no.3. It is stated in written argument at Exh.70 that, the defence raised by the opponent no.2 is an after thought this tribunal has considered the submission, but it is to be noted that if any fraud is played by the opponent no.2 then alternative remedy under law would be available to the Insurance Company, which doesn’t appears to have been established by the opponent no.3 – Insurance company.

23. This Tribunal has also considered the judgments relied upon by the Ld. Advocate for the Insurance Company and are produced along with the Exh.70 – Written argument. The Judgment of **United India Insurance Company Limited V/s. Gamirbhai @ Gamirabhai @ Gambhirbhai @ Gemarbhai Panglabhai Meda**, reported in 2021(0) AIJEL HC 243358 Gujarat High Court. First Appeal No. 2645 of 20220 of the Hon'ble High Court of Gujarat. Whereas the judgment of **Pappu V/s. Vinodkumar Lamba** of the Hon'ble Supreme Court of India 2018(0) AIJEL SC 61544, in the said judgment relied upon by the Ld. Advocate for the Insurance Company, the Para-110 of the judgment is considered which reiterated below.

> Para 110 : The summary of our findings to the various issues as raised in these petitions are as follows:
>
> (i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2)(a) of the said Act.

(iii) The breach of policy condition, e.g. disqualification of driver or invalid driving licence of the driver, as contained in Sub-section (2)(a)(ii) of Section 149, have 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 defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time,

(iv) The insurance companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof where for would be on them.

(v) The court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstance of each case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

(viii) xxx

(ix) xxx

(x) Where on adjudication of the claim under the Act the tribunal arrives at a conclusion that the insurer has satisfactorily proved its defence in accordance with the provisions of Section 149(2) read with Sub-section (7), as interpreted by this Court above, the Tribunal can direct that the insurer is liable to be reimbursed by the insured for the compensation and other amounts which it has been compelled to pay to the third party under the award of the tribunal Such determination of claim by the Tribunal will be enforceable and the money found due to the insurer from the insured will be recoverable on a certificate issued by the tribunal to the Collector in the same manner under Section 174 of the Act as arrears of land revenue. The certificate will be issued for the recovery as arrears of land revenue only if, as required by Sub-section (3) of Section 168 of the Act the insured fails to deposit the amount awarded in favour of the insurer within thirty days from the date of announcement of the award by the tribunal.

(xi) The provisions contained in Sub-section (4) with proviso thereunder and Sub-section (5) which are intended to cover specified contingencies mentioned therein to enable the insurer to recover amount paid under the contract of insurance on behalf of the insured can be taken recourse of by the Tribunal and be extended to claims and defences of insurer against insured by, relegating them to the remedy before, regular court in cases where on given facts and circumstances adjudication of their claims inter se might delay the adjudication of the claims of the victims." (emphasis supplied)

23a. On referring the above judgment, the **Paragraph nos. 6 & 7** are to be considered, wherein, the Hon'ble Supreme Court has held that …

" (vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/ are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences

available to the insured under Section 149(2) of the Act.

(vii) The question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case.

23b. The another judgment of Hon'ble Madras High Court i.e. CMA No.134 of 2026 and CMP No.1345 of 2026 is also considered by this Tribunal.

24. This Tribunal has also considered the judgments of both the side, nothing appears from the circumstances or direct evidence indicating that the Insurance Company i.e. opponent no.3 had brought on record the absence of due diligence in the employment of the driver or the entrustment of the vehicle to prove breach by the insured – opponent no.2 as held in the judgment referred by the opponent no.2 i.e. Hind Samachar Limited (Delhi Unit) V/s. National Insurance Company Limited, reported in (2026) 2 Supreme Court Cases 773 that the owner of a vehicle employing a driver can only look at the license produced by the person seeking employment and is not expected to verify from the licence issuing authority whether the licence is fake or not.

25. As per the deposition and evidence of opponent no.2, he was diligent to procure the license from the driver. As per Exh.53, written statement of opponent no.1, claim petition, driving license of opponent no.1 & registration papers of Truck No. GJ 10X 5474 were handed over to the employee of the Insurance Company i.e. Mr. Atul Purohit. As noted previously, the above contention at Para 7 & 8 of written statement of opponent no.2 are neither denied nor rebutted during the evidence. This Tribunal has also taken note that the said employee of the Insurance Company i.e. Mr. Atul Purohit is not examined by the Insurance company i.e. opponent no.3.

26. As per the evidence on record, the opponent no.2 had verified the driving license of the driver. As per the judgment of **The New India Assurance Co. Ltd. V/s. Maniben Wd/o Mohanbhai Parsotambhai Patel & Ors.,** dated 10/12/2005 in R/First Appeal No.1243 of 2022 of the Hon'ble High Court of Gujarat, the opponent no.2 had not to investigate the genuineness of the license.

Nothing is on record either in the pleading of the Insurance Company or during the evidence that the owner/insured opponent no.2 was aware or had noticed that the license was fake and the opponent no.2 still permitted the driver opponent no.1 to drive.

27. The Insurance company failed to prove that the opponent no.2 was aware and having knowledge about the fake driving license of opponent no.1, but did not take adequate care & caution to verify the genuineness of the license held by the driver. Hence, Insurance Company would be liable to innocent third party unless they prove that the owner / insured was aware or had noticed that the license was fake and still permitted that person to drive the vehicle.

28. In view of aforesaid discussion, it can be said that the present accident had occurred because of negligent act of opponent No.1 i.e. truck driver. At the relevant time, opponent No.2 was the owner of the offending Truck bearing registration No.GJ10-X-5474; this fact is clearly derived from the R. C. Book of truck produced at **Exh.43**. Therefore, the owner i.e. opponent No.2 is vicariously liable for the tortuous act of opponent No.1 - truck driver. Further, on perusing insurance policy of the truck bearing registration No.GJ10-X-5474 at **Exh.42**, it transpires that the offending vehicle was insured with the opponent No.3 for the period from 30/12/2012 to 29/12/2013. Thus, the offending truck has covered risk of insurance on 17/08/2013, the date of accident and the insurance company cannot absolve from its liability to pay compensation to the claimants and the opponent No.3 - insurer is liable to compensate the loss caused to the insured. So the opponent Nos.1 to 3 are jointly and severally liable to pay the amount of compensation to the claimants, together with proportionate costs and interest @ 9% p.a. from the date of claim petition till realization with proportionate costs to the claimants.

OTHER issues regarding negligence, age, income etc. are not in dispute which are discussed hereinafter….

29. So far as the question of negligence is concerned, the claimant No.2 - Kamruddin Tajubali has submitted his affidavit of examination-in-chief at **Exh.24** and has narrated the same facts as mentioned in his claim petition. During the cross-examination, he has stated that, he was not eyewitness of accident and hence, he has no knowledge about the same.

29a. Upon going through the police complaint vide **Exh.35** which has been lodged by Aswakhan Sahiruddin Khan who is father of the deceased on 17/08/2013, the same day of accident, it clearly transpires that, he had received telephonic message from Kamruddin Pathan that, after unloading plastic grains from the offending truck which was parked at GIDC, Bharuch, his son's i.e. deceased's hand was electrocuted while tying the rope on the truck and had fell down from the truck, as a result of which he sustained grievous injury and was shifted to Civil Hospital, Bharuch where he declared as dead.

30. The accident site panchnama produced on record vide **Exh.26** reflects the place of accident as situated on the gate of Krishna Plastic Company, GIDC, Bharuch and live electric wire passing over it, which is 15 ft. above the ground. It is mentioned in the panchnama that, north - south road facing main road of GIDC, Bharuch and the building of Krishna Plastic is situated on

Western side. It is also mentioned in the panchnama that, while the deceased was tying the rope on the truck No.GJ10-X-5474, his hand was electrocuted and the incident had taken place. Considering the evidence on record and under the facts and circumstances discussed above, the Tribunal is of the view that, no person in charge of a motor vehicle shall cause or allow any vehicle to remain at rest on any road in such a position or in such a condition or in such circumstances as to cause or to be likely to cause danger, obstruction or undue inconvenience to other users of the road.

In the case on hand, the opponent No.1 - driver of the truck had not observed the rules of parking and had parked his vehicle to cause danger to the deceased more particularly the place where live electric wire was passing over the vehicle truck due to which this unfortunate incident had happened. Had the opponent No.1 – driver, taken some reasonable care while parking his vehicle, this incident could have been averted. Failure to do so, demonstrate squarely rests upon opponent No.1 – truck driver. Thus, it can certainly be said that, this is nothing but negligent act on the part of opponent No.1 - truck driver, as a result of which deceased had lost his life. Hence, I answer the issue No.1 in the '**affirmative**'.

Issue No.2 : Quantum of Compensation

Death

31. The death of Munna Kamruddin Pathan had occurred because of shock, resulting from electrocution arising out of the use of motor vehicular accident. This fact is also undisputed and it is supported by Post Mortem Report of the deceased produced at **Exh.28**.

Age of deceased

32. According to the say of the claimants, the deceased was 24 years old at the time of accident, however, the applicant has not produced any evidence with regards to the age of the deceased. But in the Inquest Panchnama **(Exh.27)**, the age of the deceased is shown to be 22 years. Hence, in the absence of proof it may be presumed that, the deceased might be aged about 22 years.

Income including future prospects

33. Now, the question arises that, what would be the income of deceased at the time of accident ? The claimant No.2 - Kamruddin Tajubali has submitted his affidavit of examination-in-chief vide **Exh.24** and stated that, deceased was working as labourer on the truck and used to earn Rs.8,000/- per month.

33a. During his cross-examination he has stated that, his daughter-in-law has not re-married after her husband's death. He has further stated that, his son i.e. deceased was not having any child during the wedlock. He has also stated that, he has not produced any evidence with regards to the age and income of the deceased.

34. It is pertinent to note that, there is no documentary evidence on record as regards the monthly income of the deceased. Therefore, it is difficult to determine the income of the deceased as it involves good deal of guess work. In 2013, any person / labourer / cleaner doing such type of work or like activities might have earned Rs.7,000/-. Thus, income of the deceased can be presumed Rs.7,000/- p.m. and yearly it would be Rs.84,000/-, would meet the ends of justice.

35. Ld. Advocate for the claimants has submitted written arguments vide **Exh.45** and vehemently argued that, the deceased was working as cleaner / labourer on the offending truck, and if he would have been alive his income might have increased, but, untimely death of deceased Munna Pathan had caused huge financial loss to his family members. Thus, future prospective income of deceased is requires to be considered. In support of his say, he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Pranay Sethi & Ors.,*** reported in ***2017(3) GLH 536 SC.***

35a. The Hon'ble Supreme Court in ***Pranay Sethi (supra)*** has held at para-61(iv) that -

> In case of the deceased was self employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

35b. Thus, in view of **Pranay Sethi (supra)**, considering 22 years age of the deceased, an addition of 40% of the established income as future prospects is required to be considered.

36. In case of **Sarla Verma and others v. Delhi Transport Corporation and others** reported in **2009 ACJ 1298 SC,** the Hon'ble The Supreme Court has held to the effect that-

> ... ... *Where the annual income is in the taxable range, the word 'actual salary' should be read as 'actual salary less tax*'. ... ...

36a. Thus, deceased's yearly income at the time of accident was Rs.84,000 – Rs.Nil. (income tax as it was applicable in the A.Y. 2014-15 upto Rs.2.00 Lacs is Nil) = Rs.84,000/- p.a. income +

Rs.33,600/- (40% of Rs.84,000/- as future prospect) = Rs.1,17,600/-. Thus, the **income of deceased including future prospects can be considered Rs.1,17,600/- p.a.,** would meet the ends of justice.

<u>**Deduction of personal living expenses and Multiplier:**</u>

37. It is undisputed fact that, the deceased had left behind him three family members i.e. wife, father and mother. In **Sarla Verma's case (supra),** the Hon'ble Supreme Court has held that -

> *where deceased was married, the deduction towards personal and living expenses of the deceased should be 1/3rd where the number of dependent family members is 1 to 3.*

37a. Thus, deduction of personal living expenses of the deceased should be **1/3rd of income**. Further, multiplier of 18 is prescribed for the age groups of persons between 16-25. Thus, **18 multiplier** is applicable while computing the compensation.

<u>**Dependency Loss**</u>

38. After deducting the personal living expenses of the deceased, dependency loss would be Rs.1,17,600/- p.a. income - Rs.39,200/- (1/3rd of total income Rs.1,17,600/-) = Rs.78,400/- x 18 multiplier

= Rs.14,11,200/-. Therefore, it is just and proper to award a sum of **Rs.14,11,200/- towards dependency loss to the claimants**.

Conventional Amounts:

39. The compensation to be awarded towards consortium and loss of love and affection is not rigidly standardized. Nevertheless, the trend and the indications available from different decisions of the Hon'ble Supreme Court are in favour of increasing such compensation under conventional heads to keep in tune with the reducing purchasing power of the rupee as also bearing in mind the concept of sudden tragic and needless loss of life resulting into trauma and mental agony to the family members of deceased. If it happens to be the wife, she should be deprived of life long love, affection and protection and companionship. The children at tender age would lose parents, without whom their upbringing and parenting would indefinitely be incomplete.

40. The Hon'ble Supreme Court in **Pranay Sethi's case (supra)** has held that, quantum of compensation under conventional head should be awarded Rs.15,000/- towards Loss of estate; Rs.40,000/- towards Loss of consortium and Rs.15,000/- towards Funeral Expenses and directed to all the Tribunal that the aforesaid amount should be enhanced @ 10 per cent, in every 3 (three) years.

41. In the case on hand, it is also equally true that, the claimants might have incurred expenses towards last rituals of deceased. Thus, in view of ***Pranay Sethi's case (Supra)***, it will be just and proper to award a sum of **Rs.15,000/- towards funeral expenses.** Further, it is also true that, the deceased had left behind him widow, father and mother. Therefore, in view of ***Pranay Sethi's case (Supra)***, it will be just and proper to award a sum of **Rs.15,000/- towards Loss of estate** and **Rs.40,000/- towards Loss of consortium.**

42. Thus, the claimants are entitled to get the following amount of compensation:

1	Dependency Loss	14,11,200/-
2	Funeral Expenses	15,000/-
3	Loss of Estate	15,000/-
4	Loss of Consortium	40,000/-
	Total Compensation	**14,81,200/-**

43. Further, it is required to be observed that in view of the oral Judgment of the Hon'ble High Court of Gujarat in the case of **Smt. Hansagauri Prafulchandra Ladhani V/s. Oriental Insurance Company Limited and others** reported in **2007 ACJ 1897**, wherein the question of deduction of income tax by the Insurance Company has been discussed and certain directions have been issued to the Tribunal, is required to be followed by this Tribunal.

Hence, those directions are also required to be given to the present Insurance Co. regarding deposit of amount of Income Tax payable to Income Tax Department for the interest.

44. So far the issue of liability is concerned, same is discussed in detail, at the initial part of this judgement and this tribunal had come to the conclusion that, opponent Nos.1 to 3 are jointly and severally liable to pay the amount of compensation to the claimants, together with proportionate costs and interest @ 9% p.a. from the date of claim petition till realization with proportionate costs to the claimants, and hence, I answer Issue No.2 in the 'affirmative' accordingly and as the claimants succeeds partly in the matter, they are entitled to get following reliefs and award, and therefore, in the result, in reply to Issue No.3, this tribunal pass the final order as follows :-

:: <u>ORDER</u> ::

1) The claim petition stands partly allowed, against all the opponents, jointly and severally.

2) All the opponents, jointly and severally are ordered to pay a sum of Rs.14,81,200/- (Rupees Fourteen Lacs Eighty-One Thousand and Two hundred only) as compensation to the claimants, together with proportionate costs and interest @ 9% p.a. from the date of claim petition till realization within one month from the date of this order.

3) All the opponents, jointly and severally are ordered to deposit the amount of compensation awarded along with interest and proportionate costs etc., in the office of the Tribunal within **1 (one)** month from the date of this judgment.

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) Amount of Court fees, if recoverable; be recovered from the awarded amount of compensation and the same to be taxed as costs of the petition.

6) The amount of compensation shall be disbursed to the claimant Nos.1 to 3 in the ratio of 50:25:25 respectively.

7) On depositing the amount of compensation, **70%** amount be Fixed Deposited in the name of claimants in any nationalized bank or in any Government security to their choice for a period of 5 (five) years, keeping the nomination clause, with a condition that no loan or advance or charge would be admissible on this amount without prior permission of this tribunal but the claimants would be entitled to get periodical interest that may accrue to them on the said F.D.R.

8) The remaining **30%** amount be paid to the claimants by Account Payee Cheque, upon proper verification and identification.

9) The opponents are also directed to -

(a) first spread the interest amount over to the relevant financial years for the period from date of filing the claim petition till the date of deposit.

(b) thereafter, if the interest for any particular financial year exceeds Rs.50,000/-, separately deposit before this Tribunal the amount liable to be deducted at source under the provisions of Sec.194.A (3) (ix) of the Income Tax Act, 1961 such amount shall not, however, straight way, be paid over to the Income Tax Department.

(c) produce before this Tribunal a statement of compensation of interest by spreading the amount over the relevant years from the date of claim petition till the date of deposit if the interest for any particular financial year exceeds Rs.50,000/- and also request the Tribunal to treat the amount as a separate deposit.

(d) to deposit the entire amount of interest as aforesaid in the Tribunal which will be dealt with by the Tribunal in view of decision of the Hon'ble High Court of Gujarat which is rendered in Civil Application No.10031/2006 in First Appeal No. 1392 of 2006.

10) Opponents do bear their own costs whatsoever.

11) Award be drawn accordingly.

Signed and Pronounced in the open Tribunal today on this 6th day of June, 2026.

Date: 06/06/2026.
Place: Bharuch

(Ejaz Mohsinali Shaikh)
2nd Additional District Judge & MAC
Tribunal (Auxi), Bharuch
Code No.GJ00627

(EMS)*