

GJBK010000732023



Ex-
Received On: 04-11-2022
Registered On: 07-01-2023
Decided On: 24-03-2026
Y. M. D.

**BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL
(MAIN) BANASKANTHA AT PALANPUR**

M.A.C.Petition No.05/2023(Main)

Hareshji Bhudarji Thakor,
Age : 20 years, Occu: Private service,
R/o Abala, Tal. Bhabhar,
Dist. Banaskantha.

...Claimant

Versus

- (1) Chaturbhai Gagabhai Raval,
Age - 28 years, Occu. Agriculture,
At present R/o Suigam, Nr.Wav
Three ways, In the farm of Sujabhai
Mahadevbhai Rajput, At Suigam,
Tal. Suigam, Dist.Banaskantha.
Ori. R/o Nanapura, Tal. Radhanpur,
Dist. Patan.
(Driver of M-cycle No.GJ-08-CF-4008)
- (2) Rameshbhai Lavjibhai Asaniya,
Age - Adult, Occu. Agriculture,
R/o Savaniya, Tal. Deesa,
Dist. Banaskantha.
(Owner of M-cycle No.GJ-08-CF-4008)
- (3) ICICI Lombard General Ins.Co.Ltd.
Pataleshwar Complex, 2nd Floor,
Kirtistambh Road, Palanpur, Dist.B.K.
(Insurer of M-cycle No.GJ-08-CF-4008).....**Opponents**

Appearance:

Ld.Advocate, Mr. J.C. Madhu for the claimants.

Ld.Advocate, Mr. S.K. Patel for Opponents No.1 & 2.

Ld.Advocate, Mr. R.A.Raval for Opponent No.3.

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Ex-

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M.A.C.Petition No.06/2023

Dashrathkumar Lakhabhai Thakor,

Age : 24 years, Occu: Nothing at present,

R/o Abala, Tal. Bhabhar,

Dist. Banaskantha.

...Claimant

Versus

- (1) Chaturbhai Gagabhai Raval,
Age - 28 years, Occu. Agriculture,
At present R/o Suigam, Nr.Wav
Three ways, In the farm of Sujabhai
Mahadevbhai Rajput, At Suigam,
Tal. Suigam, Dist.Banaskantha.
Ori. R/o Nanapura, Tal. Radhanpur,
Dist. Patan.
(Driver of M-cycle No.GJ-08-CF-4008)
- (2) Rameshbhai Lavjibhai Asaniya,
Age - Adult, Occu. Agriculture,
R/o Savaniya, Tal. Deesa,
Dist. Banaskantha.
(Owner of M-cycle No.GJ-08-CF-4008)
- (3) ICICI Lombard General Ins.Co.Ltd.
Pataleshwar Complex, 2nd Floor,
Kirtistambh Road, Palanpur, Dist.B.K.
(Insurer of M-cycle No.GJ-08-CF-4008)

- (4) Hareshji Bhudarji Thakor,
Age : 20 years, Occu: Private service,
R/o Abala, Tal. Bhabhar,
Dist. Banaskantha.
(Driver of M-cycle No.GJ-18-CD-1634)
- (5) Bhudarji Ragnathji Thakor,
Age : Adult, Occu: Agriculture,
R/o Abala, Tal. Bhabhar,
Dist. Banaskantha.
(Driver of M-cycle No.GJ-18-CD-1634)....**Opponents**

Appearance:

Ld.Advocate, Mr. J.C. Madhu for the claimants.
Opponents No.1,2,4 & 5 - Ex-parte.
Ld.Advocate,Mr. R.A.Raval for Opponent No.3.

COMMON JUDGMENT

[1] Since all these petitions arise out of the same accident and since the facts involved in the petitions were identical and common, all these petitions were ordered to stand consolidated and evidence was ordered to be recorded in MACP No.05/2023. In these circumstances, these petitions are today being disposed of by this common judgment.

[2] The petitioners have filed the present claims seeking compensation from the opponents on account of injuries sustained by them in an accident that took place on 27.03.2022 at the time and place specified in para 6 of the respective petitions involving the Motorcycle No.GJ-08-CF-4008 which was being driven in a rash and negligent manner by opponent No.1 driver, which was of the ownership of opponent No.2, and which according to the claim petition, was duly insured by opponent

No.3, the insurance company, and therefore, it is urged that both the opponents be held jointly and severally liable to pay the amount of compensation so required to be awarded herein. The opponents No.2 and 3 are joined as driver and owner of the motorcycle No.GJ-18-CD-1634 in MACP No.6/2023.

[3] It is the case of petitioners that they have sustained grave and serious injuries on account of the accident, and therefore, are required to be properly compensated.

[4] It is the case of petitioner of MACP No.05/2023 that he was student and also doing private job and was earning Rs.8000/- per month, and was aged 20 years at the time of accident. He has claimed Rs.18 lacs from the opponents.

[5] The petitioner of MACP No.06/2023 has pleaded his age as 24 years, and income of Rs.10,000/- p.m. by agriculture work. He has claimed Rs.15,00,000/- from the opponents.

[6] The factual matrix leading to the present petition is required to be underlined as follows:

On 27.03.2022 both the claimants were riding on motorcycle No.GJ-18-CD-1634 and petitioner of MACP No.5/2023 was plying the said motorcycle and petitioner of MACP No.6/2023 was pillion rider over the said motorcycle. It is also case that they were going from Bhabhar to Suigam road, at that time the petitioner was plying the said motorcycle slowly and correct side of the road. It is also case that at about 8-00 p.m. when the said motorcycle was passing near Rangoli Farm, at that time the driver of another motorcycle No.GJ-08-CF-4008 came driving the said motorcycle at a very high and excessive speed, in rash and negligent manner and dashed with the motorcycle of the petitioners from wrong side, though the petitioner had applied

breaks and taken his motorcycle on the side of the road. It is also stated that due to the said accident both the petitioners have suffered grievous injuries all over their body and they took treatment at in the Hospital at Patan and Ahmedabad as an indoor patient. It is also stated that where they were operated. The relevant medical papers issued by the said Hospital are on the record of the proceedings. The applicants, according to the petitions, have gone through grave trauma and have suffered grave pain, shock and suffering on account of the injuries sustained in the accident, and furthermore the applicants have been deprived of their usual source of income during the time they were disabled and bedridden on account of the injuries sustained. It is further claimed that the permanent disability sustained by the applicants has reduced their future scope of income and prospects. Therefore, the applicants of both the claim petitions are required to be suitably compensated, and more particularly to the extent sought for in the present petitions.

[7] The opponents are duly served. The opponents No.1 and 2 though appeared in MACP No.5/2023 through their advocate, but have not filed reply of the claim petition. In MACP No.6/2023, though the opponents No.1,2 4 and 5 though duly served have not remained present to contest the claim petition. Hence, petition is proceeded Ex-parte against the opponents.

[8] The opponent No.2 is insurer of Motorcycle No.GJ-08-CF-4008. It has appeared on the record of the proceedings and has contested all the petitions by filing detailed identical written statements. This opponent has taken up all available defences and has, generally speaking, denied any liability to pay any amount

much less the amount of compensation claimed. It is also submitted that the driver of the motorcycle was not holding valid driving licence. The age and income of the petitioners are also denied by this opponent. It has specifically contended that the alleged accident took place due to sole negligence of the motorcyclist No.GJ-18-CD-1634 and that there was no negligence on the part of driver of Motorcycle No.GJ-08-CF-4008. Hence, the driver of said motorcycle No.GJ-18-CD-1634 was also contributory liable for the accident. The opponent has, generally speaking, sought for a dismissal and rejection of the present applications.

[9] It is in the background of such rival pleadings that this Tribunal was pleased to frame the issues in both these claim petitions as follows:

- (i) Whether the applicants prove that they sustained injuries because of rash and negligent driving on part of driver of the vehicle involved in this accident?
- (ii) Whether the applicants are entitled to get compensation? If yes, from whom and what amount?
- (iii) What order and award?

[10] My findings on each of the issues in these MACP are as hereinafter follows:

- (i) In the affirmative. The accident took place due to the negligence of driver of Motorcycle No.GJ-08-CF-4008.
- (ii) In the affirmative and as per the amount quantified.
- (iii) As per final judgment and award.

[11] The petitioners have relied both on oral and documentary evidence in an effort to establish their entitlement to the claim. It would be necessary, at the outset, and before ascribing my reasons for arriving at the findings above, to refer to the documentary evidence which are in the shape of :-

Sr. No.	Description	Exh./ mark
1	Complaint	38
2	Panchnama of scene of accident	39
3	Final Report	59
4	Medical bills of Hareshji Bhudarji Thakor	40
5	Disability certificate of Hareshji Thakor	41
6	Injury certificates of Hareshji Thakor	42,43
7	Leaving certificate of Hareshji Thakor	44
8	Mark sheets and certificate of Hareshji	45,46
9	X'ray of Hareshji Thakor	47
10	Salary Certificate of Sanjivani Hospital given to Hareshji Bhudarji Thakor	30
11	Injury certificate of Hareshji Bhudraji	55,56
12	Leaving certificate of Dashrathji Lakhaji Thakor	29
13	Medical Bills of Dashrathji Lakhaji Thakor	48
14	Disability certificate of Dashrathji Thakor	49
15	X'ray of Dashrathji Thakor	50

[12] The oral evidence on the record of the proceedings are as under:

Sr. No.	Description	Exh.
1.	PW1, Hareshji Bhudarji Thakor, Claimant of MACP No.5/2023	25
2.	PW2, Dashrathkumar Lakhabhai Thakor, Claimant of MACP No.6/2023	26
3.	DW1, Mayur Arvindbhai Gohil, R.T.O. Employee	62
4.	DW2, Motibhai Nanjibhai, I.O.	68
5.	DW3, Devang Bhikhubhai Parekh, Manager of Insurance company	70

REASONS

Issues No.1 and 2:

[13] Since the evidence, both documentary and oral, is germane and common to both issues, both are dealt with together for the sake of convenience.

[14] I have heard learned counsels for both the contesting parties and perused to record. Also perused written arguments of L.A. for the applicants at Exh.72 and 73 and L.A. for the opponent No.3 on record.

[15] It is crystal clear and needs no discussion that the insurance company has no personal knowledge with regard to taking place of the accident, and the only persons who could have best controverted or negated the claim made in the petition with regard to the factual matrix and with regard to taking place of the accident, as also the aspect of negligence, were the owner of motorcycle No.GJ-08-CF-4008, who has not been examined herein. An adverse inference is, therefore, required to be drawn against the opponent No.1 driver, and the opponent insurance company cannot be heard on this aspect at all. At the same time, the L.A. for the petitioners have pleaded that the accident occurred due to the negligence of driver of the motorcycle No.GJ-08-CF-4008. It is also contended that the charge sheet is also filed against the driver of motorcycle No.GJ-08-CF-4008. It is also contended that there is no proof on record that the driver of the motorcycle No.GJ-18-CD-1634 i.e. the petitioner was also contributory liable for the accident. It is also contended that in this case the I.O. is also examined on record who had also admitted in his cross-examination that the accident occurred due

to the sole negligence on part of opponent No.1 driver of the motorcycle No.GJ-08-CF-4008. It is also contended that though the insurance company has stated that the driver of the motorcycle No.GJ-08-CF-4008 was not holding valid driving licence, but the investigation officer has not admitted that the driver of the said motorcycle was not holding valid driving licence at the time of accident and in cross-examination of the R.T.O. officer also it is not proved that the opponent No.1 was holding driving licence or not.

[16] On the other hand, Learned advocate for the opponent No.2 insurance company has contended that looking to the complaint, panchnama and depositions of both the petitioners it clearly appears that there is head on collision between both the motorcycles. Hence, drivers of both the vehicles are equally liable for the accident. He has further submitted and mainly contended on the point that at the time of accident the opponent No.1 driver of the motorcycle No.GJ-08-CF-4008 was not holding any kind of driving licence and hence, he has stated that there is breach of policy conditions and hence, the opponent No.3 is not liable to pay compensation. He has also relied upon the various judgments of Hon'ble Gujarat High Court i.e. 1) First Appeal No.530/2011 National Insurance Co. Ltd. Vs. Hareshbhai Tulsibhai Makwana, 2) First Appeal No.3599/2013, New India Insurance Co. Ltd. Vs. Arjanbhai Hansrajbhai Dawariya, 3) First Appeal No.2180/2012, National Insurance Co. Ltd. Vs. Bharatbhai Bhimabhai Songara and 4) First Appeals No.2795/2019, 2796/2019 and 2797/2019, Lachhamansinh Jagatsinh Vs. Pravinkumar Sinh Parvas Sinh and submitted that as per the aforesaid judgments the insurance company is not

liable to pay any amount of compensation. He has also argued that as the aforesaid accident taken place on 18.01.2024 and hence, as per the new amendment in the Motor Vehicles Act dated 01.4.2022 in this case the order for Pay & Recover cannot be applicable. He has further submitted that the insurance company has also examined the officer of the insurance company, R.T.O. Employee who have also stated that the opponent No.1 driver of the motorcycle No.GJ-08-CF-4008 was not holding valid driving licence. Further I.O. of this case also examined by the opponent No.3 and he has also supported the fact that the driver of the motorcycle No.GJ-08-CF-4008 was not holding valid driving licence. Therefore he has submitted that in this case also the opponent No.3 is required to be exonerated.

[17] Now let us refer the FIR and the Panchnama of scene of accident. The FIR of this accident has been lodged by the petitioner of MACP No.5/2023 and he is an eye witness to the accident. He has filed complaint against the driver of the motorcycle No.GJ-08-CF-4008 that he had driven the motorcycle No.GJ-08-CF-4008 at a very high and excessive speed, in rash and negligent manner and dashed with his motorcycle No.GJ-18-CD-1634 and in this accident he and his cousin Dashrathbhai Lakhabhai Thakor had suffered serious injuries. Thus, the complaint is supported the facts of the claim petitions. Further it appears from the panchnama that the place of accident is situated on Bhabhar-Suigam road, near Rangoli Farm. But at the place of accident both the motorcycles are not lying. At the same time, it appears from the charge-sheet at Ex.59 that the charge-sheet is

filed against the opponent No.1 driver of the motorcycle No.GJ-08-CF-4008 and the same is not challenged.

[18] Moreover if we peruse the deposition of one Motibhai Nanjibhai who is Investigating officer of the offence has also admitted in his cross-examination that the accident occurred due to the rash and negligent driving on part of Chaturbhai Gugabhai Raval who is driver of the motorcycle No.GJ-08-CF-4008 who dashed his motorcycle with the motorcycle of Hareshbhai and after the accident fled away from the place of accident. This witness has also recorded statement of opponent No.1 driver of the motorcycle No.GJ-08-CF-4008 which is also produced on record at mark -A. He has also admitted that charge-sheet is also filed by him against the driver of the said motorcycle No.GJ-08-CF-4008. It also appears that the charge sheet is not challenged. Moreover, in National Insurance Company Ltd. Vs. Anita Devi Parimal Devra, First Appeal No.3076/21 it is held that the insurance company has not challenged the charge sheet and never challenged the correctness of FIR and charge sheet. Therefore, applicant Hareshbhai is not required to be held negligent for happening of the accident. In the circumstances, keeping in view the facts of the present case. I hold that the accident occurred due to the sole negligence of opponent No.1 driver of the motorcycle No.GJ-08-CF-4008 involved in the accident.

[19] In any case, the documentary evidence in the shape of copies of FIR, Panchnama of place of accident and treatment papers of the claimants clearly establish that they sustained injuries in an accident that took place at the time and place, and in a manner specified in the petition. It is in the background of

such facts and circumstances that I am required to answer the issue No.1 in the affirmative.

[20] As a natural consequence, and since having found issue No.1 in favour of the petitioners in the affirmative, it necessarily follows that the petitioners are entitled to the compensation as claimed. The only question that now remains is computing and assessing the quantum of compensation which is required to be awarded herein. Each of the learned advocates for the contesting parties have made submissions in this, which I propose to deal with as hereinafter follows, and after considering the rival submissions, I propose to make a specific award under each head as hereinafter follows:

MACP No.05/2023 (Hareshji Bhudarji Thakor)

[21] Age of the petitioner is pleaded as 20 years. In his Leaving certificate his date of birth is shown as 01.06.2002. The accident occurred on 27.03.2022. Therefore, age of the claimant was about 20 years on the date of accident.

[22] With regard to the income, it is claimed to be Rs.8,000/- per month by doing private job in Sanjivani Hospital, Bhabhar. To prove this fact the petitioner has produced certificate of Sanjivani Hospital, Bhabhar at Ex.30 which shows that the petitioner was serving in the said hospital and getting monthly salary of Rs.8,000/-. No document such as salary slip or bank account etc. has been produced on record to show income of the claimant. However, considering the year of accident and age of the claimant and rates of minimum wages at the relevant time, I

find it just and reasonable to assess income of the claimant at Rs.8,000/- per month.

[23] It is urged by learned advocate for the applicant that the applicant has sustained fracture lower end of Tibia, fracture right Talus, fracture of right 2nd, 3rd, 4th Metatarsal Anterior Tibia antery and tendons and fracture of right 5th Metacalpal with crush injury. He was treated as an indoor patient in the hospital from 28.3.2022 to 5.4.2022. It is submitted that as a natural consequence the applicant was unable to get up and attend to his routine activities, and more particularly his economic activity for 6 months and the applicant should be compensated for a period of 6 months for loss of income. Looking to the extent and nature of the injuries, it is natural that the healing would take some time, and therefore, I am of the opinion that it is required to be presumed and accepted that the applicant was unable to do his economic work for a period of at least 4 months. Accepting the monthly income of the applicant at Rs.8,000/-, an amount of Rs.32,000/- is awarded under this head.

[24] The petitioner has also claimed Rs.40,000/- towards attendance allowance, special diet and for transportation. There is obviously no evidence to support such claim. No supporting witnesses have also been examined to support the claim of there being attendants who have continuously attended to the applicant and as a result have been deprived of their earnings on account of such attendance. There is also no medical or expert opinion which suggested any special diet for the treatment of the injuries sustained by the present applicant. In my opinion, no doubt, some amounts might have been spent by the applicant towards the transportation for the follow-up treatment, the same naturally is

not supported by any documentary evidence. However, looking to the nature of injury, I propose to award an amount of Rs.25,000/- as a global lumpsum amount covering all such heads as claimed.

[25] The claimant has produced disability certificate of Dr. Chirag P. Prajapati at Ex.41 who had assessed total 64% disability for affected limb. The permanent partial disability of the claimant being agreed and accepted as 28% body as a whole by the opponent No.3, and computing the annual income of the petitioner at Rs.96,000/-, the annualized future economic loss on account of such permanent disability comes to Rs.26,880/-. In light of the settled legal position and in light of the ratio laid down by the Hon'ble Apex Court in Sarla Verma's case, 2009(6) SCC 121, multiplier of 18 as provided for the age between 15-20 years, be applied in the present proceedings, and therefore, looking at the annualized loss at Rs.26,880/-, total loss of future economic loss comes to Rs.4,83,840/-.

[26] The petitioner has also stated that due to serious injuries he had suffered huge pain and agony and hence, claimed compensation of Rs.1,00,000 under the head of pain, shock and suffering. Looking to the nature of injuries, I find it just and proper to award Rs.35,000/- under the head of pain, shock and suffering.

[27] The claimant has stated that huge amount has been spent towards medical expenses and claimed medical expenses. In support of his say the claimant has produced medical bills on record at Ex.40 which are worth Rs.1,64,959/-. But the opponent No.3 has admitted medical bills of Rs.1,64,000/-. Hence, the same is required to be reimbursed of Rs.1,64,000/-.

[28] Under the circumstances, the claimant is entitled to the following amount of compensation:

Rs.	
4,83,840	Loss of Future Income (Rs.8000 x 28% x 12 x 18)
32,000	Loss of Current Income (Rs.8000 x 4 months)
35,000	Pain, Shock & Suffering
25,000	Special Diet, Attendance and Transportation
1,64,000	Medical Expenses

7,39,840	Total Amount
=====	

[29] The petitioner has claimed an amount of Rs.18 lacs. However, in view of the above discussion, the claimant is entitled to the compensation of Rs.7,39,840/- only.

MACP No.06/2023 (Dashrathkumar Lakhabhai Thakor)

[30] Age of the petitioner is pleaded as 21 years. In his Leaving certificate his date of birth is shown as 01.06.1998. The accident occurred on 27.03.2022. Therefore, age of the claimant was about 24 years on the date of accident.

[31] With regard to the income, it is claimed to be Rs.10,000/- per month by doing agriculture labour work. No document has been produced on record to show income or occupation of the claimant. However, considering the year of accident and age of the claimant and rates of minimum wages at the relevant time, I find it just and reasonable to assess income of the claimant at Rs.10,000/- per month.

[32] It is urged by learned advocate for the applicant that the applicant has sustained right lower limb fracture and also

suffered injury over periurethral region on left side. He was treated as an indoor patient in the hospital from 28.3.2022 to 16.4.2022. It is submitted that as a natural consequence the applicant was unable to get up and attend to his routine activities, and more particularly his economic activity for 6 months and the applicant should be compensated for a period of 6 months for loss of income. Looking to the extent and nature of the injuries, it is natural that the healing would take some time, and therefore, I am of the opinion that it is required to be presumed and accepted that the applicant was unable to do his economic work for a period of at least 3 months. Accepting the monthly income of the applicant at Rs.10,000/-, an amount of Rs.30,000/- is awarded under this head.

[33] The petitioner has also claimed Rs.50,000/- towards attendance allowance, special diet and for transportation. There is obviously no evidence to support such claim. No supporting witnesses have also been examined to support the claim of there being attendants who have continuously attended to the applicant and as a result have been deprived of their earnings on account of such attendance. There is also no medical or expert opinion which suggested any special diet for the treatment of the injuries sustained by the present applicant. In my opinion, no doubt, some amounts might have been spent by the applicant towards the transportation for the follow-up treatment, the same naturally is not supported by any documentary evidence. However, looking to the nature of injury, I propose to award an amount of Rs.30,000/- as a global lumpsum amount covering all such heads as claimed.

[34] The claimant has produced disability certificate of Dr. Chirag P. Prajapati at Ex.49 who had assessed total 55% disability for affected limb. The permanent partial disability of the claimant being agreed and accepted as 24% body as a whole by the opponent No.3, and computing the annual income of the petitioner at Rs.1,20,000/-, the annualized future economic loss on account of such permanent disability comes to Rs.28,800/-. In light of the settled legal position and in light of the ratio laid down by the Hon'ble Apex Court in Sarla Verma's case, 2009(6) SCC 121, multiplier of 18 as provided for the age between 21-25 years, be applied in the present proceedings, and therefore, looking at the annualized loss at Rs.28,800/-, total loss of future economic loss comes to Rs.5,18,400/-.

[35] The petitioner has also stated that due to serious injuries he had suffered huge pain and agony and hence, claimed compensation of Rs.1,00,000 under the head of pain, shock and suffering. Looking to the nature of injuries, I find it just and proper to award Rs.30,000/- under the head of pain, shock and suffering.

[36] The claimant has stated that huge amount has been spent towards medical expenses and claimed medical expenses. In support of his say the claimant has produced medical bills on record at Ex.48 which are worth Rs.2,38,053/-. But the opponent No.3 has admitted medical bills of Rs.2,38,000/-. Hence, the same is required to be reimbursed of Rs.2,38,000/-.

[37] Under the circumstances, the claimant is entitled to the following amount of compensation:

Rs.	
5,18,400	Loss of Future Income (Rs.10000 x 24% x 12 x 18)
30,000	Loss of Current Income (Rs.10000 x 3 months)
30,000	Pain, Shock & Suffering
30,000	Special Diet, Attendance and Transportation
2,38,000	Medical Expenses

8,46,400	Total Amount
=====	

[38] The petitioners have claimed an amount of Rs.15 lacs. However, in view of the above discussion, the claimant is entitled to the compensation of Rs.8,46,400/- only.

Liability

[39] Insurance Policy Exh.71 has been issued by the opponent No.3 in the name of opponent No.2 for the Motorcycle No.GJ-08-CF-4008. It is issued for the period from 30.03.2021 to 29.03.2026, covering the date of accident 27-03-2022. The opponent No.1 was the driver of the said motorcycle.

[40] Learned advocate for the opponent No.3 insurance company has vehemently argued that at the time of accident the deceased driver of the Motorcycle No.GJ-08-CF-4008 was not holding any kind of driving licence and hence, he has stated that there is breach of policy conditions and hence, the opponent No.3 is not liable to pay compensation. He has also relied upon the various judgments of Hon'ble Gujarat High Court i.e. 1) First Appeal No.530/2011 National Insurance Co. Ltd. Vs. Hareshbhai Tulsibhai Makwana, 2) First Appeal No.3599/2013, New India Insurance Co. Ltd. Vs. Arjanbhai Hansrajbhai Dawariya, 3) First Appeal No.2180/2012, National Insurance Co. Ltd. Vs.

Bharatbhai Bhimabhai Songara and 4) First Appeals No.2795/2019, 2796/2019 and 2797/2019, Lachhamansinh Jagatsinh Vs. Pravinkumar Sinh Parvas Sinh and submitted that as per the aforesaid judgments the insurance company is not liable to pay any amount of compensation. He has also argued that as the aforesaid accident taken place on 18.01.2024 and hence, as per the new amendment in the Motor Vehicles Act dated 01.4.2022 in this case the order for Pay & Recover cannot be applicable. He has further submitted that the insurance company has also examined the officer of the insurance company, R.T.O. Employee who have also stated that the opponent No.1 driver of the motorcycle No.GJ-08-CF-4008 was not holding valid driving licence. Further I.O. of this case also examined by the opponent No.3 and he has also supported the fact that the driver of the motorcycle No.GJ-08-CF-4008 was not holding valid driving licence. Therefore he has submitted that in this case also the opponent No.3 is required to be exonerated.

[41] The opponent No.2 has also examined witness Motibhai Nanjibhai, Investigating officer at Ex.68. This witness has also admitted in his deposition that the driver of the motorcycle No.GJ-08-CF-4008 has admitted in his statement before him that he was not holding valid driving licence to drive the motorcycle.

[42] So far as the driving licence is concerned, it is established on the record that driver of the offending vehicle motorcycle No.GJ-08-CF-4008 was not having driving licence at the time of accident. This may be termed as fundamental breach of one of the vital conditions of the insurance policy. Hence, I

have no hesitation in holding that the insurance company is required to be exonerated.

[43] This Tribunal feels it pertinent to refer to the judgment delivered by the **Honourable Supreme Court** in the case of **Parminder Singh Vs. New India Assurance Company Ltd. and others reported in 2019 ACJ 2401**. Further in the case of **Shamanna and Another V/s Divisional Manager, Oriental Insurance Co. Ltd. and Others reported in 2018 ACJ 2163**, the **Honourable Supreme Court** has been pleased to uphold the order of pay and recover passed by Tribunal holding the following:

“11. In the present case, to deny the benefit of ‘pay and recover’, what seems to have substantially weighed with the High Court is the reference to larger Bench made by the two-Judge Bench in [National Insurance Co. Ltd. v. Parvathneni and another](#) (2009) 8 SCC 785 which doubted the correctness of the decisions which in exercise of jurisdiction under [Article 142](#) of the Constitution of India directing insurance company to pay the compensation amount even though insurance company has no liability to pay. In Parvathneni case, the Supreme Court pointed out that [Article 142](#) of the Constitution of India does not cover such type of cases and that “if the insurance company has no liability to pay at all, then, it cannot be compelled by order of the court in exercise of its jurisdiction under [Article 142](#) of the Constitution of India to pay the compensation amount and later on recover it from the owner of the vehicle”. The above reference in Parvathneni case has been disposed of on 17.09.2013 by the three-Judges Bench keeping the questions of law open to be decided in an appropriate case.

Since the reference to the larger bench in Parvathneni case has been disposed of by keeping the questions of law open to be decided in an appropriate case, presently the decision in Swaran Singh case followed in Laxmi Narain Dhut and other cases hold the field. The award passed by the Tribunal directing the insurance company to pay the compensation amount awarded to the claimants and thereafter, recover the same from the owner of the vehicle in question, is in accordance with the judgment passed by this Court in Swaran Singh and Laxmi Narain Dhut cases. While so, in our view, the High Court ought not to have interfered with the award passed by the Tribunal directing the first respondent to pay and recover from the owner of the vehicle. The impugned judgment of the High Court exonerating the insurance company from its liability and directing the claimants to recover the compensation from the owner of the vehicle is set aside and the award passed by the Tribunal is restored”.

[44] Further though the L.A. for the opponent No.3 has submitted that as per new amendment in the Motor Vehicles Act dated 01.4.2022 in this case the order for Pay & Recover cannot be applicable. But as per the amendment in the 2022 in the principle of "Pay and Recover", this principle dictates that in cases where the driver of a vehicle involved in an accident does not have a valid driving licence, the insurance company will first pay compensation to the victims of the accident, including third parties, gratuitous passengers, and pillion riders. But this amendment is applicable in the case in which the petitioner himself was not holding valid driving licence and in that case alone the order of Pay and Recover is not applicable.

[45] Therefore, though the driver of the motorcycle No.GJ-08-CF-4008 was not holding valid driving licence and though such contention is proved by learned advocate for the opponent No.3, in view of the above discussion and ratio laid down by the Honourable Apex Court in the cited cases by this Tribunal, in this case also, Insurance Company is held liable to satisfy the award by passing order of “pay and recover”.

[46] At the same time in the latest judgment of Hon'ble High Court of Allahabad in the First Appeal No.1780 of 2024 in the case of ICICI Lombard General Insurance Co. Ltd. Vs. Smt. Arti Devi and others, decided on 31.1.2025 relied by L.A. for the petitioners, in paras 37, 38 & 39 it has been held by the Hon'ble Allahabad High Court as under:

"37. From the over all discussion made above, it is crystal clear that the objection of the Motor Vehicles Act, 1988, either before the amendment or thereafter, particularly covered by Chapter XI thereof, is to compensate victims of accidents in case of an insurance policy being in existence. In view of the interpretation made, holding that omission of the proviso would exonerate the insurer of its liability to indemnify at the first instance would be too wild a proposition and would result in creating a situation where the insurer would be out of scene despite an insurance policy being there and the claimants would have to again fight for getting the amount of compensation through execution proceedings in one way or the other, searching the owner through the process of Court. In such an event, the claimants would face further harassment and nobody knows that despite a money decree in the nature of an award being there in their favour, as to whether the claimants would ever be able to get the compensation realized through recovery proceedings directly from the owner. Accordingly, the legislative intent becomes clear and there is nothing to support the insurer's arguments flowing from interpretation of Statute or Causus Omissus. The contention advanced on behalf of insurer stands discarded.

Conclusion

38. The Court, therefore, holds that mere omission of proviso attached to sub-section (4) of Section 149 of Motor Vehicles Act, 1988 after its replacement by Section 150 of Motor Vehicles (Amendment) Act, 2019 (32 of 2019), neither takes away the liability of the insurer to pay the claimants nor its right to recover the said amount from the owner. The law of this effect remains intact and unaffected by Amendment Act, 2019 and hence, insurer shall continue to indemnify the owner's risk in relation to accidents taking place after 01.04.2022 and "PAY & RECOVER" principle will still continue to govern the field advancing social object of the Status protecting third party interest. Principle of law laid down by the Supreme Court in National Insurance Co. Limited Vs. Swaran Singh and other, JT 2004 (1) SC 109 has not lost its significance and binding effect despite omission of proviso. Held accordingly.

39. Consequently, all the appeal fails and are dismissed."

[47] Therefore, the opponents No.1, 2 and 3, who are driver, owner and insurer of the offending motorcycle No.GJ-08-CF-4008, are held liable to pay the amount of compensation so awarded to the applicant, whereas the respondent No.3, which is established to be the insurance company of the offending vehicle in terms of the insurance policies, is exonerated. However, in view of the above decisions, I hold that though the insurance company is not found liable to indemnify the owner against his liability to pay compensation to the petitioner, at the first instance the insurance company shall deposit the amount of compensation and shall recover the same from the owner of the offending vehicle.

Rate of Interest

[48] Learned counsel for the petitioner has argued that the 12% interest may please be awarded on the awarded amount. On the other hand, learned counsel for the respondent No.3 submitted that 6% interest be granted on the awarded amount of compensation.

[49] I have gone through the records. The Hon'ble Supreme Court of India in *Abati Bezbaruah v. Dy. Director General, Geological Survey of India*, reported in [(2003) 3 SCC 148], after considering the catena of judgments held that "The rate of interest must be just and reasonable depending upon the facts and circumstances of each case and taking all relevant factors including inflation, change of economy, policy being adopted by Reserve Bank of India from time to time, how long the case is pending, permanent injuries suffered by the victim, enormity of suffering loss of future income, loss of enjoyment of life etc., into consideration."

[50] In this case, the accident took place in the year 2022. In the year 2022, the rate of interest was at higher side. Thus, having regards to the facts and circumstances of the case, in the light of the judgment of *Abati Bezbaruah (supra)*, it would be just and proper to award the simple interest at the rate of 9% p.a. Accordingly, the petitioners shall be entitled to get simple interest at the rate of 9% p.a. on the awarded amount of compensation from the date of filing of claim petitions till payment of awarded amount.

[51] In the event, and in light of my findings above, following final order is passed:

FINAL ORDER

MACP No.05/2023:

- (i) The petition is partly allowed.
- (ii) The opponents No.1 to 3 do jointly and severally pay an amount of Rs.7,39,840/- (Rupees Seven Lacs Thirty nine thousand Eight hundred forty only), less the compensation paid u/s 140 of the MV Act, if any, within 30 days with interest at the rate of 9% per annum from the date of petition till the date of payment to the petitioner.
- (iii) At the first instance the opponent No.3 insurance company shall deposit the amount of the award in the Tribunal and shall recover the same from the owner of the offending vehicle. If necessary, the insurance company may take out execution proceedings for recovery of the award amount, and no separate suit needs to be filed for this purpose.
- (iv) The opponents do pay costs of the claimant and also bear that of their own.
- (v) The aforesaid opponent/s is/are directed to deposit the amount of compensation through RTGS / NEFT in Bank account details of **Motor Accident Claims Tribunal, Banaskantha at Palanpur**, as under:

Name of Bank: **STATE BANK OF INDIA**

Name of Account: **MACT, DISTRICT COURT, PALANPUR**

Bank Branch Name : **OPP. OLD GANZ
BAZAR, MAIN BRANCH, PALANPUR**
Bank Account No.: **40902081331**
Bank IFSC Code No.: **SBIN0000443**
Email address: **mact-palanpur
@gujarat.gov.in.**

- (vi) It is further directed that compensation amount shall be deposited directly into the bank account maintained by this Tribunal by RTGS or NEFT mode within 30 days in compliance with the directions given by Hon'ble Supreme Court in Bajaj Alliance General Insurance Co. v. Union of India, Writ Petition (s) (Civil) No. 534 of 2020 as well as directions given by Hon'ble High Court of Madras in Civil Misc. Appeal No.428 of 2016 decided on 11th March, 2016 titled as Divisional Manager, The Oriental Insurance Co. Ltd. v. Rajesh & Ors.
- (vii) On such realization of the above said amount, after deducting deficit Court fees if any, **30%** amount shall be paid in cash by RTGS or NEFT mode to the petitioner, while remaining **70%** amount be deposited in her name in Fixed Deposit Receipt for a period of 5 years in any nationalized bank with liberty to withdraw interest periodically by the applicant. The bank shall not allow any loan or advances against the above said Fixed Deposit Receipt without previous permission of this Tribunal.
- (viii) Award be drawn accordingly.

MACP No.06/2023:

- (i) The petition is partly allowed.
- (ii) The opponents No.1 to 3 do jointly and severally pay an amount of Rs.8,46,400/- (Rupees Eight Lacs Forty six thousand four hundred only), less the compensation paid u/s 140 of the MV Act, if any, within 30 days with interest at the rate of 9% per annum from the date of petition till the date of payment to the petitioner.
- (iii) At the first instance the opponent No.3 insurance company shall deposit the amount of the award in the Tribunal and shall recover the same from the owner of the offending vehicle. If necessary, the insurance company may take out execution proceedings for recovery of the award amount, and no separate suit needs to be filed for this purpose.
- (iv) The opponents do pay costs of the claimant and also bear that of their own.
- (v) The aforesaid opponent/s is/are directed to deposit the amount of compensation through RTGS / NEFT in Bank account details of **Motor Accident Claims Tribunal, Banaskantha at Palanpur**, as under:
Name of Bank: **STATE BANK OF INDIA**
Name of Account: **MACT, DISTRICT COURT, PALANPUR**

Bank Branch Name : **OPP. OLD GANZ
BAZAR, MAIN BRANCH, PALANPUR**
Bank Account No.: **40902081331**
Bank IFSC Code No.:**SBIN0000443**
Email address: **mact-palanpur
@gujarat.gov.in.**

- (vi) It is further directed that compensation amount shall be deposited directly into the bank account maintained by this Tribunal by RTGS or NEFT mode within 30 days in compliance with the directions given by Hon'ble Supreme Court in Bajaj Alliance General Insurance Co. v. Union of India, Writ Petition (s) (Civil) No. 534 of 2020 as well as directions given by Hon'ble High Court of Madras in Civil Misc. Appeal No.428 of 2016 decided on 11th March, 2016 titled as Divisional Manager, The Oriental Insurance Co. Ltd. v. Rajesh & Ors.
- (vii) On such realization of the above said amount, after deducting deficit Court fees if any, **30%** amount shall be paid in cash by RTGS or NEFT mode to the petitioner, while remaining **70%** amount be deposited in her name in Fixed Deposit Receipt for a period of 5 years in any nationalized bank with liberty to withdraw interest periodically by the applicant. The bank shall not allow any loan or advances against the above said Fixed

Deposit Receipt without previous permission
of this Tribunal.

(viii) Award be drawn accordingly.

Original of this judgment be placed in MACP No.05/2023 and its
true copy be kept in MACP No.06/2023.

Pronounced in open Tribunal today this **24th day of March,**
2026.

PALANPUR.

(Shubhada Krishnakant Baxi)

Chairman

Date:24/03/2026

M.A.C. TRIBUNAL (MAIN)

B.K.DISTRICT, PALANPUR.

(Code : GJ00377)

SNJ