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Duration : **6Y-05M-09D**

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

MAC PETITION No.605/2019 (Main Matter) with MACP No.606/2019

Exh. ______

MACP No.605/2019

Claimants:
1. Yuvrajsinh Arjunsinh Parmar
2. Minor Rutikkumar Arjunsinh Parmar
3. Zaverben Shanabhai Parmar
   (Claimant no.2 represented through his L/G claimant no.3)

   All are R/o. Brahman Faliya, Tralsa, Ta. & Dist. Bharuch.

MACP No.606/2019

Claimants:
1. Yuvrajsinh Arjunsinh Parmar
2. Minor Rutikkumar Arjunsinh Parmar
3. Zaverben Shanabhai Parmar
   (Claimant no.2 represented through his L/G claimant no.3)

All are R/o. Brahman Faliya, Tralsa, Ta. &
Dist. Bharuch.

Versus

<u>Opponents:</u>

1. Nashirkhan Rashidkhan Pathan
   Age : Adult, Occu.: Driver,
   R/o. Dhobi Talav, Opp. Muslim Society,
   Bharuch.
2. Jamnadas Ramanlal Modi
   Age : Adult, Occu. : Owner,
   R/o. 106, Narmada Market,
   Opp. Railway godi, Bharuch.
3. Bajaj Allianz General Insurance Co. Ltd.
   Block D 120-124, R.K. Kasta, Bharuch.

<u>Appearance</u>:

Ld. Advocate Mr. R.C.Gohil, for the claimants in both petitions.
Ld. Adv.Ms.F.A. Lakdawala, for the opponent Nos.1&2 in both petitions.
Ld. Adv. Mr. N.R.Modi, for the opponent No.3 in both petitions.

Claim petition to get compensation of ***Rs.80,00,000/-*** in ***MACP No.605/2019*** and ***Rs.20,00,000/-*** in ***MACP No.606/2019*** under the provisions of ***Section 166 of the Motor Vehicles Act, 1988.***

<u>COMMON JUDGMENT</u>

1. The claimants of MACP Nos.605/2019 & 606/2019 are the legal heirs and representatives of deceased namely; Arjunsinh Shanabhai Parmar & Vilasben Arjunsinh Parmar respectively. The claimants have filed claim petitions and claimed compensation of ***Rs.80,00,000/-*** in ***MACP***

No.605/2019 and ***Rs.20,00,000/-*** in ***MACP No.606/2019*** under the provisions of ***Section 166 of the Motor Vehicles Act, 1988.*** In both the **MACP Nos.605 & 606/2019**, claimant Nos.1 & 2 are the son of the deceased & claimant no.3 is the mother of the deceased.

1.2 Both the claim petitions have arisen out of the same accident, and therefore for the sake of convenience and unnecessary repetition, MACP No.606/2019 has been consolidated with MACP No.605/2019 vide order passed below **Exh.39** and MACP No.605/2019 is treated as main claim petition. Thus, both the claim petitions are decided by this common judgment.

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

2.1 That, on 27/11/2019 at about 4.15 pm., deceased Arjunsinh Shanabhai Parmar was going to Tralsa from Bharuch by driving Motorcycle No. GJ 16 CP 0658 and his wife Vilasben Arjunsinh was set as a pillion rider. The said motor cycle drove with by the deceased Arjunsinh in moderate speed. When they reached near Petrol pump of village Kuvadar, at that time opponent No.1 came by driving Vehicle No. GJ 16 W 8947 at high speed with rash and negligent manner and dashed with motorcycle due to which Arjunsinh & Vilasben sustained bodily injuries & Arjunsinh died on the spot, when Vilasben admitted to Healing Touch Hospital, Bharuch and thereafter she was died. The FIR with respect to the said accident was registered with Nabipur Police Station vide I CR No.84/2019.

2.2 According to the claimants of **MACP No.605/2019**, at the time of accident, deceased Arjunsinh was aged 39 years, hale and healthy. It is also stated that deceased was working as an agent with LIC and New India Insurance Company, carrying on the business of mandap decoration, engaged in agricultural activities in his own agricultural land, and also owned a water well from which he supplied water to other farmers on rent. He also owned a water tankers which were given on hire, thereby he was earning income therefrom of Rs.45,000/- p.m. at the time of accident. It is further stated that had deceased been alive, income of the deceased would have increased, but due to sad demise of deceased, the claimants have suffered economic loss and claimed Rs.80,00,000/- as compensation under different heads.

2.3 According to the claimants of **MACP No.606/2019**, at the time of accident, deceased Vilasben was aged 35 years, hale and healthy. It is also stated that deceased was doing tailoring work & animal husbandry and earning Rs.12,000/- p.m. at the time of accident. It is further stated that had deceased been alive, income of the deceased would have increased, but due to sad demise of deceased, the claimants have suffered economic loss and claimed Rs.20,00,000/- as compensation under different heads.

2.4 It is further stated that the said vehicular accident has occurred due to negligent driving on the part of the opponent No.1 - driver of offending vehicle and opponent No.2 being owner of the said vehicle has insured his vehicle with opponent No.3 – insurance company, hence all the opponents are jointly & severally liable to pay the amount of compensation to the claimants.

3. Upon the petitions being admitted, notices were issued to the opponents and they have been duly served. The opponent Nos.1&2, driver and owner of offending vehicle appeared through their advocate and filed reply at **Exh.16** (in MACP No.605/2019) and **Exh.18** (in MACP No.606/2019) inter-alia contending that, all the averments made in the claim petitions are not true and correct, and denied in toto. It is further contended that, the alleged accident occurred due to negligency of the motorcyclist i.e. deceased. The claim petition of the claimants is required to be dismissed due to non-joinder of necessary parties. Hence, they have prayed to dismiss the claim petitions against them.

3.1 The opponent No.3 – Insurance Company appeared through its advocate and filed reply at **Exh.26** (in MACP **No.606/2019)** inter alia contending that, all the averments made in the claim petition are not true and correct, and denied in toto. It is further contended that, the facts regarding occurrence of accident, involvement of offending vehicle, causing injuries and resultant death of the Arjunsinh & Vilasben, age and income of the deceased and claimant are not true and correct. It is stated that alleged accident took place due to sole negligence on the part of deceased, hence Tempo driver is not responsible for the cause of accident. It is further contended that the opponent No.1 – Tempo driver was not holding valid and effective driving licence on the day of accident and has not satisfied the requirements of the Rule 3 of the Central Motor Vehicles Rules, 1989, and thereby, the insured had committed breach of policy conditions. Consequently, prays to dismiss the claim petition.

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

Sr. No.	Evidences	Exh.
Oral Evidences		
1	Zaverben Shanabhai Parmar (MACP No.605/19)	**19**
2	Zaverben Shanabhai Parmar (MACP No.606/19)	**21**
3	Anilbhai Gopinath	**25**
Documentary Evidences		
	(MACP No.605/19)	
1	Copy of FIR	**31**
2	Copy of Panchnama of place of occurrence	**32**
3	Copy of Inquest Panchnama	**33**
4	Copy of Postmortem Report	**34**
5	Copy of Permit of Tempo No. GJ 16 W 8947	**35**
6	Copy of Insurance policy of Tempo	**36**
7	Copy of Driving license of deceased	**37**
8	Copy of R.C.Book of Motor Cycle No. GJ 16 CP 0658	**38**
	(MACP No.606/19)	
1	Copy of School Leaving Certificate of deceased	**29**
2	Copy of Inquest Panchnama	**48**
3	Copy of Postmortem Report	**49**
4	Copy of Charge – sheet	**51**

5. On completion of evidence, Ld. Advocate for the claimants has filed closing pursis at **Exh.40,** whereas, Ld. Advocate for the insurance company has filed closing pursis vide **Exh.53.**

6. Heard Learned Advocates for the parties, perused the evidence and written arguments filed by Ld. Advocate for the claimants at **Exhs.30 & 54** and Ld. Advocate for the insurance company at **Exh.56.**

7. The following issues were framed at **Exh.18 (in MACP No.605/2019)** by my learned predecessor for determination of this claim petition :

1. Whether it is proved that the deceased sustained injuries and died on account of the rashness and negligence in 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. The following issues were framed at **Exh.20 (in MACP**

No.606/2019) by my learned predecessor for determination of this claim petition:

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

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

3. What order ?

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

1.In affirmative **(in both petitions),**
2.In the affirmative – As per final order **(In MACP No.605/2019).**
2.In affirmative **(In MACP No.606/2019).**
3.As per final order **(In MACP No.605/2019).**
4.As per final order **(In MACP No.606/2019).**

<u>REASONS</u>

<u>Issue No.1</u>

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

10.1 Ld. Advocate for the claimants has filed written submissions at **Exh.54 & 30** and submitted that, the accident had occurred due to sole negligence on the part of opponent No.1 – Tempo driver & charge sheet has been filed against the Tempo driver. He has further submitted that the claimants are entitled to recover an amount of Rs..33,29,400/- along with interest at the rate of 9% p.a. from all the opponents in MACP No.605/2019 & Rs. 21,66,000/- in MACP no.606/2019. He has placed relied upon the following judgment.

(1) Tata AIG General Insurance Co. Ltd. V/s. Mohmmad Irfanbhai Nurmamadbhai Sheikh & Ors, in R/Special Civil Application NO.2545 of 2024.

10.2 Ld. Advocate for the insurance company has filed written arguments at **Exh.56** and submitted that, opponent no.1 was not negligent in fact the deceased was negligent. He has further submitted that the applicants have not examined any eye witness to rebut the burden of proof thus cast upon them by the opponent no.1 driver of the Tempo. He has further submitted that the it should be exonerate from its liability. Moreover, he has submitted the following Judgments.

(1) ICICI Lombard General Insurance Co. Ltd. V/s. Rajani Sahoo & Ors., reported in 2025 Supreme (SC) 18.

(2) C.C.No.378/2020.

10.3 So far as the question of negligence is concerned, claimant No.1 – Zaverben Shanabhai Parmar who is the mother of deceased Arjunsinh (MACP No.605/2019) has filed her affidavit of examination-in-chief at **Exh.19** and she being mother of the deceased Arjunsinh & and she being grand mother of the deceased Vilasben of MACP No.606/2019 has filed her affidavit of examination-in-chief at **Exh.21** and narrated the facts as mentioned in claim petitions. During cross-examination by Ld. Advocate for the insurance company, she admitted that she has not seen the accident. She has not any documentary evidence relating to the income of her son & also she has not any documentary evidence relating to the income of her daughter in law.

10.4 The claimants have produced on record the copy of the FIR at **Exh.31** and spot panchnama at **Exh.32**, wherein, the description of the Motorcycle No GJ 16 CP 0658 has been mentioned. If the FIR at **Exh.31** is perused, it was filed by Ravjibhai Abhesingbhai Parmar who is the relative of deceased Arjunsinh Shanabhai Parmar to the effect that, when he was at home he was informed by telephonic massage that, Arjunsinh & Vilasben met with accident near Kuvadar Petrol pump. Therefore, he immediately went to the spot and came to know that when Arjunsinh and Vilasben was going on Motorcycle No.GJ 16 CP 0658 and passing from Bharuch to Tralsa, at that one unknown vehicle came at high speed and dashed with Motorcycle and thereafter fled away from the spot.

10.5 From the perusal of panchnama at **Exh.32**, it appears that incident took place on the road of village Hingalla towards Tralsa on the road of sim of village Kuvadar. There is a tar road and blood stains are found. It also appears from panchnama that, mudguard of front side of motor cycle was bend & also jumper was broken and steering was also bend. And also main & side lights were broken & there is a blood stains on silencer are found. Also there is a pieces of fiber glass of motor cycle were lying scattered. It is pertinent to note that the position of unknown offending vehicle is not mentioned in the panchnama by the panchas as the unknown offending driver fled away from the spot after the accident.

10.6 From the material on record, it is clear that the driver of the two wheeler Arjunsinh & pillion rider Vilasben died in the accident.

10.7. Further, the claimants have produced the Inquest Panchnama at **Exh.33** (in MACP No.605/2019), **Exh.48** (in MACP No.606/2019) and copy of P.M. Report at **Exh.34** (in MACP No.605/2019) and **Exh.49** (in MACP No.606/2019). The P.M. Reports **Exh.34** (in MACP No.605/2019) and **Exh.49** (in MACP No.606/2019) clearly reveals that the cause of death of deceased Arjunsinh & deceased Vilasben is hemorrhagic shock due to severe degree of cranio- cerebral and lacerated injuries of lungs due to chest injuries & also due to haemorrhagic shock due to severe injuries in cranio cerebral region, lacerated injuries in liver, spleen due to abdominal injuries respectively.

10.8. Moreover, Driver of Tempo No. GJ 16 W 8947, who is opponent no.1 - Mr. Nasirkhan Rasidkhan Pathan has been examined at Exh.42. He has cross-examined by Ld. Advocate Mr. N.R.Modi on behalf of the Opponent no.3, wherein, in his examination in chief, he has stated that he was serving as a driver in Jamnadas Modi & Company, Narmada Transport. In the year 2019, while he was coming from Dayadara to Bharuch via Kothi road by driving his own Tempo No. GJ 16 W 8947 the road on his right side was closed, two trucks were moving ahead and suddenly a motorcyclist came out from behind those two Hyva trucks moving ahead of Tempo and collided with front side of his tempo, due to which the accident occurred. He has stated that Police has registered an offence against him. In that case, he is acquitted by the court.

The said witness is cross-examined by Ld. Advocate of the claimants Mr. R.C.Gohil, wherein he has admitted that the road where the accident occurred was a four track road and there was a divider in the middle. He has further admitted that the road on his side was closed and therefore, he was traveling on the opposite side road. He has further admitted that there was no load in his vehicle, the speed of his vehicle was about 50 to 60 km per hour. He has further admitted that Police had arrested him and after completion of investigation, a charge-sheet was filed against him. So, here is the crystal clear that the opponent no.1 was solely negligent for the said accident.

11. Thus, considering the facts and circumstances of the present case, evidence of Tempo driver **(Exh.42)** and the material placed on record, it is evident that the accident occurred between the Tempo and the motorcycle near village Kothi road to Bharuch and this fact is not disputed. The defence put forth by the opponents that the deceased motorcyclist suddenly came from behind those two Hyva truck moving ahead of Tempo and collided with front side of his tempo, is not supported by any independent or corroborative evidence. Further, there is no credible material on record to substantiate the claim that the Tempo driver attempted to stop the vehicle in time upon motorcyclist's sudden appearance. This version of events is inconsistent with the contents of the FIR which was filed against the Tempo driver. The learned advocate for the opponents has relied upon the judgment in Criminal Case No.378/2020 produced **at Exh.47**, in which the Tempo driver was given benefit of doubt and acquitted for the criminal charges and held not responsible for the accident. However, it is a well-settled principle of law that an acquittal in a criminal case does not ipso facto absolve a person of civil liability. The standard of proof in criminal proceedings is "beyond reasonable doubt", whereas in motor accident claim cases, the matter is decided on the basis of the "preponderance of probabilities".

11.1 It is pertinent to note after due investigation, charge sheet was also filed against him, the copy of which is produced on record **at Exh.51** and this fact was admitted by opponent No.1 during his cross-examination. However, the Tempo driver in his evidence at Exh.42 alleged that the motorcyclist was riding at an excessive speed, in a rash and negligent manner and thereby lost control of the vehicle and suddenly came ahead of Tempo. These assertions, however, are inconsistent with the other evidence on record which reflect contradictory positions adopted by Tempo driver. Such inconsistencies undermine the credibility of the defence and render it unreliable and unworthy of acceptance. As a driver of Tempo, it was his duty to operate the vehicle at moderate speed and with due care and caution. Had Tempo driver exercised reasonable care and reduced the speed of his vehicle, the accident could have been averted. Therefore, considering the entire record, it is established that the accident occurred due to the negligence of opponent No.1 i.e. Tempo driver. There is no evidence on record to suggest any negligence on the part of the motorcyclist in causing the accident. Therefore, it is established that the accident has occurred due to sole rash and negligent driving on the part of Tempo driver resulted into death of Arjunsinh and Vilasben in the accident. Hence, I answer Issue No.1 (in MACP No.605/2019) and issue Nos.1&2 (in MACP No.606/2019) accordingly in ***"Affirmative"***.

Issue No.2

In MACP No.605/2019 (Fatal)

12. 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.

13. On perusing the Driving License at **Exh.37**, deceased's birth date is mentioned as 23.01.1978. Therefore, deceased was 42 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 **14** is applicable.

14. The claimant No.3 who is the mother of the deceased has submitted in her affidavit at **Exh.19** that, deceased was working as an agent with LIC and New India Insurance Company, carrying on the business of mandap decoration, engaged in agricultural activities in his own agricultural land, and also owned a water well from which he supplied water to other farmers on rent. He also owned a water tankers which were given on hire, thereby he was earning income therefrom of Rs.45,000/- p.m. at the time of accident.

14.1 The witness Mr. Anilbhai Gopinath of the claimants has cross-examined by Ld. Advocate Mr. R.C.Gohil at Exh.25, wherein he has stated that he is serving as a Income Tax Inspector since 1994 and after showing the copy of Income Tax Return of AY 2018-19 of deceased Arjunsinh Shanabhai Parmar, wherein he has identified the signature of his officer, in which, Rs.2,60,315/- is gross total income of deceased has been mentioned, the copy of which is produced on record at Exh.27.

14.2 The claimants have prove produced income-tax return at **Exh.27**. On perusing the same, it appears that the gross total income was Rs.2,60,315/- in AY 2018-19, and the said return was filed prior to the date of accident.

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

> ***7.*** *We have heard the learned counsel for the parties. We are unable to agree with the view taken by the Tribunal and High Court on the income of the deceased. It has been clarified in* ***Malarvizhi & Ors. v. United India Insurance Co. Ltd. & Ors.*** *that the determination of income must proceed on the basis of Income Tax Return when available, being a statutory document. More recently, this Court in* ***New India Assurance Co. Ltd. v. Sonigra Juhi Uttamchand*** *while determining the income of the deceased therein had observed:*
>
> *"8. Monthly income could be fixed taking into account the tax returns only if the details of payment of tax are appropriately brought into evidence so as to enable the Tribunal/Court to calculate the income in accordance with law."*

14.4 Therefore, in view of the above decision, income of the deceased can be considered on the basis of income-tax returns being a statutory documents. In the present case, claimants have produced income-tax return of the deceased vide **Exh.27**. Further, it is also required to be noted that the said document is not challenged by the opponents being concocted or forged. Hence, the said document is required to be considered to determine the income of the deceased.

Further, it is established from the income tax return that, income of the deceased has been increased year after year. Further, the income-tax return for AY 2018-19 shows income of Rs.2,60,315/- and the same is also required to be considered. Hence, considering the income of the AY 2018-19, of the deceased is Rs.2,60,315/- **p.a.**

14.5 The deceased was aged 42 years and he being self-employed, and therefore as per the decision reported 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 **25%** i.e. **Rs.65,078/- [Rs.2,60,315/- p.a. income x 25% future prospects].** Hence, deceased's yearly income at the time of accident including future prospects is considered as Rs.2,60,315 + Rs.65,078 = **Rs.3,25,393/-**. Thus, **income of the deceased including future prospects would be Rs.3,25,393/- p.a.**

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

16. After deduction of personal living expenses of the deceased, dependency loss would be Rs.3,25,393/- p.a. income –

Rs.1,08,464/- (1/3rd of total income Rs.3,25,393/-) = Rs.2,16,929 x 14 multiplier = Rs.30,37,006/-. Therefore, it is just and proper to award sum of **Rs.30,37,006/- under the head of loss of dependency.**

17. 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.

17.1 Further, so far as the grant of consortium to the claimants are concerned, the Hon'ble Supreme Court in the case of **New India Insurance Company Ltd. Vs. Somwati 2020 SCC Online SC 720, United Insurance Co. Ltd. Vs. Satinder Kaun 2020 SCC Online SC 410, Joginder Singh Vs. ICICI Lombard General Insurance Company 2019 SCC Online SC 1029,** ***Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram*** *reported in* **2018 (0) AIJEL-SC 62739** has categorically held that in addition to spouse, the children are entitled to parental consortium in the case of death of the parents and parents are entitled to filial consortium in the case of death of their child and the amount to be awarded for Loss of Consortium will be as per the amount fixed in ***Pranay Sethi (supra)***. It is held by the Hon’ble Supreme Court in the case of ***Magma General Insurance Co. Ltd. (supra)*** at **para 8.7** to **para-8.7.8** as under:-

> ***8.7*** *A Constitution Bench of this Court in Pranay Sethi (supra) dealt with the various heads under which compensation is to be awarded in a death case. One of these heads is Loss of Consortium.*
>
> ***8.7.1*** *In legal parlance, “consortium” is a compendious term which encompasses ‘spousal consortium’, ‘parental consortium’, and ‘filial consortium’.*
>
> ***8.7.2*** *The right to consortium would include the company, care,*

help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse. (Rajesh and Ors. vs. Rajbir Singh and Ors.[JT 2013 (8) SC 288].

8.7.3 *Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of "company, society, co-operation, affection, aid the other in every conjugal relation."*

8.7.4 *Parental consortium is granted to the child upon the premature death of a parent, for loss of "parental aid, protection, affection, society, discipline, guidance and training."*

8.7.5 *Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.*

8.7.6 *Consortium is a special prism reflecting changing norms about the status and worth of actual relationships. Modern jurisdictions world-over have recognized that the value of a child's consortium far exceeds the economic value of the compensation awarded in the case of the death of a child. Most jurisdictions therefore permit parents to be awarded compensation under loss of consortium on the death of a child. The amount awarded to the parents is a compensation for loss of the love, affection, care and companionship of the deceased child.*

8.7.7 *The Motor Vehicles Act is a beneficial legislation aimed at providing relief to the victims or their families, in cases of genuine claims. In case where a parent has lost their minor child, or unmarried son or daughter, the parents are entitled to be awarded loss of consortium under the head of Filial Consortium.*

8.7.8 *Parental Consortium is awarded to children who lose their* *parents in motor vehicle accidents under the Act.*

17.2 Therefore, the claimant Nos. 1 & 2 are the children of the deceased is entitled to get **Rs.48,400/- each towards Parental Consortium &** claimant no.3 is the mother of the deceased is entitled to **Rs.48,400/- towards Filial Consortium.**

18 In view of the above, the claimants are entitled to get following compensation.

Future loss of income/dependency	**Rs. 30,37,006=00**
Loss of Parental & Filial consortium	Rs. **1,45,200=00** (Rs.48,400 x 3)
Loss of estate	Rs. 18,150=00
Funeral expenses	Rs. 18,150=00
Total	**Rs. 32,18,506=00**

19. Hence, the claimants are entitled to get **Rs.32,18,506/-** as compensation.

<u>In MACP No.606/2019</u> (Fatal)

20. According to say of claimants, deceased was aged 35. years at the time of accident. On perusing the School Leaving Certificate at **Exh.29**, deceased's birth date is mentioned as 10.08.1983. Therefore, deceased was 26 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 **15** is applicable.

21. The claimant No.3 is the grand-mother of the deceased Vilasben has submitted in her affidavit at **Exh.21** that, deceased was doing tailoring work & animal husbandry and earning Rs.12,000/- p.m. at the time of accident. The claimants have not led any evidence to prove the income of the deceased and this fact is also admitted by the claimant no.3 in her cross-examination at **Exh.21**. It has been duly proved by claimants that the accident occurred on **21.11.2019,** therefore, taking assistance of slab of Minimum Wages Act prevalent at the time of said accident, which is stated to be **Rs.284/-** per day for skilled labor, this tribunal has assessed monthly income of deceased to be <u>**Rs.8,520/-**</u> (<u>Rs.284/- X 30 days</u>) i.e. **Rs.1,02,240/- p.a.** at the time of accident, which would be just and reasonable assessment. Hence, it would be just and proper to consider the income of the deceased as **Rs.8,520/- per month** and **Rs.1,02,240/- p.a**

21.1 The deceased was aged 35 years and was not permanent employee, and therefore as per the decision reported 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 4**0%** i.e. **Rs.40,896/- [Rs.1,02,240/- p.a. income x 40% future prospects].** Hence, deceased's yearly income at the time of accident including future prospect is considered as Rs.1,02,240 + Rs.40,896 = **Rs.1,43,136/-**.

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

23. After deduction of personal living expenses of the deceased, dependency loss would be Rs.1,43,136/- p.a. income – Rs.47,712/- (1/3rd of total income Rs.1,43,136/-) = Rs.95,424 x 15 multiplier = Rs.14,31,360/-. Therefore, it is just and proper to award sum of **Rs.14,31,360/- under the head of loss of dependency.**

24. 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. Further, in view of ***Magma General Insurance Co. Ltd. (supra),*** claimant Nos.2&3 are the children of the deceased are entitled to **Rs.48,400/- each towards Parental Consortium. Claimant no.3 is the mother-in-law of the deceased is not entitled to get any amount of consortium.**

25 In view of the above, the claimants are entitled to get following compensation.

Future loss of income/dependency	Rs. 14,31,360=00
Loss of Parental & Filial consortium	Rs. 96,800=00 (Rs.48,400 x 2)
Loss of estate	Rs. 18,150=00
Funeral expenses	Rs. 18,150=00
Total	**Rs. 15,64,460=00**

26. Hence, the claimants are entitled to get **Rs.15,64,460/-** as compensation.

<u>Liability</u>

27. In view of above discussion, the present accident had occurred due to sole negligence of Tempo driver. The opponent No.2 was the owner of the Tempo No. GJ 16 W 8947 at the relevant time and this fact is also established from the Goods Carriage Permit of Tempo at **Exh.35** (in MACP No.605/2019). Further, on perusing the insurance policy of Tempo No. GJ 16 W 8947 at **Exh.36** (in MACP No.605/2019), it transpires that the vehicle in question was insured with the opponent No.3 for the period from 17.07.2019 to 16.07.2020. Thus, it was valid insurance on 27.11.2019 i.e. the date of accident.

28. The Ld. Advocate on behalf of Insurance Company i.e. opponent no.3 has submitted his **written statement at Exh.26** and contended that the opponent no.1 was not holding valid and effective driving license on the day of accident.

This court has also taken note that in the entire record, no copy of licence of driver of offending vehicle is on record, and under such facts and circumstances on record, the judgement of <u>Shamanna vs The Divisional Manager The Oriental, CIVIL APPEAL NO. 8144 OF 2018 [Arising out of SLP(C) No.26955 of 2017, AIR 2018 SUPREME COURT</u>

3726, is to be considered wherein it is held that….

> *6. In the case of third party risks, as per the decision in National Insurance Company Ltd. v. Swaran Singh and others (2004) 3 SCC 297, the insurer had to indemnify the compensation amount payable to the third party and the insurance company may recover the same from the insured. Doctrine of "pay and recover" was considered by the Supreme Court in Swaran Singh case wherein the Supreme Court examined the liability of the insurance company in cases of breach of policy condition due to disqualifications of the driver or invalid driving licence of the driver and held that in case of third party risks, the insurer has to indemnify the compensation amount to the third party and the insurance company may recover the same from the insured. Elaborately considering the insurer's contractual liability as well as statutory liability vis-a-vis the claims of third parties, the Supreme Court issued detailed guidelines as to how and in what circumstances, "pay and recover" can be ordered…..*

> *7. As per the decision in Swaran Singh case, onus is always upon the insurance company to prove that the driver had no valid driving licence and that there was breach of policy conditions. Where the driver did not possess the valid driving licence and there are breach of policy conditions, "pay and recover" can be ordered in case of third party risks. The Tribunal is required to consider as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, does not fulfill the requirements of law or not will have to be determined in each case.*

29. Since the claimant had nothing to do with the inter se contract between the insured and insurer, considering the case of **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 the insurance company.

30. Looking to the Goods Carriage Permit & Insurance Policy of offending vehicle**,** opponent no.2 is owner of the said offending vehicle, as such the opponent nos. 1 to 3 are jointly and severally liable to pay the compensation amount to the claimants together with proportionate costs and interest @ 9% p.a. from the date of claim petition till realization, and hence, I answer Issue No.2 **(in MACP No.605/2019)** & issue No.3 **(in MACP No.606/2019)** the **'affirmative'** accordingly. In reply to issue No.3 **(in MACP No.605/2019)** & issue No.4 **(in MACP No.606/2019)**, the following final order is passed:-

ORDER

1. MACP **Nos.605 of 2019 & 606 of 2019** stands partly allowed.

2. The claimants of **MACP No.605/2019** are entitled to recover **Rs.32,18,506/ (Rupees Thirty Two Lacs Eighteen Thousand Five Hundred Six Only)** as compensation and the claimants of **MACP No.606/2019** are also entitled to recover **Rs.15,64,460/(Rupees Fifteen Lacs Sixty Four Thousand Four Hundred Sixty only)** as compensation together with proportionate cost and interest @ **9% p.a.** from the date of the claim petitions till realization of the amount from the opponent Nos.1 to 3 jointly and severally.

   However, it is further held that, **the opponent no. 3 Insurance Co. shall first pay the compensation amount** to the claimants and then the insurance company - opponent no. 3 will be at liberty to recover the same from the opponent No.1 and 2, by initiating appropriate legal proceedings.

3. The interim amount of compensation, if any, paid or deposited under the principle of No Fault Liability, will be

adjusted from the aforesaid amount of compensation awarded.

4. In **MACP No.605/2019**, the, claimant Nos.1 & 2 shall get **30% each** share and claimant No.3 shall get **40%** share in the awarded amount. In **MACP No.606/2019**, the, claimant Nos.1 & 2 shall get **30% each** share and claimant No.3 shall get **40%** share in the awarded amount.

5. As per the award, the opponent Nos.1 to 3 are directed to transfer the amount of court fees through RTGS or NEFT mode in the account of Additional District Judge, Bharuch, the details of account are as under:

A/c. Name	**Additional District Judge, Bharuch**
Branch Name	**State Bank of India, Muktinagar Branch, Bharuch**
A/c. No.	**4075997852**
IFSC Code	**SBIN0008278**
MICR	**392002002**

6. After depositing the awarded amount in this account, the insurance company shall inform and send the copy of said Bank advice to the MACP Tribunal through e-mail I.D. mactbha@gmail.com.

7. The claimants are hereby directed to furnish the details of their bank account 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 Nos.1 to 3 are directed to transfer the awarded amount into bank account of claimants within 30 days. Before transferring the amount into the bank account of the claimants, the opponent Nos.1 to 3 shall inform the concerned bank of the claimants well in advance regarding the transfer of the awarded amount, so that the concerned bank is able to give effect to the direction of this tribunal regarding depositing of respective amount in fixed deposit.

8. The opponent Nos.1 to 3 are also directed to intimate this tribunal on e-mail I.D. mactbha@gmail.com with respect to transfer of awarded amount in the bank account of the concerned claimants along with proof of such transfer, such as, MACP Number, Name of Claimant, Amount Transfer, Date of Transfer, Name of Claimant's Bank with Account Number within 7 days from date of transfer.

9. Out of the amount coming to the share of claimants of both **MACP Nos.605 & 606/2019**, **70%** amount shall be invested in FDR in the name of the claimant Nos.1 & 3 in any Nationalized Bank of their choice for a period of 5 years. Whereas, in case of minor claimant No.2 **(in both MACP Nos.605 & 606/2019)**, the entire amount of compensation shall be fixed deposited in any Nationalized Bank through their guardian for a period of 5 years or till they attains the age of majority, whichever is later. 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 claimants will be at liberty to withdraw the periodical interest accrued on the said FDRs.

10. Insofar as tax deduction at source is concerned, Form 16-A of the Income Tax Act should be provided to the claimants on whose behalf the deduction has been made so as to enable them to seek refund of tax deducted.

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

12. A certified copy of this judgment be kept in case record of **MACP No.606/2019.**

13. 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.

14. Award be drawn accordingly.

Signed & Pronounced in the open Court today on **08th June, 2026.**

Date:08/06/2026
Place: Bharuch

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

(ZYV)